

NOTICE OF FILING

Details of Filing

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File Title: ETIENNE ALEXIOU v AUSTRALIA AND NEW ZEALAND BANKING
GROUP LIMITED (ACN 005 357 522)
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



[Filed pursuant to the Court Orders entered on 12 March 2025

Form 17

Rule 8.05(1)(a)

Third Second Redacted Further Amended Statement of eClaim

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

1. The Applicant was during the period 8 August 2011 to 1 September 2015:
 - (a) an employee of the Respondent (otherwise **ANZ**);
 - (b) an employee within the meaning of Chapter 2 of the *Fair Work Act 2009* (Cth) (**Fair Work Act**);
 - (c) an employee whose employment was subject to the workplace protections contained in Divisions 3 and 5 of Part 3-1 of the *Fair Work Act*; and
 - (d) an employee of the Respondent for the purposes of Part 9.4AAA of the *Corporations Act 2001* (Cth) (**Corporations Act**); and
 - (e) an employee of the Respondent for the purpose of Part VIA of the *Banking Act 1959* (Cth) (**Banking Act**).

2. The Respondent was at all material times:

Filed on behalf of (name & role of party)	<u>The Applicant, Etienne Alexiou</u>
Prepared by (name of person/lawyer)	<u>Stewart Alan Levitt & Mike Gutzinger, Solicitors Timothy Price</u>
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[Version 2 form approved 09/05/2013]

- (a) a corporation;
 - (b) able to be sued;
 - (c) a national system employer within the meaning of that term in Part 1-2 of the Fair Work Act;
 - (d) an employer to whom Part 3-1 of the Fair Work Act applied;
 - (e) a corporation for the purposes of the *Competition and Consumer Act 2010* (Cth) (~~Australian Consumer Law~~);
 - (f) an authorised deposit-taking institution (**ADI**) within the meaning of the *Banking Act*; and
 - (g) a company for the purposes of Part 9.4AAA of the Corporations Act.
3. Other natural persons referred to in this statement of claim are identified by reference to their occupation or relationship to the Applicant or ANZ in Amended Schedule A.

Relevant Organisational Structure of ANZ

4. At all material times, ANZ was structured to include four main divisions: Australia (Retail, Commercial), Global Wealth, International and Institutional and New Zealand, which were supported by, *inter alia*, the Group Treasury Division.
5. At all material times, ANZ's corporate governance framework consisted of:
- (a) Board committees which reported directly to the Board, including the Risk Committee, which was delegated responsibility for overseeing, monitoring and reviewing ANZ's risk management principles and policies, strategies, processes and controls including credit, market, liquidity, balance sheet, operational, compliance and other reputational risk control frameworks, as well as the culture of the organisation in connection with such matters.
 - (b) Several key management committees reporting to the Chief Executive Officer, including:
 - (i) the Credit & Market Risk Committee (**CMRC**), with oversight and control of credit, market, insurance and material financial risks across ANZ;

- (ii) Group Asset and Liability Committee (**GALCO**) which was responsible for the oversight and strategic management of ANZ's balance sheet, liquidity and funding positions and capital management activities.

Group Treasury Division

- 6. At all material times, the Group Treasury Division included a business unit identified as the Short-Term Funding Group.
- 7. At all material times, a principal function and objective of the Short-Term Funding Group was to ensure that the short-term liquidity of ANZ was maintained and that ANZ complied with its internal liquidity policy and its prudential funding obligations, including by:
 - (a) measuring and monitoring ANZ's funding and liquidity requirements;
 - (b) making decisions, each business day, as to whether to issue NCDs (as defined in paragraph [25] below) for sale, and, if so, in what volume;
 - (c) providing wholesale funding plans to senior management on a regular basis (via GALCO) and supplementing these plans with forecasting which reviewed ANZ's funding and liquidity position in light of market conditions and balance sheet requirements.
- 8. At all material times, employees and officers within the Short-Term Funding Group ultimately reported to Rick Moscati, the Group Treasurer of ANZ, and relevantly included:
 - (a) Luke Davidson, in the position of Head of Group Funding; and
 - (b) Adrian Went, in the position of Deputy Group Treasurer / Head of Balance Sheet Management;
 - (c) Sean Collier, in the position of Senior Manager, Funding and Liquidity.

International and Institutional Division

- 9. At all material times, the International and Institutional Division included a business unit identified as "Global Markets" (**Global Markets**), which was based in Sydney.
- 10. At all material times, Global Markets included the following business units:

- (a) a business unit identified as “Global Balance Sheet Trading” (**Balance Sheet**), comprising sub-units or “desks” identified as “Mismatch” and “Liquidity”;
 - (b) a business unit identified as “Rates Trading” (**Rates Trading**), which included sub-units or “desks” identified as follows:
 - (i) “Short-dated Securities” desk;
 - (ii) “Swaps” desk;
 - (iii) “Interest rate options” desk;
 - (iv) “Foreign exchange forwards” desk.
11. At all material times, senior management in the Global Markets Division included:
- (a) Richard Huston, in the position of Co-Head of Fixed Income, Currencies and Commodities and Co-CEO Europe and North America;
 - (b) Eddie Listorti, in the position of Co-Head of Fixed Income, Currencies and Commodities;
 - (c) Steve Bellotti, in the position of Head of Global Markets and Loans;
 - (d) John Chase, in the position of Business Manager Balance Sheet Trading and Head of Governance;
 - (e) Fred Pucci, in the position of Head of Compliance.
12. In the period August 2011 to September 2013, senior management in the Global Markets Division included:
- (a) Robert O’Callaghan, in the position of Global Head of Fixed Income.
13. In the period August 2011 to September 2013, Robert O’Callaghan was the Applicant’s line manager.
- 13A. In the period September 2013 to September 2015, Richard Huston was the Applicant’s line manager.

Balance Sheet

14. At all material times, the Mismatch desk, within the Balance Sheet business unit:
 - (a) traded financial products including interest rate swaps, forward rate agreements, and Bank Accepted Bill (**BAB**) futures (as defined at paragraph [26] below);
 - (b) did not trade or hold Bank Bills (as defined at paragraph [28] below).

15. At all material times, the Liquidity desk, within the Balance Sheet business unit:
 - (a) managed the Liquidity portfolio, which was a prudentially regulated asset book that ANZ was required to maintain in accordance with conventions specified by the Australian Prudential Regulation Authority (**APRA**), including Prudential Standard APS 117 promulgated by APRA pursuant to s 11AF of the Banking Act;
 - (b) managed a portfolio of financial products which included, among other products, Bank Bills, floating rate notes and derivative products;
 - (c) managed the risks arising from those investments by trading in a range of cash products and derivatives.

16. At all material times, the employees and officers within Balance Sheet relevantly included:
 - (a) Jason Pritchard, in the position of Head of Balance Sheet Australia and Proprietary Trader Balance Sheet;
 - (b) Neil Lynch, in the positions of Trainee Trader, Balance Sheet and Trader, Balance Sheet;
 - (c) James Millen, in the position of Trainee Trader, Balance Sheet and Trader, Balance Sheet.
 - (d) Mark Budrewicz, in the position of Trader, Balance Sheet.

Rates Trading

17. At all material times, the personnel of the short-date securities, swaps and interest rate options desks within the Rates Trading business unit relevantly:

- (a) made ANZ's submission to AFMA each Sydney business day for the purpose of calculation of the Bank Bill Swap Reference Rate (as defined at paragraph [30] below);
 - (b) managed ANZ's portfolio of Bank Bills including by assisting in the distribution of these products to clients of ANZ and conducting trades required to purchase and sell Bank Bills to meet ANZ's funding and liquidity requirements;
 - (c) traded in financial products including interest rate swaps, forward rate agreements, currency swaps and exchange rate forwards.
18. At all material times, the employees and officers in Rates Trading relevantly included:
- (a) Matthew Morris, in the positions of Head of Australia New Zealand Linear Rates and Head of Mismatch Trading, Balance Sheet;
 - (b) Sam Ellis, in the position of Trader, Interest Rate Swaps.

Market Risk

19. Market Risk was the organisational unit within ANZ's International and Institutional Division that was responsible for oversight of traded and non-traded market risk, operational risk and compliance within Global Markets.
20. At all material times, employees and officers within Market Risk included:
- (a) Nigel Williams, in the position of Group Chief Risk Officer;
 - (b) Shayne Collins, in the position of Head of Market Risk;
 - (c) Duncan Marshall, in the position of Head of Market Risk Australia.

Australia Division

21. At all material times the Australia division was the business unit within ANZ which was responsible for servicing the bank's retail customers, relevantly including variable interest-rate home mortgage lending.
22. At all material times, employees and officers within the Australia division included Philip Chronican, in the position of CEO ANZ Australia, Australia division.

Legal

23. At all material times, employees and officers of ANZ included Bob Santamaria, in the position of Group General Counsel and Company Secretary.
24. In at least the period July 2014 to September 2015, ANZ instructed Clayton Utz to act for it in connection with the ASIC BBSW Investigation (as defined at paragraph [172] below).

Relevance of BBSW in Global Markets

Bank Bills and the Bank Bill Swap Reference Rate (BBSW)

25. A Negotiable Certificate of Deposit (**NCD**) is:
 - (a) a certificate issued by a bank evidencing an interest bearing deposit with the issuing bank for a fixed term, which entitles the holder of the certificate to payment of a specified sum (**Face Value**) by that bank on the date that the certificate matures; and
 - (b) an instrument by which a bank, including a Prime Bank (as defined at paragraph [27] below), may borrow funds for a short term, usually for a period of no longer than 12 months.
26. A BAB is:
 - (a) a bill of exchange, as defined in s 8 of the *Bills of Exchange Act 1909* (Cth), which has been accepted by a bank and bears the name of the accepting bank as acceptor, and which obliges the bank to pay the Face Value of the bill to the holder of the bill on the date that it matures; and
 - (b) an instrument by which a bank, including a Prime Bank, may borrow funds for a short term, usually for a period of no longer than 12 months.
27. A **Prime Bank** is one of a designated sub-set of banks operating in Australia, whose short-term securities trade as a homogeneous asset class and are recognised as being of the highest quality with regard to liquidity, credit and consistency of relative yield.

Particulars

ASX Prime Bank Conventions, as modified from time to time

28. A reference to **Bank Bills** in this statement of claim is a reference to both NCDs and BABs.

29. At all material times NCDs issued, and BABs accepted, by Prime Banks (**Prime Bank Bills**) were able to be traded on a fungible basis, and were recognised by participants in the short date securities market (**Bank Bill Market**) as being of the highest quality with regard to liquidity, credit and consistency of relative yield.
30. At all material times, the Bank Bill Swap Reference Rate (**BBSW**) was:
- (a) the trimmed, averaged mid-rate of the observed best bid/best offer for Prime Bank Bills on each Sydney business day published by the Australian Financial Markets Association Limited;
 - (b) set on the basis of observations submitted by BBSW panellists (including ANZ) as to the yield at which Prime Bank Bills were trading at 10am on each trading day;
 - (c) a key reference rate and benchmark rate in the financial markets in Australia, the independence and transparency of which was at all material times a critical factor in ensuring the efficiency, integrity and good operation of those markets;
 - (d) widely used as the benchmark (or reference) interest rate in financial products in Australia, including short term interest rate products, floating rate derivative products, and commercial loans;
 - (e) used by ANZ to set its internal funds transfer pricing mechanisms.

Global Markets Exposure to BBSW

31. On each Sydney business day at all material times, portfolios (known as “**books**”) managed by the Mismatch, Liquidity and Rates Trading desks in Global Markets included one or both of the following:
- (a) holdings of BBSW-referenced products in relation to which:
 - (i) an obligation to pay an amount of money would be quantified when the relevant BBSW was set on that day; and
 - (ii) in the case of some of the BBSW-referenced products, whether the amount was payable by ANZ to the counterparty or by the counterparty to ANZ, depended upon the rate at which the relevant BBSW was set on that day; and

- (b) funds allocated to the desk pursuant to ANZ's internal funds transfer pricing arrangements, which earned or recorded a return on that day the amount of which depended upon the rate at which the relevant BBSW was set on that day,
- and, therefore, the profit and loss of the books was affected by movement in the BBSW on that day (**BBSW Rate Set Exposure**).
32. At all material times, the internally-monitored BBSW Rate Set Exposure of each of the Mismatch desk, Liquidity desk and Rates Trading in Global Markets (being the net aggregate of the BBSW Rate Set Exposure of each book on the relevant desk), and, accordingly, of ANZ, included exposures arising from the holding and or trading by ANZ of BBSW-referenced financial products, relevantly including forward rate agreements (**FRAs**).

Applicant's Employment with ANZ

33. The Applicant was recruited to ANZ as Head of Mismatch Trading and retained that role from August 2011 to December 2012. In this role, the Applicant oversaw the operations of the Mismatch desk within the Balance Sheet sub-unit of Global Markets.
34. On or around 23 June 2011, the Applicant entered into a contract of employment with ANZ (the **2011 Contract**) which included the following terms:
- (a) fixed Remuneration including salary and superannuation contribution of \$425,000 per annum;
 - (b) compensation for remuneration forfeited from the Applicant's then employer Barclays, comprising deferred equity to a maximum value of \$1,880,720;
 - (c) compensation for the remuneration forfeited from Barclays, being a cash payment in the sum of \$310,000 gross;
 - (d) compensation for the bonus foregone from Barclays in the sum of \$1,500,000, paid as a cash payment of \$850,000 in March 2012 and deferred equity to a maximum value of \$650,000;
 - (e) eligibility to participate in the International and Institutional Division Incentive Plan that provided the Applicant with the opportunity to earn performance bonuses; and
 - (f) eligibility to receive bonuses or other rewards based on the Applicant's annual performance under the applicable Short-Term Incentive Plan.

35. The 2011 Contract was a written contract.

Particulars

The 2011 Contract was made in writing in a letter from ANZ to the Applicant dated 23 June 2011 and its terms were partly express and partly implied.

36. It was a term of the 2011 Contract that performance bonuses payable under the International and Institutional Division Incentive Plan were:
- (a) not guaranteed;
 - (b) generally calculated based on a combination of the Applicant's job level, his performance relative to his peers, the overall achievement of Institutional Division's profit and growth targets and the Applicant's individual contributions to those achievements;
 - (c) calculated with reference to the matters in sub-paragraph (b) above in the ANZ financial year ending 30 September immediately preceding the date of the remuneration review, which was typically completed in early November;
 - (d) determined in accordance with the terms of the International and Institutional Division Incentive Plan (as varied from time to time);
 - (e) made at the discretion of the Board of Directors of ANZ;
 - (f) subject to the on-going discretion of the Board of Directors of ANZ to adjust performance-based components of remuneration (including deferred equity) downwards, or to zero if appropriate, if the Board considered such an adjustment was necessary:
 - (i) to protect the financial soundness of ANZ; or
 - (ii) to meet unexpected or unknown regulatory requirements; or
 - (iii) if the Board subsequently considers that having regard to information which has come to light after the grant of the deferred equity, the initial grant of deferred equity was not justified (**Clawback Discretion**).

Particulars

Letter ANZ to the Applicant, 23 June 2011, Schedule A Clause 5

37. It was an implied term of the 2011 Contract that ANZ would deal fairly with the Applicant and or exercise any contractual rights or discretions (including the discretion not to award any bonus and the Clawback Discretion) in good faith and for a proper purpose (**Implied Good Faith Obligation**).
38. It was an implied term of the 2011 Contract that ANZ would not exercise any discretion conferred upon it (including the discretion not to award any bonus and the Clawback Discretion) capriciously, arbitrarily or unreasonably, and only after giving real and genuine consideration to the interests of the Applicant (**Implied Reasonableness Obligation**).
39. It was an implied term of the 2011 Contract that each party would co-operate in the doing of acts necessary for performance, or to enable the other party to secure any benefit provided by the contract (**Implied Benefit Obligation**).
40. On 8 August 2011, the Applicant commenced employment as Head of Mismatch with ANZ under the terms of the 2011 Contract.
41. In this role, the Applicant was responsible for managing risk arising out of mismatches between assets, liabilities and equity on ANZ's balance sheet, including by trading interest rate swaps, forward rate agreements and Bank Bill futures.

2012 Performance and Remuneration Review

42. On or around November 2012 the Applicant was awarded performance bonuses totalling \$2,650,000 (**2012 Performance Bonuses**).
43. The award of the 2012 Performance Bonuses took into account:
 - (a) the Applicant's performance relative to his peers in four categories, namely:
 - (i) Financial;
 - (ii) Customer;
 - (iii) Process/risk; and
 - (iv) People; and

- (b) the Applicant's demonstration of ANZ's Values, including his compliance with ANZ's Code, Policy and Values (as defined at paragraph [123] below);

in the calendar year 1 October 2011 to 30 September 2012.

Particulars

Letter ANZ to the Applicant, 14 November 2012

- 44. The 2012 Performance Bonus was awarded in circumstances where ANZ:
 - (a) monitored the Applicant's use of ANZ's systems including the Bloomberg Chat Platform and his ANZ email account continually; and
 - (b) was aware or ought reasonably to have been aware of the contents of the Applicant's communications using ANZ's systems including the Bloomberg Chat Platform and his ANZ email account.

Particulars

Employee Guide, informing the Applicant that his use of ANZ's systems including the Bloomberg Chat Platform and his ANZ email account would be monitored continually

- 45. The 2012 Performance Bonus was awarded in circumstances where ANZ did not take issue with:
 - (a) any aspect of the Applicant's use of ANZ's systems including the Bloomberg Chat Platform and his ANZ email account; or
 - (b) the content of communications between the Applicant and his peers and colleagues at ANZ or at other financial institutions.

Particulars

Letter ANZ to the Applicant, 14 November 2012

Employee Guide

- 46. The 2012 Performance Bonuses comprised:
 - (a) a short-term incentive bonus of \$2,300,000; and
 - (b) a long-term equity plan bonus of \$350,000

(together, the **2012 Performance Bonuses**).

47. It was a condition of the grant of the 2012 Performance Bonuses that \$1,100,000 of the short-term incentive bonus be deferred to equity.
48. Deferral to equity (whether of short-term incentive bonus components or long-term equity plan components of the 2012 Performance Bonuses) involved:
 - (a) shares in ANZ being allocated to the Applicant at no cost;
 - (b) the allocated shares being held in trust for the Applicant by ANZEST Pty Ltd as Trustee for the ANZ Employee Share Acquisition Plan (the **Trustee**);
 - (c) the allocated shares being held “unvested” for the Applicant until the vesting date;
 - (d) the allocated shares “vesting” in the Applicant on the relevant vesting date;
 - (e) “vested” shares continuing to be held on trust for the Applicant at and from the vesting date unless and until the Applicant advised the share registry, Computershare Plan Managers, to transfer the shares into his name.

Particulars

Letter ANZ to the Applicant reporting outcome of 2012 Performance & Remuneration Review dated 14 November 2012.

49. The number of shares deemed equivalent to \$1,100,000 for the purposes of the deferral to equity of this portion of the Applicant’s short-term incentive bonus was 44,408. The number of shares deemed equivalent to \$350,000 for that purpose was 14,129.
50. It was a condition of the grant of the 2012 Performance Bonuses that the deferred equity component of the short-term incentive bonus would vest in two tranches:
 - (a) 22,204 shares on 12 November 2013; and
 - (b) 22,204 shares on 12 November 2014.
51. It was a condition of the grant of the 2012 Performance Bonuses that the long-term equity plan bonus of 14,129 shares would vest on 12 November 2015.
52. The 2012 Performance Bonuses were subject to the express and implied terms in the 2011 Contract, referred to at paragraphs [33] to [39] above.

53. It was a term of the 2012 Performance Bonuses that:
- (a) for termination on notice, all unvested shares were forfeited at “full notice termination date”, unless the Applicant was classified as a “good leaver”;
 - (b) in certain pre-determined circumstances where the Applicant’s termination is classified as a “good leaver”, then, unless the Board of Directors of ANZ determined otherwise, all unvested long-term equity plan shares would be pro-rated for the period from the date of the grant to the “full notice termination date” and released at the “original vesting date”;

Particulars

Letter ANZ to Etienne Alexiou reporting outcome of 2012 Performance & Remuneration Review dated 14 November 2012.

Employee Share Acquisition Plan (ESAP)

Further and better particulars may be provided after discovery.

2012 Promotion to Head of Balance Sheet Australia

54. On or around 12 December 2012, ANZ promoted the Applicant to the position of Head of Balance Sheet Australia.

Particulars

Letter from Rob O’Callaghan to the Applicant, 12 December 2012

55. As Head of Balance Sheet Australia, the Applicant was responsible for overseeing trading activities in relation to ANZ’s Australian balance sheet on both Mismatch and Liquidity desks in the Global Markets Division.
56. In this role, the Applicant was responsible for overseeing ANZ’s activities in entering into trades in relation to its Australian balance sheet to hedge interest rate risk, comply with prudential requirements, maintain liquidity, and to maximise profit in that process.

2013 Promotion to Head of Balance Sheet Australia and New Zealand

57. On or around 8 March 2013, the Applicant was promoted to Head of Balance Sheet Australia and New Zealand.

Particulars

Email Steve Bellotti to Global Markets, 8 March 2013

58. In this role, the Applicant was responsible for overseeing ANZ's activities in entering into trades in relation to its Australia and New Zealand balance sheet to hedge interest rate risk, comply with prudential requirements, maintain liquidity, and to maximise profit in that process.
59. On or around 21 March 2013, the Applicant and ANZ entered into a new contract of employment (**2013 Contract**).

Particulars

The 2013 Contract was made in writing in a letter from ANZ to the Applicant dated 20 March 2013 and signed by the Applicant on 21 March 2013 and its terms were partly express and partly implied.

60. Pursuant to the terms of the 2013 Contract, the Applicant's remuneration was to include:
- (a) fixed Remuneration including salary and superannuation contribution of \$460,000 per annum;
 - (b) bonuses calculated, paid and allocated annually based on the Applicant's performance in the relevant performance year, the quantum of which was to be calculated at the discretion of ANZ under applicable ANZ incentive schemes, including Variable Reward and Short-Term Incentive (sch 1).
61. The Applicant's entitlement to deferred equity at termination of employment was to be determined in accordance with the terms of the Employee Share Acquisition Plan (**ESAP**).
62. It was an implied term of the 2013 Contract that ANZ was subject to the Implied Good Faith Obligation.
63. It was an implied term of the 2013 Contract that ANZ was subject to the Implied Reasonableness Obligation.

64. It was an implied term of the 2013 Contract that ANZ was subject to the Implied Benefit Obligation.

2013 Performance and Remuneration Review

65. On or around November 2013, the Applicant was awarded performance bonuses totalling \$4,000,000 (**2013 Performance Bonuses**).
66. The award of the 2013 Performance Bonuses took into account:
- (a) external market practice;
 - (b) the Applicant's overall performance rating;
 - (c) the Applicant's demonstration of ANZ's Values, including his compliance with ANZ's Code, Policy and Values (as defined at paragraph [123] below);
- in the calendar year 1 October 2012 to 30 September 2013.

Particulars

Letter ANZ to the Applicant, 19 November 2013

67. The 2013 Performance Bonus was awarded in circumstances where ANZ:
- (a) monitored the Applicant's use of use of ANZ's systems including the Bloomberg Chat Platform and his ANZ email account continually; and
 - (b) was aware or ought reasonably to have been aware of the contents of the Applicant's communications using ANZ's systems including the Bloomberg Chat Platform and his ANZ email account.

Particulars

Employee Guide, informing the Applicant that his use of ANZ's systems including the Bloomberg Chat Platform and his ANZ email account would be monitored continually

68. The 2013 Performance Bonus was awarded in circumstances where ANZ did not take issue with:
- (a) any aspect of the Applicant's use of ANZ's systems including the Bloomberg Chat Platform and his ANZ email account; or

- (b) the content of communications between the Applicant and his peers and colleagues at ANZ or at other financial institutions.

Particulars

Letter ANZ to the Applicant, 19 November 2013

Employee Guide

- 69. It was a condition of the grant of the 2013 Performance Bonuses that \$2,352,000 be deferred to equity on terms imposed in accordance with ANZ's Total Incentives Performance Plan (**TIPP**).
- 70. Deferral to equity involved:
 - (a) shares in ANZ being allocated to the Applicant at no cost;
 - (b) the allocated shares being held in trust for the Applicant by the Trustee;
 - (c) the allocated shares being held "unvested" for the Applicant until the vesting date;
 - (d) the allocated shares "vesting" in the Applicant on the relevant vesting date;
 - (e) "vested" shares continuing to be held on trust for the Applicant at and from the vesting date unless and until the Applicant advised the share registry, Computershare Plan Managers, to transfer the shares into his name.

Particulars

Letter ANZ to Etienne Alexiou reporting outcome of 2013 Performance & Remuneration Review dated 19 November 2013.

- 71. The number of shares deemed equivalent to \$2,352,000 for the purposes of the deferral to equity of this portion of the Applicant's bonus was 74,079.
- 72. Of the portion of the 2013 Performance Bonuses deferred to equity on TIPP terms:
 - (a) 24,693 shares vested on 22 November 2014;
 - (b) 24,693 shares were to vest on 22 November 2015; and
 - (c) 24,693 shares were to vest on 22 November 2016.

73. The 2013 Performance Bonuses were subject to the express and implied terms in the 2013 Contract, referred to above at paragraphs [59] to [64].
74. It was a term of the 2013 Performance Bonuses that:
- (a) for termination on notice, all unvested shares were forfeited at “full notice termination date”, unless the Applicant was classified as a “good leaver”;
 - (b) in certain pre-determined circumstances where the Applicant’s termination was classified as a “good leaver”, then, unless the Board of Directors of ANZ determined otherwise, all unvested shares would be retained by the Applicant and released at the “original vesting date”.

Particulars

Letter from ANZ to Etienne Alexiou reporting outcome of 2013 Performance & Remuneration Review dated 19 November 2013.

ESAP

Further and better particulars may be provided after discovery.

2013 Promotion to Global Head of Balance Sheet Trading

75. On or around 5 December 2013, ANZ promoted the Applicant to the position of Global Head Balance Sheet Trading.
76. The Applicant’s employment continued to be governed by the 2013 Contract.
77. In his role as Global Head of Balance Sheet, the Applicant oversaw trading activities in relation to ANZ’s global balance sheet on both Mismatch and Liquidity desks in Global Markets.
78. In this role, the Applicant was required to oversee ANZ’s activities in entering into trades in relation to its global balance sheet to hedge interest rate risk, to comply with prudential requirements, maintain liquidity, and to maximise profit in that process.

2014 Performance and Remuneration Review

79. On or around 17 November 2014, pursuant to new procedures for annual performance reviews in Global Markets, the Applicant was given by ANZ a “Global Markets 2014 Performance Summary” as part of his performance review (**Performance Summary**).

Particulars

Document entitled Global Markets 2014 Performance Summary

80. The Performance Summary was divided into four quadrants as follows:
- (a) **Financial**, with a weighting of 50%. The Applicant was recorded as “exceeds expectations” for this category and as having a “record year”, including with, *inter alia*:
 - (i) “GBST revenue \$496 mio (YTD), \$210 mio over plan”
 - (ii) “NPAT \$292 mio, \$150 mio over plan”
 - (iii) “H1 pct revenue and NPAT increase yoy highest of peers”;
 - (b) **Process/Risk**, with a weighting of 20%. The Applicant, *inter alia*, “improved liquidity compliance; Fully compliant on regulatory and operating risk; No credit breaches, improved global credit oversight; involved in ongoing issues relating to finance AFS reporting and external enquiries”;
 - (c) **Customer**, with a weighting of 15%. The Applicant, *inter alia*, “improved the transparency and culture in the Balance Sheet to focus heavily on being fair, open and honest in all our internal dealings and rely purely on financial logic in providing neutral base transfer price curves”; and
 - (d) **People**, with a weighting of 15%. The Applicant, *inter alia*, “kept high level of focus post an outstanding H1 and during a period of significant change and uncertainty.”
81. The 2014 Performance Bonus was provisionally awarded in circumstances where ANZ:
- (a) monitored the Applicant’s use of ~~use of~~ ANZ’s systems including the Bloomberg Chat Platform and his ANZ email account continually; and
 - (b) was aware or ought reasonably to have been aware of the contents of the Applicant’s communications using ANZ’s systems including the Bloomberg Chat Platform and his ANZ email account.

Particulars

Employee Guide, informing the Applicant that his use of ANZ's systems including the Bloomberg Chat Platform and his ANZ email account would be monitored continually

82. The 2014 Performance Bonus was provisionally awarded in circumstances where ANZ did not take issue with:
- (a) any aspect of the Applicant's use of ANZ's systems including the Bloomberg Chat Platform and his ANZ email account; or
 - (b) the content of communications between the Applicant and his peers and colleagues at ANZ or at other financial institutions.

Particulars

Letter ANZ to the Applicant, 12 November 2014

Employee Guide

83. On or around November 2014, the Applicant's salary was increased to \$485,000 per annum inclusive of superannuation.
84. On or around 17 November 2014, the Applicant was awarded performance bonuses totalling \$5,000,000 (**2014 Performance Bonuses**).

Particulars

Letter ANZ to the Applicant, 12 November 2014

85. The award of the 2014 Performance Bonuses took into account:
- (a) external market practice;
 - (b) the Applicant's performance against objectives;
 - (c) the Applicant's demonstration of ANZ's Values, including his compliance with ANZ's Code, Policy and Values (as defined at paragraph [123] below);
 - (d) ANZ's overall performance;

in the calendar year 1 October 2013 to 30 September 2014.

Particulars

Letter ANZ to the Applicant, 12 November 2014

86. It was a condition of the grant of the 2014 Performance Bonuses that \$2,952,000 be deferred to equity.
87. Deferral to equity meant allocation of shares to the Applicant on the condition that they be held in trust for the Applicant until the end of the deferral period.
88. It was a condition of the grant of the 2014 Performance Bonuses that the deferred equity component would vest in three tranches:
 - (a) \$984,000 on 21 November 2015;
 - (b) \$984,000 on 21 November 2016; and
 - (c) \$984,000 on 21 November 2017.
89. The equities equivalent of the cash figure was not determined in relation to the 2014 Performance Bonuses.
90. The 2014 Performance Bonuses were subject to the express and implied terms in the 2013 Contract, referred to above at paragraphs [59] to [64].
91. In accordance with the terms of the 2013 Contract, the Applicant's entitlements upon termination fell to be determined by reference to the ESAP.
92. The terms of the ESAP were broadly to the effect that:
 - (a) deferred equity (being shares held on trust for the Applicant by the Trustee) was forfeited on termination unless the Applicant was classified as a "good leaver";
 - (b) in certain pre-determined circumstances where the Applicant's termination was classified as a "good leaver", then, unless the Board of Directors of ANZ determined otherwise, all unvested shares would be retained by the Applicant and released at the "original vesting date";

Particulars

Document entitled 'Conditions of Grant 2014 – STI or TIPP', dated on or around 12 November 2014

ESAP

Further and better particulars may be provided after discovery.

93. On or around 19 November 2014, ANZ wrote to the Applicant indicating that while the 2014 Performance Bonus had been “provisionally awarded” ANZ had decided to “defer making a final decision” in respect of the award of the 2014 Performance Bonus “until the ASIC and ANZ investigations are closed and it is known whether there are any adverse findings against you”.

Particulars

Letter Richard Huston to the Applicant, 19 November 2014

The Applicant’s Participation in Leadership Programs

94. On or around 2012, the Applicant was invited to participate in the IIB G40 accelerated Leadership Program (**Leadership Program**), which was a leadership program which ANZ ran in various international locations each year for employees of ANZ within the International and Institutional Division which ANZ identified as having exceptional leadership talent and potential.
95. The Applicant graduated the Leadership Program in 2013.
96. Following this, on or around 2014, ANZ invited the Applicant to participate in the highest development program offered at ANZ called the Executive Leadership Program (**ELP**) in July 2014.
97. In 2014, the ELP comprised 24 employees out of the 50,840 employed across all divisions globally in ANZ and was held in Melbourne.
98. The ELP program included those employees in senior management positions identified by ANZ as having exceptional leadership talent and potential and future leadership career prospects at ANZ.
99. The Applicant’s invitation to participate and participation in both the Leadership Program and the ELP occurred in circumstances where ANZ:
- (a) monitored the Applicant’s use of use of ANZ’s systems including the Bloomberg Chat Platform and his ANZ email account continually; and

- (b) was aware of the contents of the Applicant's communications using ANZ's systems including the Bloomberg Chat Platform and his ANZ email account.

Particulars

Employee Guide, informing the Applicant that his use of ANZ's systems including the Bloomberg Chat Platform and his ANZ email account would be monitored continually

100. The Applicant's invitation to participate and participation in both the Leadership Program and the ELP occurred in circumstances where ANZ did not take issue with:
- (a) any aspect of the Applicant's use of ANZ's systems including the Bloomberg Chat Platform and his ANZ email account; or
 - (b) the content of communications between the Applicant and his peers and colleagues at ANZ or at other financial institutions.

Function of Bloomberg Chats in Global Markets

101. Prior to the Applicant's employment commencing with ANZ, ANZ installed on the Applicant's work desk a Bloomberg terminal and licence with individual log in details for the Applicant, which enabled the Applicant to use the 'Instant Bloomberg' electronic messaging facility (**Bloomberg Chat Platform**).
102. Means of accessing the Bloomberg Chat Platform were also installed by ANZ on the Applicant's ANZ-issued laptop computer and mobile telephone.
103. At all relevant times, the Bloomberg terminal was a piece of hardware separate to a work computer and was installed by ANZ on management, trading and sales work desks at ANZ's workplace at the Global Markets.
104. At all relevant times the Applicant could also access the full functionality of the Bloomberg Chat Platform together with other features of the Bloomberg terminal facility on his ANZ-issued mobile telephone and laptop computer.
105. Until disclosed to the Australian Securities and Investments Commission (**ASIC**) in the context of the ASIC BBSW Investigation (as defined at paragraph [464172]), the contents of communications posted on the Bloomberg Chat Platform were accessible only to:
- (a) participants in the relevant conversation;

- (b) ANZ as holder of the relevant Bloomberg Chat Platform licence (including compliance and senior management);
 - (c) the licensees through whom other participants in the relevant conversation gained access to the Bloomberg Chat Platform.
106. It was a feature of the Bloomberg Chat Platform that:
- (a) a person could only participate in a conversation by invitation;
 - (b) some conversations were standing conversations to which participants recurrently returned;
 - (c) some conversations were *ad hoc*, formed for ephemeral purposes and disbanding once those purposes had been served.
107. The contents of the communications posted on the Bloomberg Chat Platform were recorded and time stamped.
108. At all relevant times, it was the common business practice facilitated by ANZ for employees of ANZ in management, trading and sales to use the Bloomberg Chat Platform to communicate with peers, colleagues and counterparties internal and external to ANZ.

Particulars

At all relevant times the Bloomberg Chat Platform was installed by ANZ on the Applicant's computer at work and ANZ-issued telephone and laptop computer and on the devices of the Applicant's colleagues

109. At all relevant times, ANZ knew that its employees in management, trading and sales used the Bloomberg Chat Platform as a form of communication and authorised, facilitated and encouraged the use of that mode of communication.
110. The Bloomberg Chat Platform enabled employees in management, trading and sales to:
- (a) obtain real-time market intelligence about counter-parties' views and sentiment of the market;
 - (b) understand other banks positioning of their trading books;

- (c) understand potential market positioning for determining proprietary trading of market participants;
 - (d) receive research and views from market participants;
 - (e) cultivate and maintain relationships with traders in institutions who were ANZ's counterparties to trades in financial products;
 - (f) cultivate and maintain counterparty relationships to ensure access to liquidity;
 - (g) discuss and understand the potential impacts of changes to the regulatory environment;
 - (h) discuss and understand measures being put in place at other financial institutions to respond to changes in the regulatory environment;
 - (i) better manage counterparty credit risk;
 - (j) undertake transactions;
 - (k) evidence transactions undertaken; and
 - (l) facilitate the confirmation and settlement of transactions.
111. At all relevant times, ANZ knew that the use of the Bloomberg Chat Platform was integral to the performance of duties of employees working in Global Markets at ANZ.
112. At all relevant times, the Applicant used the Bloomberg Chat Platform as a means of attending to matters integral to the performance of his duties, including the matters pleaded at paragraph [110] above.
113. Frequently during the period August 2011 to September 2013, the Applicant used the Bloomberg Chat Platform and work email account in the context where, due to the nature of his role, the Applicant worked long hours at ANZ (regularly working up to 18 hours per day).
114. Because the Applicant and the peers and colleagues with whom he communicated through the Bloomberg Chat Platform and over his ANZ email were working under similar circumstances referred to in paragraph [113] above, personal and market-related communications were often intermingled in their communications.

115. In the circumstances outlined in paragraphs [113] and [114], it was impracticable, undesirable and or prohibited for the Applicant to conduct his social conversations without making use of Bloomberg Chat Platform and his ANZ work email, among other reasons because such communications would not be able to be monitored by ANZ.
116. At all relevant times, ANZ benefited from the Applicant's use of the Bloomberg Chat Platform and work email in performance of his duties, including by the Applicant exceeding performance targets set for him by ANZ, including over the period 2011 to 2013, by:
- (a) increasing Balance Sheet revenue above budget each financial year;
 - (b) increasing return on equity above target in each financial year;
 - (c) maintaining regulatory compliance for Balance Sheet in each financial year; and
 - (d) ensuring credit risk was well managed and which avoided default within the Balance Sheet portfolio.
117. At all relevant times, the use of the Bloomberg Chat Platform and the Applicant's ANZ work email:
- (a) to carry out the functions enumerated at paragraphs [110], [111] and [112] above;
 - (b) to include social communication or connection, having regard to the matters outlined in paragraphs [113] to [115] above;
 - (c) to secure for ANZ the benefits enumerated at paragraph [116] above;
- was facilitated and encouraged by ANZ.
118. ANZ continually monitored the use of its systems including the Bloomberg Chat Platform and ANZ work email and was aware that:
- (a) its employees using those systems used coarse or lewd language or language which in other contexts may be offensive;
 - (b) such language was the common parlance of the market or markets in which employees in the Global Markets business unit operated.

119. At no time during the period August 2011 to September 2013 did ANZ take exception to or issue with or otherwise reprimand its employees for the use of language of the kind described at paragraph [118].
120. ANZ had commercial reasons not to take issue with or otherwise reprimand its employees for the use of language of the kind described at paragraph [118], including that if its employees were prevented from participating in conversations and exchanges where the use of such language was commonplace by preventing the ANZ employee from using such language its employees could be inhibited in the discharge of their functions within and for ANZ.
121. In facilitating and encouraging the use of the Bloomberg Chat Platform and ANZ work email in the manner described at paragraph [117] above, ANZ recognised that it was commercially advantageous to ANZ:
- (a) to permit personal use of ANZ systems including the Bloomberg Chat Platform and ANZ work email in line with the Personal Use Representation and Permissible Personal Use Representation (as defined at paragraph [127] and [130] below);
 - (b) to tolerate language of the kind described at paragraph [118] above.

Representations Concerning Conduct in Global Markets

122. As at June 2011, ANZ had created and circulated amongst its employees various codes, policies and procedures applicable to employees though not ordinarily incorporated into contracts of employment.
123. These codes, policies and procedures included a 'Code of Conduct and Ethics' (**Code**), a 'Use of Systems, Equipment and Information Policy' (**Policy**) and a statement of values, 'ANZ Values' (**Values**).
124. These codes, policies and procedures further included a 'Business Instruction Manual' specific to Global Markets, sometimes referred to as the Blue Book.
125. At all material times, ANZ propounded a Code, Policy, and Values, as varied from time to time.

126. On or around August 2011, at the commencement of his employment with ANZ, the Applicant was given a document entitled “ANZ – Employee Information Guide” (**Employee Guide**).
127. The Employee Guide was included in a “welcome pack” for new employees provided to the Applicant when he commenced employment with ANZ. The Employee Guide stated among other things:
- (a) that ANZ provided access to systems and equipment so that the Applicant could do his job;
 - (b) that ANZ “allows some limited and reasonable personal use of systems and equipment under certain conditions – i.e. the personal use does not offend, does not interrupt or interfere with the performance of your duties or anyone else’s, does not cause significant cost or drain on ANZ resources” (the **Personal Use Representation**); and
 - (c) that in relation to the monitoring of electronic communications:
 - (i) “it is important that you are aware that ANZ monitors the use of its systems and equipment”;
 - (ii) that “ANZ has a standard business practice of monitoring email and internet use”, which practice “is necessary for ANZ to maintain secure systems, protect our confidential information and ensure content is not menacing, harassing or offensive”;
 - (iii) that ANZ “carries out electronic surveillance”(collectively, the **Monitoring Representations**).
128. The “systems and equipment” referred to in sub-paragraph [127(c)] above encompassed:
- (a) the Bloomberg Chat Platform;
 - (b) the Applicant’s work email.
129. At all material times, ANZ maintained systems to monitor compliance with the Code, Policy and Values, including by:
- (a) monitoring employee communications (including Bloomberg Chats and email);

- (b) preventing certain words being used on Bloomberg Chats;
- (c) inserting directions into contracts of employment and other material provided to employees indicating that employees should comply with the Code, Policy and Values.

Particulars

The existence and ambit of the systems pleaded in this paragraph are to be inferred among other matters from the contents of the Employee Guide.

Further and better particulars may be provided after discovery.

130. At all relevant times from August 2011 to September 2013, ANZ, through its officers and employees, represented to the Applicant that it was permissible to use ANZ's systems including the Bloomberg Chat Platform and the Applicant's ANZ work email for limited and reasonable personal use on conditions:

- (a) that such personal use did not offend;
- (b) that such personal use did not interrupt or interfere with the performance of the Applicant's duties or anyone else's; and
- (c) that such personal use did not cause significant cost or drain on ANZ resources (**Permissible Personal Use Representation**).

Particulars

The Permissible Personal Use Representation was made by means including the inclusion of the representation in the Employee Guide and the provision of the Employee Guide to the Applicant upon commencement of his employment.

Further and better particulars may be provided after discovery.

131. At all relevant times from August 2011 to September 2013, ANZ, through its officers and employees, represented to the Applicant (implicitly or explicitly) that:

- (a) there was a workplace environment or culture within Global Markets of using coarse or lewd language, including language which in other contexts could cause offence, to communicate with peers and colleagues;

- (b) there was a workplace environment or culture within Global Markets of using coarse or lewd language, including language which in other contexts could cause offence, when using the Bloomberg Chat Platform or work email to communicate with peers and colleagues at ANZ and in comparable environments at other institutions;
- (c) coarse or lewd language, including language which in other contexts could cause offence, was acceptable to ANZ, or at the least, ANZ was indifferent to it, when used on the Bloomberg Chat Platform or work email to communicate with peers and colleagues in Global Markets at ANZ and with peers and colleagues working in comparable environments at other institutions;
- (d) ANZ would not impose any, or any serious, sanction (including termination of his employment or forfeiture of deferred equity entitlements) for the use of coarse or lewd language, including language which in other contexts could cause offence, on the Bloomberg Chat Platform or work email to communicate with peers and colleagues in Global Markets or with peers and colleagues working in comparable environments at other institutions;
- (e) ANZ would not impose any, or any serious, sanction (including termination of his employment or forfeiture of deferred equity entitlements) for the use of coarse or lewd language, including language which in other contexts could cause offence, even if the use of that language could be construed as a breach of ANZ's Code of Conduct, Policy and Statement of Values, where that language was used on the Bloomberg Chat Platform or work email to communicate with peers and colleagues in Global Markets or with peers and colleagues working in comparable environments at other institutions.

Collectively, the **Communication Representations**.

Particulars

The representations were oral and or implied. For example, over the period 2011 to September 2013, coarse and lewd communication by officers and employees of Global Markets was frequently observed by the Applicant and included the following examples:

- a) *Swear words such as “fark”, “cu*t” were commonly used on the Bloomberg Chat Platform or work email;*

- b) *Lewd language referencing sexual or explicit matters such as references to illicit drugs or alcohol was used on the Bloomberg Chat Platform or work email;*
- c) *Swear words such as “fark”, “cu*t” were commonly orally used in ANZ’s dealing room;*
- d) *Lewd language referencing sexual or explicit matters such as references to illicit drugs or alcohol were commonly orally used in ANZ’s dealing room;*

Over the period 2011 to September 2013, the Applicant was not aware of any employee of ANZ being sanctioned for his communications on Bloomberg Chat Platform or work email

132. At all material times, ANZ had a compliance group within Global Markets whose functions and duties included (**Compliance Group**):

- (a) monitoring compliance with the Code, Policy and Values using the systems pleaded above at paragraph [129] and consistently with the Monitoring Representations;
- (b) responsibility for monitoring or ensuring compliance with the Code, Policy and Values within Global Markets;
- (c) responsibility for monitoring or ensuring, more generally, legal and regulatory compliance with Global Markets.

133. Between September 2011 and September 2013, the approach within the Compliance Group and or by ANZ towards compliance with the Code, Policy and Values was to either ignore, permit or acquiesce in disregard of the Code, Policy and Values.

Particulars

- a) *On or around September 2011, John Chase responded to an allegation that a “white substance” was found in the male toilets of the dealing room on the occasion of his birthday by saying to the Applicant words to the effect of “when I told Rob O’Callaghan he said, what a waste, someone should have sprinkled it on the birthday cake”.*
- b) *The Applicant regularly witnessed junior staff completing compliance training for senior management, including the executive assistant to his line manager*

Robert O'Callaghan completing online Code, Policy and Values compliance and training modules on Mr O'Callaghan's behalf in September 2011.

- c) *On or around October 2011, Robert O'Callaghan reported to the Applicant that in or around October 2011, at a dinner meeting of the Global Markets senior leadership team, attendees including Robert O'Callaghan, Richard Huston, Eddie Listorti and Steve Bellotti sculled glasses of brandy between courses and went to a strip bar after dinner.*
- d) *On or around March 2013, a number of senior managers in the Global Markets Division including Steve Bellotti engaged conspicuously in violations of the Code, Policy and Values at an ANZ conference in the Hunter Valley.*

134. Between September 2011 and February 2014, ANZ made no, or limited, attempt to enforce strict compliance with the Code, Policy and Values among employees in Global Markets.

135. At all relevant times, ANZ represented to the Applicant that conduct in breach of the Code, Policy or Values or that was otherwise ethically unprofessional engaged in within Global Markets was accepted or tacitly authorised and would not be subject to disciplinary action, including standing down, termination of employment and forfeiture of equity deferred under performance bonuses (the **Code Latitude Representations**).

Particulars

The Applicant refers to and repeats the particulars to paragraph [132] above.

The representations were oral and or implied. For example:

- a) *On or around June 2011, immediately after a meeting convened for the Applicant to complete pre-employment documentation, held in a city wine bar, the Applicant was taken by Robert O'Callaghan and two ANZ human resources staff to a strip club close to ANZ's then offices in Martin Place.*
- b) *The Applicant was not aware of ANZ routinely sanctioning any employee of ANZ for breaches of the Code, the Policy and the Values.*
- c) *The Applicant was not aware of ANZ sanctioning any employee of ANZ for failing to understand or adhere to the Code, the Policy and the Statement of Values when communicating on either work email or the Bloomberg Chat Platform using informal, lewd or offensive language.*

- d) *On or around November 2012, ANZ stated, in an email from Duncan Marshall, that the content of policies pertaining to BBSW rate setting were not expected to have any bearing upon the conduct of employees in ANZ's Global Markets Division, suggesting that ANZ was aware that employees were not following policies in relation to BBSW.*
- e) *On or around 18 February 2014, ANZ represented, in an email from Steve Bellotti and Shayne Collins to the 'Global Markets – All Staff Global' email circulation list on 18 February 2014:*
 - 1. *that employees in the Global Markets Division would now be required strictly to comply with the Code, Policy and Values;*
 - 2. *by implication, that employees in the Global Markets Division had not previously been required strictly to comply with the Code, Policy and Values.*
- f) *In March 2014, Daniel King said words to the Applicant to the effect that he "regretted not being able to do more about the culture at the top of Global Markets"*

Further and better particulars may be provided after discovery

136. As a result of the Communications Representations, the Code Latitude Representations, the Monitoring Representations, the Personal Use Representation and the Permissible Personal Use Representation the Applicant assumed:
- (a) that he was permitted by ANZ to use coarse or lewd language, including language which in other contexts could cause offence, when communicating on the Bloomberg Chat Platform or work email, including in (directly or indirectly) the performance of his duties as pleaded above at paragraphs [110] and [112];
 - (b) in order to get along, assimilate with or participate in the workplace environment or culture at ANZ as pleaded above at paragraphs [122] and [132], that the Applicant could use language, including language which in other contexts could cause offence, on the Bloomberg Chat Platform or work email consistent with that culture or practice;
 - (c) that any use of coarse or lewd language, including language which in other contexts could cause offence, when communicating on the Bloomberg Chat Platform and work email did not leave him liable to sanction (including standing down, termination, the

exercise of the Clawback Discretion or forfeiture of any deferred equity entitlements) by ANZ;

- (d) that his ongoing use of ANZ systems including the Bloomberg Chat Platform and his ANZ work email was compliant with the Code, Policy and Values;
- (e) that his approbations for exemplary conduct in the 2012, 2013 and 2014 Performance and Remuneration Reviews and in his inclusion in the Leadership Program and ELP were made or given in circumstances where ANZ was monitoring his use of its systems including the Bloomberg Chat Platform and his ANZ work email and took no exception to any aspect of his use of those systems.

(together, the **Communications Assumptions**).

137. In reliance on one or more of the Communications Representations, the Code Latitude Representations, the Monitoring Representations, the Personal Use Representation and the Permissible Personal Use Representation the Applicant:

- (a) over the period August 2011 to September 2013, used language on the Bloomberg Chat Platform and work email which was consistent with the workplace environment or culture at ANZ as represented in the Communications Representations;
- (b) over the period August 2011 to September 2013, communicated on the Bloomberg Chat Platform and work email without regard to whether he was using coarse or lewd language or language which was liable in other contexts to cause offence or which may not have complied with ANZ's written policies;
- (c) conducted himself on the Bloomberg Chat Platform and work email with the state of mind that any language, including coarse or lewd language or language which in other contexts may have caused offence, whilst subject to audit and review by ANZ, would not be in contravention of Respondent's written policies, or alternatively, he would not be at risk of any sanction by ANZ, including having his employment terminated or his deferred equity entitlements or bonus payments compromised in any way, by reason of his conduct being in breach of those policies.

138. If ANZ had not led the Applicant to adopt the Communications Assumptions by making one or more of the Communications Representations, Code Latitude Representations, the Monitoring Representations, the Personal Use Representation and the Permissible

Personal Use Representation the Applicant would have during the period August 2011 to September 2013:

- (a) taken care to ensure compliance with ANZ's written policies, such as the Code, Policy and Values, at all times whilst using the Bloomberg Chat Platform and work email account;
- (b) taken care not to use lewd or offensive language whilst using the Bloomberg Chat Platform or work email account.

Respondent's Awareness of Contents of Bloomberg Chats and Emails

139. At all relevant times, ANZ was able to access and audit the work email accounts and Bloomberg Chat Platforms used by its employees for compliance and other purposes as pleaded above in paragraphs [127] to [129] and [132].
140. At all relevant times, ANZ was able to access the Bloomberg Chat Platform used by its employees and prevent certain words being used on that platform.
141. At all relevant times, ANZ kept and archived records of communications on the Bloomberg Chat Platform.
142. At all relevant times, ANZ knew, or ought reasonably to have known, that its employees who used the Bloomberg Chat Platform communicated, or were likely to communicate, using coarse or lewd language in a manner consistent with the workplace environment as pleaded above in paragraphs [122] and [129].
143. During the period August to 2011 to September 2013, the Applicant was not aware of ANZ sanctioning any employee of ANZ for any communications on the Bloomberg Chat Platform or work email.
144. At all relevant times, as pleaded above in paragraphs [127] to [129] and [132], ANZ had access to and systems in place to monitor the Applicant's work email and Bloomberg Chat Platform, including when ANZ was conducting annual reviews of the Applicant's work for the purposes of determining the Applicant's performance bonus entitlements.
145. At no time during the period 2011 to 2013 did ANZ sanction the Applicant for any of his communications on the Bloomberg Chat Platform or work email.

146. At no time during the period 2011 to September 2013 did ANZ warn the Applicant that his communications on the Bloomberg Chat Platform or work email may result in him losing any deferred bonus entitlements or the termination of his employment.

147. In:

- (a) the Applicant's 2012 Performance and Remuneration Review in November 2012;
- (b) the Applicant's 2013 Performance and Remuneration Review in November 2013;
- (c) the Applicant's 2014 Performance and Remuneration Review in November 2014;
- (d) the Invitation to participate in and the Applicant's participation in the Leadership Program and the ELP; and
- (e) making the 2014 Communication Representation;

ANZ expressly recognised and approved the Applicant's conduct as demonstrating or at least not being inconsistent with ANZ's values and represented by implication that the Applicant's conduct constituted satisfactory adherence to the Code, Policy and Values.

148. In the Applicant's promotion to:

- (a) Head of Balance Sheet Australia in December 2012;
- (b) Head of Balance Sheet Australia and New Zealand in March 2013; and
- (c) Global Head of Balance Sheet Trading in December 2013;

the Applicant's conduct was implicitly recognised and approved by ANZ as exemplifying or at least not being inconsistent with ANZ's values, including adherence to the Code, Policy and Values.

149. In the circumstances:

- (a) the award of performance bonuses to the Applicant in the period November 2012 to November 2014;
- (b) the Applicant's invitation to participate, and participation, in the Leadership Program and ELP;
- (c) the Applicant's promotions in December 2012, March 2013 and December 2013,

reinforced to the Applicant the Communication Representations, the Code Latitude Representations, the Permissible Personal Use Representation, the Personal Use Representation and the Monitoring Representations and confirmed the Communications Assumptions.

Applicant's Disclosures to ANZ

October 2011 Complaint

150. At around the time when the Applicant commenced employment with ANZ, liaison between Global Markets and Group Treasury concerning the timing and volume of NCD issuance to manage and trade to profit from ANZ's BBSW Rate Set Exposure (**ANZ's Rate Set Trading Practice**) was occurring.

Particulars

This liaison is evidenced by communications internal to ANZ, including:

- a) *Email chain between Shayne Elliott, Steve Bellotti, Mike Smith and Robert O'Callaghan, 9 March 2010*
- b) *Email chain between inter alia Jason Pritchard, Steve Bellotti, Robert O'Callaghan, Shayne Elliott and Matt Morris, 19 August 2010*
- c) *Email chain between inter alia Jason Pritchard, Steve Bellotti, Rob O'Callaghan and Matt Morris, 16 August 2010*
- d) *Email chain between Matt Morris, Rob O'Callaghan, Jason Pritchard and Shayne Elliott, 17 August 2010*
- e) *Email from Shayne Elliott (ANZ Group Managing Director, Institutional) to Steve Bellotti (Managing Director, Global Markets), on or around 20 August 2010*
- f) *Emails between Rick Moscati and Peter Marriott, 24 January 2011*
- g) *Email chain between inter alia Luke Davidson, Robert O'Callaghan, Rick Moscati, Matt Morris, Jason Pritchard on 17 February 2011*
- h) *Bloomberg Chat Platform messages between officers and employees in Global Markets and officers and employees in Group Treasury concerning ANZ's*

short-term funding requirements in the context of managing ANZ's BBSW Rate-set Exposure, 26 August 2011

- i) *Bloomberg Chat Platform messages between officers and employees in Global Markets and officers and employees in Group Treasury concerning ANZ's short-term funding requirements in the context of managing ANZ's BBSW Rate-set Exposure, 8 September 2011*

Further and better particulars may be provided after discovery

151. In August 2010, Global Markets circulated a proposal that Global Markets in Sydney take on increased responsibility for trading in Prime Bank Bills to meet ANZ's short-term funding needs (**Short-term Funding Strategy Proposal, or STF Strategy Proposal**).

Particulars

This activity is evidenced by communications internal to ANZ, including:

- a) *Email chain between inter alia Jason Pritchard, Steve Bellotti, Robert O'Callaghan, Shayne Elliott and Matt Morris, 19 August 2010*

152. It was an aspect of the STF Strategy Proposal that as part of the reassignment of responsibility for trading in Prime Bank Bills to meet ANZ's short-term funding needs, Global Markets would be granted increased funding limits to enable it to hold higher volumes of Prime Bank Bills on its balance sheet.

Particulars

This matter is evidenced by communications internal to ANZ, including:

- a) *Email chain between inter alia Jason Pritchard, Steve Bellotti, Robert O'Callaghan, Shayne Elliott and Matt Morris, 19 August 2010*

Further and better particulars may be provided after discovery.

153. The STF Strategy Proposal was recorded in a power-point presentation entitled "ANZ Short term Funding Execution Strategy Proposal Global Markets" in or around August 2010 (**STF Strategy Proposal Presentation**).

Particulars

Email chain between inter alia Jason Pritchard, Steve Bellotti, Robert O'Callaghan, Shayne Elliott and Matt Morris, 19 August 2010

154. Arguments in favour of the STF Strategy Proposal included that it would enable ANZ better to manage its BBSW Rate-Set Exposure by giving the Global Markets traders tasked with managing that exposure control over ANZ's issuance of and trade in Bank Bills, including during the rate set window.

Particulars

Email chain between Matt Morris, Rob O'Callaghan, Jason Pritchard and Shayne Elliott, 17 August 2010

155. The STF Strategy Proposal was favourably viewed by senior management in both the International and Institutional division and Group Treasury.

Particulars

Email from Shayne Elliott (ANZ Group Managing Director, Institutional) to Steve Bellotti (Managing Director, Global Markets), on or around 20 August 2010.

156. On or around August 2011, shortly after the Applicant commenced work with ANZ, the Applicant became aware of the practices pleaded at paragraph [150] above.

Particulars

The Applicant's awareness of these practices derived from:

- a) an email chain between Sean Collier, Jason Pritchard, Mark Budrewicz and the Applicant, 10 August 2011*
- b) conversations with Neil Lynch, Jason Pritchard and James Millen in the days and weeks after the Applicant commenced employment with ANZ.*

In these conversations, Lynch, Pritchard and Millen indicated to the Applicant their awareness of ANZ's BBSW Rate Set Exposure from day to day and described details of conversations they were having with employees in Group Treasury division concerning the sale or purchase of Prime Bank Bills depending on ANZ's BBSW Rate Set Exposure and ANZ's cash position.

It is inferred from the contents of these conversations that the practices pleaded at paragraph [150] above were commonplace at ANZ in or around September 2011.

157. Soon after he commenced employment with ANZ, in or around September 2011, the Applicant became aware of:

- (a) the STF Strategy Proposal; and
- (b) the STF Strategy Proposal Presentation.

Particulars

The Applicant was told of these matters by Jason Pritchard across the course of several conversations in or around September 2011.

158. On or around September 2011, the Applicant met with Philip Chronican, Rick Moscati, and Robert O'Callaghan, from the ANZ, at which meeting Philip Chronican on behalf of ANZ's Australia division approached the Applicant in his role as Head of Mismatch to canvass his support for a proposal under which the Australia Division would:

- (a) cease to transfer interest rate risk on its variable mortgage portfolio onto ANZ's balance sheet by way of the Transfer Pricing Mechanism;
- (b) commence to manage interest rate risk on its variable mortgage portfolio for itself, engaging the Balance Sheet business unit within Global Markets to enter into specific transactions to hedge or run risk on the Australia Division's variable interest rate mortgage portfolio on an ad hoc basis at the Australia Division's discretion; and
- (c) obtain a credit authorisation in the form of an increased risk limit from ANZ's Board (through CMRC and or GALCO) to enable the Australia Division to seek to profit from rather than simply to neutralise or 'hedge' risk on its variable interest rate mortgage portfolio (**Mortgage Book Trading Proposal**).

Particulars

Meeting between among others Philip Chronican, Rick Moscati, Robert O'Callaghan and the Applicant, in or around September 2011

159. On or around September 2011, the Mortgage Book Trading Proposal was being considered by ANZ's Australia Division:

- (a) in order to enable ANZ to set variable interest rates on mortgages independently of the RBA cash rate; and

- (b) in order to enable the Australia Division to manage, in order to profit from, its own BBSW Rate Set Exposure;
 - (c) in respect of the standard variable mortgage book, this meant to profit from the interest rate risk on the standard variable mortgage book.
160. On or around September 2011, the Applicant met with Philip Chronican, Rick Moscati, Robert O'Callaghan, from the ANZ, and spoke against the Mortgage Book Trading Proposal, on the grounds that:
- (a) the move to change the transfer pricing mechanism on ANZ's mortgage book would cause the Australian Prudential Regulation Authority to raise ANZ's basis capital requirements; and
 - (b) 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 RBA cash rate.

Particulars

Meeting between among others Philip Chronican, Rick Moscati, Robert O'Callaghan and the Applicant, in or around September 2011

The inference arising from this paragraph is that from September 2011 ANZ (including Philip Chronican, Rick Moscati and Robert O'Callaghan) knew that the Applicant would:

- (a) *form his own view on the conduct of ANZ; and*
- (b) *express his views of that conduct without any fear of the personal consequences for expressing those views.*

161. On or around September 2011, Philip Chronican dismissed the Applicant's concerns identified above at paragraph [160](a), saying words to the effect of "We will tell the regulator what to think!"

Particulars

Meeting between among others Philip Chronican, Rick Moscati, Robert O'Callaghan and the Applicant, in or around September 2011

162. On 8 December 2011 ANZ's Australia division announced:

- (a) that ANZ would no longer set variable mortgage rates by reference to the RBA cash rate; and
- (b) that ANZ would set variable mortgage rates instead by reference to the cost of raising funding on the wholesale funds market.

Particulars

ANZ Media Release, 8 December 2011

163. In September 2011, an ANZ employee, Jason Pritchard said on a few occasions in the presence of the Applicant words to the effect of "I am going to slaughter the rate set" (the **First Pritchard Conduct**).

Particulars

The Applicant heard Mr Pritchard make these remarks in ANZ's trading room in or around September 2011.

The Applicant inferred that Mr Pritchard intended to trade in Prime Bank Bills during the BBSW rate set window in a manner calculated to unduly influence the price of Prime Bank Bills in order for ANZ to profit from ANZ's BBSW Rate Set Exposure.

164. On 30 September 2011 an employee of the Reserve Bank of Australia made a telephone call to Matt Morris, an employee of ANZ, to enquire whether ANZ had a funding problem.

165. ANZ did not have a funding problem as at 30 September 2011.

166. On 30 September 2011, an ANZ employee, Mr Paul Woodward, was selling Prime Bank Bills in material volumes unrelated to ANZ's actual or estimated commercial need to raise funds on the Prime Bank Bill market during the BBSW rate-setting window (the **Woodward Conduct**).

Particulars

This inference arises from the telephone call received by Matt Morris from the Reserve Bank of Australia, which suggested that ANZ's conduct in the BBSW rate-setting window of selling material volumes of Prime Bank Bills suggested that ANZ had a funding problem, but ANZ did not have a funding problem on 30 September 2011.

167. Upon becoming aware of the First Pritchard Conduct and the Woodward Conduct, the Applicant held the belief that ANZ by the conduct of Mr Pritchard and Mr Paul Woodward, as ANZ's trader in Prime Bank Bills, had been attempting to manipulate the market in order to profit from ANZ's BBSW Rate Set Exposure.
168. On or about Tuesday 4 October 2011, the Applicant had a conversation with Robert O'Callaghan, during which conversation:
- (a) the Applicant said to Robert O'Callaghan words to the effect of "I heard Jason Pritchard say that he was going to "slaughter" the rate set. I am worried about the use of the term "slaughter" in relation to the BBSW. It is unprofessional and reflects badly on the bank";
 - (b) the Applicant also informed Robert O'Callaghan that the Reserve Bank of Australia had called Matt Morris on 30 September 2011 to enquire whether ANZ had a funding problem;
 - (c) the Applicant said words to the effect that he had received complaints from other banks and asked Robert O'Callaghan to look into the trades during the BBSW rate-setting window on 30 September 2011;
- (subparagraphs (a), (b) and (c) above are, together, the **October 2011 Complaint**); and
- (d) Robert O'Callaghan asked the Applicant his opinion about the structure of Global Markets and Group Treasury and whether, in his opinion, Global Markets should have greater control of the issuance of NCD's and Bank Bills as outlined in the STF Strategy Proposal Presentation. The Applicant replied that he thought the structure should not be changed as the separation of duties was an important control mechanism.

Particulars

*The October 2011 Complaint was oral and was made to Robert O'Callaghan.
Robert O'Callaghan was the Global Head of Fixed Income.*

169. In the premises pleaded in paragraphs [163] to [168] above in respect of the October 2011 Complaint:
- (a) the Applicant informed Robert O'Callaghan of his name before making the October 2011 Complaint;

Particulars

The Applicant was well known to Robert O'Callaghan, and by speaking to Robert O'Callaghan, the Applicant disclosed his name to Robert O'Callaghan before making the October 2011 Complaint.

- (b) the Applicant had reasonable grounds to suspect that ANZ had manipulated the market in order to profit from in ANZ's BBSW Rate Set Exposure, and that:
 - (i) ANZ may have contravened a provision of the Corporations legislation;
 - (ii) Pritchard, as an employee of ANZ may have contravened a provision of the Corporations legislation;
 - (iii) Woodward, as an employee of ANZ may have contravened a provision of the Corporations legislation;
 - (c) in the premises pleaded in sub-paragraph (b) above, the information the subject of the October 2011 Complaint concerned misconduct or an improper state of affairs in relation to ANZ;
 - (d) the Applicant considered that the information the subject of the October 2011 Complaint may assist Robert O'Callaghan to perform his duties in relation to ANZ;
 - (e) the Applicant made the October 2011 Complaint to Robert O'Callaghan in good faith.
170. After making the October 2011 Complaint, the Applicant was introduced to David McGowan, as an internal investigator employed by ANZ, and told that an internal investigation was being undertaken into the use of the word "slaughter" and the actions of ANZ employees on 30 September 2011 in relation to the setting of BBSW.

Particulars

Oral conversation between Robert O'Callaghan, David McGowan and the Applicant on or around December 2011.

171. On or around March 2012, the Applicant was informed by Robert O'Callaghan, an ANZ employee, in relation to the October 2011 Complaint, words to the effect that "the issue had been looked into and was fine".

Particulars

Oral conversation between the Applicant and Robert O'Callaghan on or around March 2012.

The inference arising from this fact is that ANZ did have a record of the Applicant having made the October 2011 Complaint and had completed an investigation into the October 2011 Complaint.

172. On or around July 2012, ASIC launched an investigation into manipulation of the BBSW by ANZ (ASIC BBSW Investigation).

Particulars

In August 2012 ANZ responded to a notice from ASIC (confirmed in an email dated 14 August 2013 from Andrew Heathwood, Chief Risk and Compliance Officer, Americas, to the Applicant and Luke Davidson, Head of Funding, ANZ Treasury).

173. On or around 20 February 2013, ANZ entered into a series of Forward Rate Agreements (**FRAs**) commencing on 20 February 2013 until 10 March 2013.

Particulars

Email James Millen to the Applicant, Rick Moscati, Adrian Went and others, 20 February 2013

174. In about March 2013, the Applicant had reasonable grounds to suspect that ANZ Treasury withheld supply of Prime Bank Bills and NCDs in early February 2013 and ANZ sold Prime Bank Bills and NCDs during the BBSW rate-setting period between 20 February 2013 to 10 March 2013 in a volume that did not reflect ANZ's funding needs and which influenced movements in the BBSW.

Particulars

The Applicant's suspicion was based on:

- (a) *the Applicant's knowledge of ANZ's Prime Bank Bill transactions in early February 2013 during the BBSW rate-setting period on 20 February 2013 to 10 March 2013 (inclusive);*

- (b) *the Applicant's knowledge of ANZ's funding needs 20 February 2013 to 10 March 2013 (inclusive); and*
- (c) *the Applicant's observation of the effect of ANZ's Prime Bank Bill transactions on the BBSW rate.*

Further and better particulars may be provided after discovery.

175. In about March 2013, the Applicant had reasonable grounds to suspect that the movements in the BBSW caused by ANZ Treasury's withholding of supply of Prime Bank Bills or NCDs in early February 2013 and ANZ's sale of Prime Bank Bills in the BBSW rate-setting period on 20 February 2013 to 10 March 2013 caused ANZ to profit from ANZ's BBSW Rate Set Exposure by ANZ Australia Division's profit from the FRAs.

Particulars

The Applicant repeats the particulars to the previous paragraph. Further, the Applicant suspected that the movement in the BBSW caused ANZ to profit from ANZ's BBSW Rate Set Exposure by ANZ Australia Division's profit from the FRAs.

176. On or around late February 2013 or early March 2013, the Applicant telephoned Adrian Went, Deputy Group Treasurer, and referred to the matters pleaded at paragraph [173] and [174], and said words to the effect of:

- (a) "balance sheet trading needs to protect the relationships we have in the market";
- (b) "this is important in order to access the liquidity necessary to hedge the banks interest rate risk"; and
- (c) "the transactions entered into by Treasury are damaging to the banks reputation, its ability to access liquidity and its reputation as the counterparties we hedged with have lost money on the transactions due to Treasury subsequently issuing bank bills and the widening of the FRA-overnight index swap spread as a result" (**February 2013 Complaint**).

Particulars

The February 2013 Complaint was oral and was made during a telephone call to Adrian Went.

The telephone call was automatically recorded by ANZ.

177. After the February 2013 Complaint, ANZ did not enter into FRAs or sell Prime Bank Bills in a manner which allowed ANZ's Australia Division to profit from FRAs.
178. In the premises pleaded in paragraphs [173] to [177] above, in respect of the February 2013 Complaint:
- (a) the Applicant informed Adrian Went of his name before making the February 2013 Complaint;

Particulars

The Applicant was well known to Adrian Went, and by speaking to Adrian Went by telephone, and introducing himself, the Applicant disclosed his name to Adrian Went before making the February 2013 Complaint.

- (b) the Applicant had reasonable grounds to suspect that ANZ had manipulated the market in order to profit from ANZ's BBSW Rate Set Exposure, and that ANZ may have contravened a provision of the Corporations legislation;
- (c) in the premises pleaded in sub-paragraph (b) above, the information the subject of the February 2013 Complaint concerned misconduct or an improper state of affairs in relation to ANZ;
- (d) the Applicant considered that the information the subject of the February 2013 Complaint may assist Adrian Went to perform his duties in relation to ANZ;
- (d) the Applicant made the February 2013 Complaint to Adrian Went in good faith.
179. In the premises pleaded in paragraphs [157] to [177] above, on or around August 2013 ANZ knew that:
- (a) the Applicant had spoken against ANZ engaging in conduct to manipulate the market to profit from ANZ's BBSW Rate Set Exposure;
- (b) the Applicant held the belief that in September 2011 ANZ had manipulated the market in order to profit from ANZ's BBSW Rate Set Exposure;
- (c) the Applicant held the belief that in February 2013 ANZ had manipulated the market in order to profit from ANZ's BBSW Rate Set Exposure;

- (d) the Applicant would likely inform ASIC, if asked, that ANZ had engaged in the conduct described in sub-paragraphs (b) and (c) above.

Particulars

- (i) *This knowledge is to be inferred from, and to be attributed to ANZ, from the facts, matters and circumstances pleaded in paragraphs [157] to [177] above;*
- (ii) *Further or in the alternative, ANZ knew because:*
- a. *Robert O'Callaghan and David McGowan knew the matters referred to in (a) and (b) above; and*
- b. *Adrian Went knew the matters referred to in (a) and (c) above and Adrian Went reported to Rick Moscati, who was Group Treasurer and a senior manager and officer of ANZ, including because he had delegated responsibility from the Executive Committee chaired by the Chief Executive Officer to manage the interest rate risk in ANZ's retail variable mortgage book.*

180. In or around August 2013, ASIC served ANZ with a notice issued under s 33 of the *Australian Securities and Investments Act 2001* (Cth) (**ASIC Act**) requiring ANZ to produce certain books including the contents of Bloomberg Chats made on prescribed dates between June 2008 and October 2010.

Particulars

The Notice served on 12 August 2013 (confirmed in an email dated 14 August 2013 from Andrew Heathwood, Chief Risk and Compliance Officer, Americas, to the Applicant and Luke Davidson, Head of Funding, ANZ Treasury).

181. On or about 12 December 2013:

- (a) Fred Pucci, John Chase and the Applicant attended a telephone call to discuss possible disciplinary outcomes for Jason Pritchard concerning a disclosure of information that Jason Pritchard had made to— an external broker, Daniel Burke. During that call Fred Pucci said words to the effect that ANZ had received a notice from ASIC for production of a recording of a phone call on 1 October 2013 between Jason Pritchard and Daniel Burke, which notice had been issued in respect of an investigation by ASIC;

- (b) Fred Pucci, John Chase and the Applicant confirmed to one another that they had listened to the recording of the phone call between Jason Pritchard and Daniel Burke, in which Jason Pritchard disclosed his view of the market and another domestic bank's position in respect of Australian interest rate futures traded on the Sydney Futures Exchange to Mr Burke (**Second Pritchard Conduct**);
- (c) Fred Pucci, John Chase and the Applicant discussed that Pritchard's Conduct was potentially a breach of the *Corporations Act*;
- (d) Fred Pucci informed the Applicant that Jason Pritchard would need to be supported as he was also part of the ASIC BBSW Investigation;
- (e) John Chase expressed the view that Jason Pritchard should receive a verbal warning that Pritchard's Conduct involved a breach of ANZ's Code;
- (f) the Applicant recommended that Jason Pritchard receive a written warning for contravention of ANZ's Code in respect of the Second Pritchard Conduct, with which Fred Pucci agreed.

Particulars

Telephone call between Fred Pucci, John Chase and the Applicant on or about 12 December 2013

182. On 19 December 2013, the Applicant provided a written warning to Jason Pritchard for the Second Pritchard Conduct.

Particulars

Letter dated 19 December 2013 from the Applicant to Jason Pritchard

183. By July 2014 Bob Santamaria from ANZ was appointed by the Chief Executive Officer of ANZ Mike Smith to co-ordinate ANZ's response to the ASIC BBSW Investigation and ANZ's own investigation into BBSW.

Particulars

Letter dated 5 December 2014 from Bob Santamaria to the Applicant. Further particulars will be provided after discovery.

184. On or around 17 July 2014, the Applicant had a conversation with Eddie Listorti from ANZ in which:

- (a) Eddie Listorti told the Applicant that ANZ had appointed a committee known as Project Arrow to respond to the ASIC BBSW Investigation;
- (b) Eddie Listorti told the Applicant that he had been chosen as the representative of global markets on Project Arrow;
- (c) The Applicant told Eddie Listorti of the October 2011 Complaint (**17 July 2014 Complaint**);
- (d) Eddie Listorti informed the Applicant that:
 - (i) Project Arrow had no record of the October 2011 Complaint;
 - (ii) Project Arrow had been meeting and reviewing Bloomberg chats that had been produced to ASIC, including the Applicant's Bloomberg chats;
 - (iii) The Bloomberg chats that Project Arrow had reviewed, including those that did not involve the Applicant, frequently featured use of the term "slaughter" in respect of the BBSW rate set;
 - (iv) "Nigel Williams is gunning for you";
 - (v) "You are top of their list of 5 people";
 - (vi) "You should look after your family"; and
 - (vii) "You should get a publicist".

Particulars

Oral representations by Eddie Listorti to the Applicant on 17 July 2014.

185. In the premises pleaded in paragraphs [184] above in respect of the 17 July 2014 Complaint:

- (a) the Applicant informed Eddie Listorti of his name before making the 17 July 2014 Complaint;

Particulars

The Applicant was well known to Eddie Listorti, and by speaking to Eddie Listorti, the Applicant disclosed his name to Eddie Listorti before making the 17 July 2014 Complaint.

- (b) the Applicant had reasonable grounds to suspect that ANZ had manipulated the market in order to profit from in ANZ's BBSW Rate Set Exposure in respect of the conduct pleaded in paragraphs [163] to [167] above, and that:
 - (i) ANZ may have contravened a provision of the Corporations legislation;
 - (ii) Pritchard, as an employee of ANZ may have contravened a provision of the Corporations legislation;
 - (iii) Woodward, as an employee of ANZ may have contravened a provision of the Corporations legislation;
 - (c) in the premises pleaded in sub-paragraph (b) above, the information the subject of the 17 July 2014 Complaint concerned misconduct or an improper state of affairs in relation to ANZ;
 - (d) the Applicant considered that the information the subject of the 17 July 2014 Complaint may assist Eddie Listorti to perform his duties in relation to ANZ;
 - (e) the Applicant made the 17 July 2014 Complaint to Eddie Listorti in good faith.
186. The Applicant's Bloomberg chats included conversations with persons outside of ANZ that were:
- (a) critical of the conduct of ANZ regarding the BBSW rate set;
 - (b) critical of the conduct of ANZ in issuing Bank Bills in a way that affected the BBSW rate set; and
 - (c) critical of the conduct of ANZ's decision to price its variable interest rate mortgages off BBSW, rather than by reference to the RBA Cash Rate.

Particulars

The Applicant's Bloomberg chats included:

- (i) 28 September 2011 at 23:50:39
- (ii) 29 September 2011 at 3:00:48 and 03:01:14;
- (iii) 10 October 2011 at 22:54:07;
- (iv) *Bloomberg chats in March 2013 including with counterparties to the FRA transactions related to the February 2013 Complaint regarding ANZ's issuance of bank bills in a way that affected the BBSW rate set.*

Further particulars will be provided after discovery.

187. By 17 July 2014 ANZ had appointed a committee leading its response to the ASIC BBSW Investigation that was known as Project Arrow.

Particulars

Bob Santamaria was the Group General Counsel tasked with co-ordinating ANZ's response to the ASIC BBSW Investigation (Letter dated 5 December 2014 from Bob Santamaria to the Applicant) and reported to the Chief Executive Officer. Letter from Santamaria to the Applicant dated 5 December 2014, in which Bob Santamaria informed the Applicant that the Chief Executive Officer and the Board were being kept informed of all developments.

188. The Project Arrow committee included among its members Bob Santamaria, Nigel Williams, Mark Evans, Shayne Collins, Fred Pucci, Andrew Geczy, Richard Huston and Eddie Listorti.

Particulars

Bob Santamaria was the Group General Counsel tasked with co-ordinating ANZ's response to the ASIC BBSW Investigation (Letter dated 5 December 2014 from Bob Santamaria to the Applicant) and reported to the Chief Executive Officer. Letter from Santamaria to the Applicant dated 5 December 2014, in which Bob Santamaria informed the Applicant that the Chief Executive Officer and the Board were being kept informed of all developments.

Nigel Williams was the Chief Risk Officer and reported to the Chief Executive Officer. Nigel Williams was the spokesperson for the bank in connection with the ASIC BBSW Investigation (see, for example, Press Release dated 19 November 2014, 31 July 2015, 4 March 2016 and 10 November 2017).

Mark Evans was the Chief Compliance Officer and reported to Nigel Williams.

Shayne Collins was the Group General Manager for Markets Risk and reported to Mark Evans.

Fred Pucci was the Head of Compliance Global Markets, being the senior most compliance officer responsible for Global Markets, and reported to Mark Evans and also to Steve Bellotti, Managing Director of Global Markets.

Andrew Geczy was the Head of International and Institutional Bank and reported to the Chief Executive Officer.

Richard Huston was Co-Head Fixed Income, Commodities and Currency.

Eddie Listorti, Co-Head Fixed Income, Commodities and Currency. Letter from Listorti to the Applicant dated 7 October 2014.

189. Project Arrow conducted ANZ's strategic response to the ASIC BBSW Investigation, and reported to the Chief Executive of ANZ, and the Board of ANZ, to keep them informed of all developments in respect of the ASIC BBSW Investigation.
190. In respect of the ASIC BBSW Investigation and ANZ's conduct towards the Applicant defined below as:
 - (a) the Standing Down (see paragraph [215] below);
 - (b) the Press Release (see paragraph [218] below);
 - (bb) [Not used]
 - (bbb) [Not used]
 - (bbbb) the ANZ Media Comment (see paragraph 228G] below);
 - (c) the Termination (see paragraph [249] below);
 - (d) the Forfeitures (see paragraph [254] below); and

(e) the Withholding of the 2014 Bonus (see paragraph [254] below);

the corporate mind and will of ANZ was that of:

- (i) The committee known as Project Arrow; or
- (ii) Further or in the alternative:
 1. the committee known as Project Arrow;
 2. the Chief Executive Officer of ANZ;
 3. the Executive Committee (also known as the Management Board) (**Executive Board**); and
 4. the Board of ANZ.

Particulars

This corporate mind and will of ANZ is to be inferred from, and to be attributed to ANZ, as a consequence of:

- (a) *The fact that Bob Santamaria was appointed by the Chief Executive Officer of ANZ Mike Smith to co-ordinate ANZ's response to the ASIC BBSW Investigation and to co-ordinate ANZ's own investigation into BBSW. In that role, Bob Santamaria convened and managed the Project Arrow committee;*
- (b) *Bob Santamaria reported to the Board of ANZ and on a daily basis to the Chief Executive Officer in his capacity as Group General Counsel;*
- (c) *The Chief Executive Officer reported on Project Arrow to the Chairman regularly and to the Board on a weekly basis. The frequency of reporting by Bob Santamaria to the Chief Executive Officer, and by the Chief Executive Officer to the Chairman and the Board, was disclosed by Bob Santamaria to the Applicant during a meeting on 23 February 2015 (see paragraph [232] below);*
- (d) *The Project Arrow committee was comprised of senior managers from ANZ and represented the mind of ANZ;*
- (e) *The Project Arrow committee consulted and shared information with senior executives in the bank, including the Chief Executive Officer and the ANZ Board*

(as identified in the letter dated 5 December 2014 from Bob Santamaria to the Applicant), including each of Bob Santamaria, Nigel Williams, Phil Chronican, Mark Evans, Fred Pucci, Andrew Geczy, Richard Huston and Eddie Listorti;

- (f) *The Executive Board was comprised of senior managers from ANZ and represented the mind of ANZ. The constitution of the Executive Board from time to time is in the knowledge of ANZ, but included from time to time Mike Smith, Shayne Elliott, Bob Santamaria, Nigel Williams, Phil Chronican and Andrew Geczy; and*
- (g) *The fact that ANZ senior management were aware of ANZ's Rate Set Trading Practice as defined in paragraph [150] above. ANZ senior management, including Mr Mike Smith (Chief Executive Officer), Mr Shayne Elliott (Chief Executive Officer, Institutional), Mr Steve Bellotti (Managing Director of Global Markets) and Mr Robert O'Callaghan (Global Head of Fixed Income), were consulted in respect of a STF Strategy Proposal by email on 9 March 2010. A reason advanced in that email in support of the STF Strategy was that relocation of the issuance function would enable the Institutional Division to control issuance for the purpose of supporting ANZ's rate set trading practice. It is to be inferred from the fact that senior management were consulted in relation to the STF Strategy that those senior management were informed of and aware of the existence of ANZ's rate set trading practice in March 2010 and of the support for facilitating and enhancing the said practice. Further, it is to be inferred from the fact that ANZ's Rate Set Trading Practice was the subject of the ASIC BBSW Investigation that those senior managers had an interest in ANZ's response to the ASIC BBSW Investigation and Project Arrow.*

191. The Applicant was not, and never had been, engaged in conduct to manipulate the market in order for ANZ to profit from ANZ's BBSW Rate Set Exposure.

192. ANZ knew that the Applicant was not, and never had been, engaged in conduct to manipulate the market in order for ANZ to profit from ANZ's BBSW Rate Set Exposure.

Particulars

This knowledge is to be inferred from, and to be attributed to ANZ as a consequence of the positions of employment held by the Applicant, his job description, and performance reviews of his employment. The Applicant was hired to manage ANZ's long end balance sheet risk and ANZ hired other employees to manage ANZ's short

term balance sheet risk, including Mark Budrewicz, Matthew Morris and Paul Woodward. The Applicant's employment did not involve the Applicant trading or issuing Bank Bills or NCDs in the BBSW rate set. The Applicant was not involved in the inputting of the BBSW rate or designing the process by which ANZ set the BBSW rate.

This knowledge is also to be inferred from the fact that ANZ senior management were aware of ANZ's Rate Set Trading Practice as defined in paragraph [150] above. ANZ senior management, including Mr Mike Smith (Chief Executive Officer), Mr Shayne Elliott (Chief Executive Officer, Institutional), Mr Steve Bellotti (Managing Director of Global Markets) and Mr Robert O'Callaghan (Global Head of Fixed Income), were consulted in respect of a STF Strategy Proposal by email on 9 March 2010. A reason advanced in that email in support of the STF Strategy was that relocation of the issuance function would enable the Institutional Division to control issuance for the purpose of supporting ANZ's rate set trading practice. It is to be inferred from the fact that senior management were consulted in relation to the STF Strategy that those senior management were informed of and aware of the existence of ANZ's rate set trading practice in March 2010, prior to the Applicant's employment, and of the support for facilitating and enhancing the said practice. The STF Strategy was not implemented and, so far as the Applicant is aware, ANZ's Rate Set Trading Practice did not change after the commencement of his employment with ANZ at any time prior to the ASIC BBSW Investigation.

The Applicant further relies on the admission, in the letter from ANZ's solicitors, Seyfarth Shaw to the Applicant's solicitors, YPOL Lawyers, dated 2 October 2024, that ANZ is not in possession of sufficient factual information to deny the allegation.

192A. At the time of the Standing Down (as referred to in paragraph [215] below), ANZ had not identified any evidence that Applicant had engaged in conduct, or attempted to engage in conduct, to manipulate the market in order for ANZ to profit from ANZ's BBSW Rate Set Exposure.

192B. At the time of the Termination (as referred to in paragraph [249] below), ANZ had not identified any evidence that the Applicant had engaged in conduct, or attempted to engage in conduct, to manipulate the market in order for ANZ to profit from ANZ's BBSW Rate Set Exposure.

192C. It remains the case that ANZ has not identified any evidence that the Applicant had engaged in conduct, or attempted to engage in conduct, to manipulate the market in order for ANZ to profit from ANZ's BBSW Rate Set Exposure.

193. On or about 18 July 2014 the Applicant sent an email to Fred Pucci of ANZ, in which the Applicant sought confirmation from Mr Pucci (in his capacity as Head of Compliance, Global Markets) that ANZ had a record of the October 2011 Complaint (**18 July 2014 Complaint**).

194. On or about 18 July 2014 Mr Listorti informed the Applicant that:

- (a) Mr Listorti had spoken to Nigel Williams (Chief Risk Officer) and Fred Pucci and made them aware of the substance of the October 2011 Complaint; and
- (b) That the Applicant's Bloomberg chats were "not a big issue" and were a "2 out of 10" in terms of seriousness and would not warrant even a verbal warning (**2014 Communication Representation**).

195. In the premises pleaded in paragraphs [193] and [194(a)] above in respect of the 18 July 2014 Complaint:

- (a) the Applicant informed Fred Pucci of his name before making the 18 July 2014 Complaint;

Particulars

The email sent by the Applicant to Fred Pucci dated 18 July 2014 disclosed the Applicant's name.

- (b) the Applicant had reasonable grounds to suspect that ANZ had manipulated the market in order to profit from ANZ's BBSW Rate Set Exposure in respect of the conduct pleaded in paragraphs [163] to [168] above, and that:
 - (i) ANZ may have contravened a provision of the Corporations legislation;
 - (ii) Pritchard, as an employee of ANZ may have contravened a provision of the Corporations legislation;
 - (iii) Woodward, as an employee of ANZ may have contravened a provision of the Corporations legislation;

- (c) in the premises pleaded in sub-paragraph (b) above, the information the subject of the 18 July 2014 Complaint concerned misconduct or an improper state of affairs in relation to ANZ;
 - (d) the Applicant considered that the information the subject of the 18 July 2014 Complaint may assist Fred Pucci to perform his duties in relation to ANZ;
 - (e) the Applicant made the 18 July 2014 Complaint to Fred Pucci in good faith.
196. In the premises pleaded in paragraphs [157] to [195] above, the inferences are that as 18 July 2014 ANZ:
- (a) had reviewed the content of the Applicant's Bloomberg chats;

Particulars

This knowledge is to be inferred from, and to be attributed to ANZ, from the facts, matters and circumstances pleaded in paragraphs [184(d)], [187]-[189] and [194] above;

- (b) knew that ASIC would likely identify the Applicant as a person of interest in the ASIC BBSW investigation;

Particulars

This knowledge is to be inferred from, and to be attributed to ANZ, from the facts, matters and circumstances pleaded in paragraphs [184(d)], [186] to [189] and [193]-[194] above, including:

- (i) *the conversation between Eddie Listorti and the Applicant on 17 July 2014;*
- (ii) *the contents of an email sent by the Applicant to Fred Pucci, on or around 18 July 2014, in which the Applicant indicated to Mr Pucci the fact of the October 2011 Complaint;*
- (iii) *the oral representation by Eddie Listorti to the Applicant on 18 July 2014, in which Mr Listorti informed the Applicant that he had made Nigel Williams and Fred Pucci aware of the substance of the October 2011 Complaint that morning;*

- (iv) *the fact that Mr Williams and Mr Pucci were members of or in the alternative aware of the discussions and decisions of Project Arrow, which was leading the bank's response to the ASIC investigation in his role as Head of Compliance for Global Markets; and*
 - (v) *the fact that Bob Santamaria convened and managed the Project Arrow committee and reported to the Board of ANZ and the Chief Executive Officer in his capacity as Group General Counsel.*
- (c) knew that, as a consequence of the frequent use of the term “slaughter” in the Bloomberg chats, and the substance of October 2011 Complaint, that ASIC would be interested in speaking to the Applicant about his complaint about the use of the term “slaughter” in the October 2011 Complaint;

Particulars

This knowledge is to be inferred from, and to be attributed to ANZ, from the facts, matters and circumstances pleaded in paragraphs [184(d)], [186]-[189] and [193]-[194] above;

- (d) knew that the Applicant had spoken out against ANZ engaging in conduct to manipulate the market to profit from ANZ's BBSW Rate Set Exposure;

Particulars

This knowledge is to be inferred from, and to be attributed to ANZ as a consequence of the facts, matters and circumstances pleaded in paragraphs [168], [176], [184] and [193] above in respect of the Applicant speaking against ANZ engaging in conduct to manipulate the market to profit from ANZ's BBSW Rate Set Exposure, and the particulars thereto;

- (e) knew that the Applicant had made the October 2011 Complaint;

Particulars

This knowledge is to be inferred from, and to be attributed to ANZ, from the facts, matters and circumstances pleaded in paragraphs [163]-[171] above;

- (f) knew that the Applicant had made the February 2013 Complaint;

Particulars

This knowledge is to be inferred from, and to be attributed to ANZ, from the facts, matters and circumstances pleaded in paragraphs [173]-[176] above;

- (g) put the Applicant on a list of Project Arrow of employees of ANZ important to the ASIC BBSW Investigation;

Particulars

This knowledge is to be inferred from, and to be attributed to ANZ, from the facts, matters and circumstances pleaded in paragraph [184] above;

- (h) had formed the opinion that any conduct on the part of the Applicant disclosed in the Bloomberg Chats contrary to the Code, Policy, Statement of Values and the guiding values and ethical standards developed by ANZ was minor in nature, and not requiring any disciplinary action to be taken against the Applicant;
- (i) made the implied threat to the Applicant that if he co-operated with ASIC in the ASIC BBSW Investigation that:
 - (i) his employment would be terminated;
 - (ii) his financial position harmed; and
 - (iii) his reputation would be damaged.

Particulars

This knowledge is to be inferred from, and to be attributed to ANZ, from the facts, matters and circumstances pleaded in paragraph [184] above.

196A. By at least 21 July 2014, ANZ knew and understood that the October 2011 Complaint, the 17 July 2014 Complaint and the 18 July 2014 Complaint were, or were capable of being characterised as disclosures for the purposes of Part 9.4AAA of the *Corporations Act* and Part VIA of the *Banking Act* to which the Applicant was entitled to the statutory whistleblower protections pursuant to that legislation.

Particulars

The Applicant relies upon the email exchange between 18 July 2014 and 21 July 2014 (Exhibit FMP-5 to the affidavit of Mr Pucci sworn 16 November 2023) between Messrs Pucci, Evans, Williams, Collins, Gaudian, Santamaria, McGowan and Ms Smith, including the references in that exchange to keyword searches of 'whistleblowing' and a proposed search of the 'external whistleblower channel' in relation to the October 2011 Complaint.

The fact that the participants in this email exchange included senior executives and members of the Project Arrow committee.

The fact that those participants in the email exchange were senior executives of ANZ and by virtue of their roles and experience they had or ought to have had a full understanding of the whistleblower protections.

The fact that those participants included Mr Santamaria, who was a competent and experienced lawyer who understood and promoted whistleblower protections.

Mr Santamaria's farewell speech extracted in The Australian newspaper in an article entitled 'Good leaders empower staff to speak up' published on 4 October 2019.

197. On 28 July 2014 ASIC requested that the Applicant assist ASIC with the ASIC BBSW Investigation.

Particulars

The Applicant received a telephone call from Colin Luxford on behalf of ASIC to inform the Applicant that ASIC wanted to speak with the Applicant as part of the ASIC BBSW Investigation and to ask whether the Applicant would be prepared to speak with ASIC voluntarily or pursuant to an enforceable notice.

198. On 28 July 2014 the Applicant informed ANZ that ASIC had requested that the Applicant assist ASIC with the ASIC BBSW Investigation.

Particulars

The Applicant spoke with Bob Santamaria on behalf of ANZ and told him that the Applicant had received a call from Colin Luxford on behalf of ASIC to inform the Applicant that ASIC wanted to speak with the Applicant as part of the ASIC BBSW

Investigation and to ask whether the Applicant would be prepared to speak with ASIC voluntarily or pursuant to an enforceable notice.

199. On 29 July 2014 ANZ arranged legal representation to act on behalf of the Applicant in respect of the ASIC BBSW Investigation.

Particulars

Email exchange between Michelle Smith, Global Head of Legal, Global Markets and the Applicant on 29 July 2014 informing the Applicant that ANZ had arranged a lawyer for employees contacted by ASIC, but that ANZ would consider and pay for alternative independent lawyers suggested by the employee.

The inference arising from this fact is that ANZ knew that ASIC:

- (i) was contacting employees to arrange interviews with those employees; and*
- (ii) had contacted the Applicant to arrange an interview with the Applicant.*

200. On 6 August 2014, the Applicant received a notice from ASIC under s 19 of the ASIC Act requiring him to appear at an examination (**First s 19 Notice**).

Particulars

Letter ASIC to Applicant, 6 August 2014

201. The First s 19 Notice was in respect of suspected contraventions of ss 912A(1), 1041A, 1041B and 1041H of the Corporations Act and s 178BB of the *Crimes Act 1900* (NSW) by ANZ.

Particulars

Letter ASIC to Applicant, 6 August 2014

202. On 5 August 2014 Colin Luxford of ASIC asked the Applicant whether he should have the same legal representation arranged by ANZ as other ANZ employees who were being interviewed by ASIC

Particulars

Conversation between Colin Luxford of ASIC and the Applicant

203. On 8 August 2014 the Applicant advised ANZ of ASIC's query whether the Applicant should have the same legal representation arranged by ANZ as other ANZ employees who were being interviewed by ASIC, from which an inference arises that ANZ knew that ASIC had formed the view that the legal representatives arranged by ANZ on behalf to the Applicant may have a conflict of interest in acting for the Applicant and also other ANZ employees.

Particulars

The Applicant had a telephone conversation with Michelle Smith, Global Head of Legal, Global Markets ANZ, in which the Applicant informed Ms Smith that Colin Luxford of ASIC had enquired whether the Applicant was content to have the same lawyers as other employees, to which Ms Smith responded that the lawyers should know if they have a conflict of interest, in which event they would inform the Applicant.

Telephone Conversation between the Applicant and Ms Smith.

The inferences arising from this fact are that:

- (a) *ANZ (Ms Smith) knew that ASIC considered there to be a potential for a conflict of interest between the Applicant, ANZ and other ANZ employees;*
- (b) *ANZ (Bob Santamaria and Project Arrow) knew that ASIC considered there to be a potential for a conflict of interest between the Applicant, ANZ and other ANZ employees, as Ms Smith reported to Bob Santamaria as Group General Counsel, and Bob Santamaria convened Project Arrow and reported to the Chief Executive Officer and Board; and*
- (c) *ANZ (Bob Santamaria and Project Arrow) knew that ASIC considered that the Applicant may be a material witness for ASIC, as that was the basis for any conflict of interest between the Applicant and ANZ and other ANZ employees.*

204. On or around 8 August 2014 the Applicant informed Eddie Listorti of ANZ that he intended to disclose the substance of the October 2011 Complaint to ASIC.

Particulars

The Applicant informed Eddie Listorti during a conversation on their mobile telephones

205. On or around 15 August 2014, the Applicant disclosed the information subject of the October 2011 Complaint to ASIC (**First ASIC Disclosure**).

Particulars

Section 19 examination of the Applicant by Colin Luxford and Emman Farroukh, 15 August 2014

205A. ANZ was aware that the Applicant attended a compulsory examination with ASIC pursuant to section 19 of the ASIC Act on 15 August 2014.

Particulars

Affidavit of Jonathan Slater dated 1 October 2021 at [25]

206. In the premises pleaded in paragraphs [205] above in respect of the First ASIC Disclosure:

- (a) the Applicant informed ASIC of his name before making the First ASIC Disclosure;

Particulars

Section 19 examination of the Applicant by Colin Luxford and Emman Farroukh, 15 August 2014

- (b) the Applicant had reasonable grounds to suspect that ANZ had manipulated the market in order to profit from ~~in~~ ANZ's BBSW Rate Set Exposure in respect of the conduct pleaded in paragraphs [163] to [168] above, and that:
- (i) ANZ may have contravened a provision of the Corporations legislation;
 - (ii) Pritchard, as an employee of ANZ may have contravened a provision of the Corporations legislation;
 - (iii) Woodward, as an employee of ANZ may have contravened a provision of the Corporations legislation;
- (c) the Applicant considered that the information the subject of the First ASIC Disclosure may assist ASIC to perform its duties in relation to ASIC and ANZ;
- (d) the Applicant made the First ASIC Disclosure in good faith.

207. In the premises pleaded in paragraphs [197] to [205A] above the inference is that ANZ knew that the Applicant had made the First ASIC Disclosure.

Particulars

This knowledge is to be inferred from, and to be attributed to ANZ as a consequence of:

- (a) *The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [168], [176], [184] and [193] above in respect of the Applicant speaking against ANZ engaging in conduct to manipulate the market to profit from ANZ's BBSW Rate Set Exposure, and the particulars thereto;*
- (b) *The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [163]-[171] above in respect of the October 2011 Complaint, and the particulars thereto;*
- (c) *The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [173]-[176] above in respect of the February 2013 Complaint, and the particulars thereto;*
- (d) *The Applicant repeats the facts, matters and circumstances pleaded in paragraph [184] above in respect of the 17 July 2014 Complaint, and the particulars thereto;*
- (e) *The Applicant repeats the facts, matters and circumstances pleaded in paragraph [193] above in respect of the 18 July 2014 Complaint;*
- (f) *the fact that ANZ had arranged legal representation on behalf of the Applicant in respect of the ASIC BBSW Investigation;*
- (g) *the fact that the Applicant had been interviewed by ASIC;*
- (h) *the fact that Bob Santamaria and Eddie Listorti were members of and reported to Project Arrow; and*
- (i) *the fact Bob Santamaria convened and managed the Project Arrow committee and reported to the Board of ANZ and the Chief Executive Officer in his capacity as Group General Counsel.*

207A. By at least 15 August 2014, ANZ knew and understood that the First ASIC Disclosure was or was capable of being characterised as a disclosure for the purposes of Part 9.4AAA of the Corporations Act and Part VIA of the Banking Act to which the Applicant was entitled to the statutory whistleblower protections pursuant to that legislation.

Particulars

The Applicant repeats paragraph [196A].

207B. [Not used]

208. On or around October 2014 one or more of ANZ's traders in ANZ Global Markets were trading BBSW/Libor Basis Swaps in order to profit from inside information learnt from ANZ Group Treasury that ANZ Group Treasury was preparing to issue a Senior Unsecured Bond.

Particulars

This information was communicated to the Applicant in a telephone conversation between the Applicant and Neil Lynch in or around October 2014. The Applicant confirmed that ANZ Group Treasury was preparing to issue a Senior Unsecured Bond with Luke Davidson.

209. On or around October 2014 the Applicant had reasonable grounds to suspect that ANZ had engaged in trading activity using inside information in order to profit from information not available to the market, and that ANZ may have contravened the Corporations legislation.

Particulars

This information was communicated to the Applicant in a conversation between the Applicant and Neil Lynch in or around October 2014.

The October 2014 Complaint was made orally to Fred Pucci and John Chase.

The information was confirmed in a conversation with Luke Davidson.

210. On or around October 2014, the Applicant reported the events described at paragraph [208] above and the concerns described at paragraph [209] above to Fred Pucci and John Chase **(October 2014 Complaint)**.

Particulars

The October 2014 Complaint was made orally to Fred Pucci and John Chase.

211. In the premises pleaded in paragraphs [208] to [210] above in respect of the October 2014 Complaint:
- (a) the Applicant informed Fred Pucci and John Chase of his name before making the October 2014 Complaint;

Particulars

The Applicant was well known to Fred Pucci and John Chase, and by speaking to Fred Pucci and John Chase by telephone, and introducing himself, the Applicant disclosed his name to Fred Pucci and John Chase before making the October 2014 Complaint.

- (b) the Applicant had reasonable grounds to suspect that ANZ had engaged in insider trading in the Australian interest rate derivatives market, and that ANZ may have contravened a provision of the Corporations legislation;
 - (c) in the premises pleaded in sub-paragraph (b) above, the information the subject of the October 2014 Complaint concerned misconduct or an improper state of affairs in relation to ANZ;
 - (d) the Applicant considered that the information the subject of the October 2014 Complaint may assist each of Fred Pucci and John Chase to perform his duties in relation to ANZ;
 - (e) the Applicant made the October 2014 Complaint to each of Fred Pucci and John Chase in good faith.
212. On 7 October 2014 ANZ invited the Applicant to meet with ANZ as part of ANZ's own investigation into ANZ's BBSW rate setting process.

Particulars

Letter from Eddie Listorti to the Applicant dated 7 October 2014

213. In November 2014 and prior to 19 November 2014 the Applicant was informed by ANZ's solicitor that he had found the Applicant's Bloomberg Chats "highly entertaining".

Particulars

Conversation between Jonathan Slater of Clayton Utz and the Applicant in November 2014 in the presence of Shayne Collins.

The inferences arising from this fact are that:

- (a) *Clayton Utz had read the Applicant's Bloomberg chats;*
- (b) *ANZ (Project Arrow) was aware the contents of the Bloomberg chats;*
- (c) *If the Applicant made disclosures to ASIC that prejudiced ANZ's position then ANZ would use the Applicant's Bloomberg chats against the Applicant, even though the Bloomberg chats were not relevant to the ASIC BBSW Investigation, were confidential to the participants in the Bloomberg chats and would not be revealed to third parties unless ANZ elected to release them; and*
- (d) *ANZ did not terminate the Applicant because of the content of his Bloomberg chats.*

214. In the premises pleaded in paragraphs [157] to [213] above the inferences are that on or around 19 November 2014 ANZ knew that the Applicant could be an important witness for ASIC in proceedings against ANZ arising out of the ASIC BBSW Investigation, and give evidence on behalf of ASIC against ANZ in respect 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 First ASIC Disclosure; and
- (f) the October 2014 Complaint.

Particulars

This knowledge is to be inferred from, and to be attributed to ANZ as a consequence of:

- (a) *The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [168], [176], [184] and [193] above in respect of the Applicant speaking against ANZ engaging in conduct to manipulate the market to profit from ANZ's BBSW Rate Set Exposure, and the particulars thereto;*
- (b) *The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [163]-[171] above in respect of the October 2011 Complaint, and the particulars thereto;*
- (c) *The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [173]-[176] above in respect of the February 2013 Complaint, and the particulars thereto;*
- (d) *The Applicant repeats the facts, matters and circumstances pleaded in paragraph [184] above in respect of the 17 July 2014 Complaint, and the particulars thereto;*
- (e) *The Applicant repeats the facts, matters and circumstances pleaded in paragraph [193] above in respect of the 18 July 2014 Complaint;*
- (f) *The fact that the Applicant had informed Bob Santamaria on 28 July 2014 that he was to be interviewed by ASIC;*
- (g) *The fact that the Applicant reported the October 2014 Complaint to Fred Pucci and John Chase;*
- (h) *The fact that Fred Pucci and John Chase were senior managers of ANZ;*
- (i) *The fact that Fred Pucci and John Chase were members of and reported to the Project Arrow committee;*
- (j) *The fact that Bob Santamaria convened and managed the Project Arrow committee and reported to the Board of ANZ and the Chief Executive Officer in his capacity as Group General Counsel;*
- (k) *The fact that on 7 October 2014 the Applicant was invited to meet to discuss the BBSW rate setting process by ANZ;*
- (l) *The fact that on 20 November 2014 Jonathan Slater of Clayton Utz telephoned Robert Schneider of HWL to invite the Applicant to an interview on 26 November*

2014, the notes of which would be provided to ASIC, if the Applicant consented to do so. During this call, Mr Slater described the purpose of the meeting as to get the Applicant's "views on things" and to get information from the Applicant, who Mr Slater described as a "crucial person" the Bank needs to speak to. The details of this conversation were recorded in handwritten notes made by Robert Schneider on 20 November 2014;

- (m) The fact that prior to 19 November 2014 the Applicant's BBSW Chats had been reviewed by ANZ's legal representatives, Clayton Utz; and
- (n) the seniority of the Applicant's position of employment within ANZ.

215. On 19 November 2014, the Applicant was stood down on full pay pending completion of the BBSW Investigation (**Standing Down**).

Particulars

Meeting between the Applicant, Richard Huston and Kerrie Harris (ANZ Head of Human Resources, Global Markets), 19 November 2014

Letter Richard Huston to Etienne Alexiou, 19 November 2014. This letter refers to the decision being taken to stand down the Applicant because of his involvement in the current investigations undertaken by ASIC and ANZ and because it is likely to be stressful time for the Applicant.

216. On 19 November 2014, at the time of the Standing Down, Richard Huston informed the Applicant that he was being stood down because he was a key person in the ASIC BBSW Investigation, that he was likely to be required for a follow up interview by ASIC, and that the Applicant was being stood down because ANZ believed that ASIC would not accept graduates being stood down but required more senior executives to be stood down.

Particulars

Meeting between the Applicant, Richard Huston and Kerrie Harris (ANZ Head of Human Resources, Global Markets), 19 November 2014

ANZ engaged in conduct by standing down the Applicant from his normal employment duties, at the meeting of 19 November 2014 and by the issuance of the letter dated 19 November 2014, which was signed by Richard Huston on behalf of ANZ. By inference of Richard Huston's role as a senior manager of ANZ and as a member of

and reporting to Project Arrow, the Standing Down was conducted with the approval of senior executives in ANZ, including the members of Project Arrow.

Given that:

- (a) *The Applicant had not engaged in conduct to manipulate the market in order to profit from ANZ's BBSW Rate Set Exposure, in circumstances where the Applicant was hired to manage ANZ's long term balance sheet risk, and there were other specialists who were responsible for managing ANZ's short term BBSW risk, the Applicant's employment did not involve the Applicant trading or issuing Bank Bills or NCDs in the BBSW rate set or involve the Applicant inputting the BBSW rate or designing the process by which ANZ set the BBSW rate;*
- (b) *ANZ knew that the Applicant had not engaged in conduct to manipulate the market in order to profit from ANZ's BBSW Rate Set Exposure, alternatively ANZ had not identified any evidence that the Applicant had engaged in conduct to manipulate the market in order to profit from ANZ's BBSW Rate Set Exposure;*
- (c) *Various employees at ANZ who were involved in trading Bank Bills, inputting the BBSW rate, or designing the process by which ANZ set the BBSW rate, in the period to 2013, and who may have manipulated, or were in a position to manipulate, the market in order to profit from ANZ's BBSW Rate Set Exposure, were not stood down by ANZ;*
- (d) *That at different times different reasons were given for the Standing Down, as outlined in the letter dated 19 November 2014 (paragraph [215]), by Richard Huston on 19 November 2014 (paragraph [216]) and by Bob Santamaria (paragraph [222](b));*
- (e) *That ANZ had previously issued a written warning but not stood down Jason Pritchard for the Second Pritchard Conduct, and the Applicant had been told that the bank needed to support Jason Pritchard, when ASIC was investigating the Second Pritchard Conduct (see paragraph [181] to [182] above);*

the inference that arises is that ANZ stood down the Applicant because:

- (f) ANZ knew that the Applicant had made the October 2011 Complaint, the February 2013 Complaint, the October 2014 Complaint, and the First ASIC Disclosure;
- (g) ANZ were intending to make the Applicant a scapegoat in relation to the BBSW Investigation; and
- (h) ANZ wanted to discourage the Applicant from assisting ASIC.

216A. At the time of the Standing Down, the Applicant was directed not to speak to the media about the ASIC BBSW Investigation or any associated matter (**Media Communication Direction**).

Particulars

Letter Richard Huston to Etienne Alexiou, 19 November 2014.

217. ANZ did not stand down a number of employees who in the period to 2013 had held positions of employment where it was open to the employee to manipulate the market in order for ANZ to profit from ANZ's BBSW Rate Set Exposure:

Particulars

From at least 14 August 2013 ANZ had identified the derivatives traders and those submitting mid-rate contributions during the period June 2008 and October 2010 as including Matt Morris, Doug Seymor and Michael Dodd (see email from Andrew Heathwood to the Applicant dated 14 August 2013), none of whom where stood down.

217A. [Not used]

218. Immediately after the Standing Down, ANZ issued a press release announcing that ANZ had been undertaking its own internal review into ANZ's involvement in the ASIC BBSW Investigation, and that, in this context, ANZ was: "taking the precaution of having seven staff involved in markets trading step down pending completion of the investigation" (the **Press Release**).

Particulars

ANZ Media release, "ANZ continuing to cooperate with ASIC review of interbank BBSW rate trading", 19 November 2014

The Press Release was conduct of ANZ where the Press Release was issued by ANZ and by inference was released with the approval of senior executives in ANZ, including the members of Project Arrow.

Given that:

- (a) Inquiries would be made to identity the seven staff referred to in the Press Release that had been stood down pending completion of the investigation;*
- (b) Those enquiries would reveal that the Applicant was the most senior of the seven staff that had been stood down;*
- (c) The Applicant had not engaged in conduct to manipulate the market in order to profit from ANZ's BBSW Rate Set Exposure;*
- (d) ANZ knew that the Applicant had not engaged in conduct to manipulate the market in order to profit from ANZ's BBSW Rate Set Exposure;*
- (e) Various employees of ANZ who had held positions to 2013 where it was open to them to manipulate the market in order to profit from ANZ's BBSW Rate Set Exposure, had not been stood down;*

The inferences are that ANZ issued the Press Release:

- (f) when ANZ knew that the Applicant had made the October 2011 Complaint, the February 2013 Complaint, the October 2014 Complaint, and the First ASIC Disclosure;*
- (g) so that the Applicant would be identified as a person involved in market manipulation, because he was the most senior person stood down;*
- (h) to make the Applicant a scapegoat in relation to the ASIC BBSW Investigation;*
- (i) to discourage the Applicant from assisting ASIC; and*
- (j) to damage the Applicant's reputation and discredit the Applicant as a witness in support of any case against ANZ brought by ASIC arising out of ASIC's the ASIC BBSW Investigation.*

218A. [Not used]

218B. [Not used]

218C. [Not used]

218D. [Not used]

218E. [Not used]

218F. [Not used]

218G. [Not used]

218H. [Not used]

218I. [Not used]

218J. [Not used]

218K. [Not used]

218L. [Not used]

218M. [Not used]

218N. [Not used]

218O. [Not used]

218P. [Not used]

218Q. [Not used]

218R. [Not used]

218S. [Not used]

218T. [Not used]

218U. [Not used]

219. In the premises pleaded in paragraphs [157] to [218] above, and by engaging in the conduct of the Standing Down, and the issuing of the Press Release, ANZ caused detriment to the Applicant .

Particulars

The detriment suffered by the Applicant included:

- (a) *Damage to the Applicant's reputation;*
- (b) *Damage to the Applicant's credibility;*
- (bb) *Not used*
- (c) *Damage to the Applicant's employment prospects as a prospective employee*

219A. [Not used]

220. In the premises pleaded in paragraphs [157] to [218] above, and by engaging in the conduct of the Standing Down, and the issuing of the Press Release, ANZ intended to cause detriment to the Applicant:

- (a) because the Applicant had made the October 2011 Complaint;
- (b) because the Applicant had made the February 2013 Complaint;
- (c) because the Applicant had made the First ASIC Disclosure; and further, or in the alternative,
- (d) because the Applicant had made the October 2014 Complaint,

in order to:

- (e) to make the Applicant a scapegoat in relation to the ASIC BBSW Investigation;
- (f) to discourage the Applicant from being a witness for and assisting ASIC; ~~and~~
- (g) to damage the Applicant's reputation and discredit the Applicant as a witness in support of any case brought by ASIC against ANZ arising out of the ASIC BBSW Investigation;
- (h) [Not used];
- (i) [Not used];
- (j) [Not used];

(k) [Not used]

(h)(l) [Not used].

Particulars to sub-paragraphs (a)-(lg) above

This intention is to be inferred from, and to be attributed to ANZ, as a consequence of ANZ's knowledge of the following facts, matters and circumstances:

- (a) *The fact that ANZ senior management were aware of ANZ's Rate Set Trading Practice, which was the subject of the ASIC BBSW Investigation. ANZ senior management, including Mr Shayne Elliott (Chief Executive Officer, Institutional), Mr Mike Smith, (Chief Executive Officer of ANZ), Mr Steve Bellotti (Managing Director of Global Markets), and Mr Robert O'Callaghan (Global Head of Fixed Income), were consulted in respect of the STF Strategy Proposal by email on 9 March 2010. A reason advanced in that email in support of the STF Strategy Proposal was that relocation of the issuance function would enable the Institutional Division to control issuance for the purpose of supporting ANZ's rate set trading practice. It is to be inferred from the fact that senior management were consulted in relation to the STF Strategy Proposal that those senior management were informed of and aware of the existence of ANZ's rate set trading practice in March 2010 and of the support for facilitating and enhancing the said practice.*
- (b) *The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [168], [176], [184] and [193] above in respect of the Applicant speaking against ANZ engaging in conduct to manipulate the market to profit from ANZ's BBSW Rate Set Exposure, and the particulars thereto;*
- (c) *The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [163]-[171] above in respect of the October 2011 Complaint, and the particulars thereto;*
- (d) *The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [173]-[176] above in respect of the February 2013 Complaint, and the particulars thereto;*
- (e) *the Applicant repeats the facts, matters and circumstances pleaded in paragraph [181]-[182] above and the particulars thereto;*

- (f) *The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [184] above in respect of the 17 July 2014 Complaint, and the particulars thereto;*
- (g) *The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [193] above in respect of the 18 July 2014 Complaint;*
- (h) *The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [197]-[207] above in respect of the First ASIC Disclosure, and the particulars thereto;*
- (i) *The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [208]-[210] above in respect of the October 2014 Complaint, and the particulars thereto;*
- (j) *The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [215]-[218] above in respect of the Standing Down, ~~and the Press Release~~ and the particulars thereto;*
- (k) *[Not used].*

220A. [Not used]

220B. [Not used]

220C. [Not used].

221. On or around 1 December 2014 the Applicant's solicitor was informed by ANZ's solicitor that ANZ would "live or die" by the Applicant's statements to ASIC and ANZ's solicitor asked for an interview of the Applicant to "get on top" of what the Applicant had informed ASIC.

Particulars

Conversation between Jonathan Slater of Clayton Utz and the Applicant's legal representatives Peter Silver, Robert Schneider and Alexandra White. The details of the conversation were recorded in Mr Schneider and Ms White's handwritten notes of the conversation dated 1 December 2014.

222. On 5 December 2014 the Applicant and his legal representatives met with Bob Santamaria and Shayne Collins from ANZ, and his legal representatives said to Bob Santamaria and Shayne Collins that:

- (a) there would come a time when the Applicant would sit down with ASIC and articulate what had been happening at ANZ in respect of the setting of BBSW rates; and
- (b) the Applicant expected to be asked by ASIC to assist ASIC against ANZ; (together, the **ASIC Request Representation**),

and the Applicant was informed and provided a letter from ANZ to the Applicant of the same date, which explained that:

- (c) Bob Santamaria had been asked by the Chief Executive Officer to coordinate ANZ's investigation into BBSW, as well as ANZ's response to ~~ASIC's~~ the ASIC BBSW Investigation; and
- (d) ANZ's decision to stand down the Applicant balanced a number of factors, including but not limited to:
 - (i) The status of ~~ASIC's~~ the ASIC BBSW Investigation and the Bank's BBSW investigation;
 - (ii) The considerable distractions and other commercial pressures the Applicant was exposed to on a daily basis; and
 - (iii) The continued efficient operation of ANZ's business units.

Particulars

Letter dated 5 December 2014 from Bob Santamaria to the Applicant.

Meeting between the Applicant, Peter Silver of counsel, Robert Schneider and Alexandra White of HWL Ebsworth, Bob Santamaria, Group General Counsel, and Shayne Collins, Group General Manager for Markets Risk. The details of the conversation were recorded in Mr Schneider and Ms White's handwritten notes of the meeting dated 5 December 2014.

223. On 5 December 2014 the Applicant and his legal representatives met with ANZ, and ANZ's solicitor, and:

- (a) [REDACTED]
- (b) [REDACTED]

(c) [Redacted]
[Redacted]
[Redacted]

(d) [Redacted]
[Redacted]

(i) [Redacted]

(ii) [Redacted]
[Redacted]

[Redacted]

[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

224. [Redacted]
[Redacted]

(a) [Redacted]
[Redacted]

[Redacted]

[Redacted]
[Redacted]
[Redacted]

(b) [Redacted]
[Redacted]
[Redacted]

(c) [Redacted]
[Redacted]
[Redacted]

- (d) [REDACTED]
[REDACTED]
- (e) [REDACTED]

225. On or around 11 December 2014 ANZ knew that ASIC was proposing to further interview the Applicant as part of the ASIC BBSW Investigation.

Particulars

- (i) *The inference arising from the fact that HWL Ebsworth was acting for the Applicant in respect of the ASIC BBSW Investigation at the cost of ANZ, and the fact that Clayton Utz was acting for ANZ in respect of the ASIC BBSW Investigation, is that the services provided by HWL Ebsworth to the Applicant in respect of the ASIC BBSW Investigation were recorded in invoices submitted by HWL Ebsworth to ANZ c/- Clayton Utz, and thereby Clayton Utz was kept updated about the Applicant's dealings with ASIC, and as the solicitors acting for ANZ in respect of the ASIC BBSW Investigation the further inference is that Clayton Utz was required to, and therefore would, pass on that information to ANZ, and therefore Project Arrow, by providing HWL Ebsworth's invoices to ANZ for payment, and by requesting that ANZ attend to payment of HWL Ebsworth's invoices submitted by HWL Ebsworth in respect of services provided by HWL Ebsworth to the Applicant.*
- (ii) *On 11 December 2014 Robert Schneider of HWL Ebsworth received an email from Colin Luxford of ASIC informing Robert Schneider that ASIC intended to resume the Applicant's section 19 examination. On 11 December 2014, Robert Schneider informed Jonathan Slater that he had received this email and that the Applicant was being required to attend for a further section 19 examination. Robert Schneider asked for ANZ to make further documents available to the Applicant before his resumed section 19 examination. Jonathan Slater informed Robert Schneider that he would seek instructions regarding that request. An inference arising from this discussion is that Jonathan Slater informed ANZ that ASIC was proposing to further interview the Applicant as part of the ASIC BBSW Investigation. The details of the conversation are recorded in Robert Schneider's handwritten notes of the conversation dated 11 December 2014 and the HWL invoice to ANZ c/- Clayton Utz dated 19 December 2014, in particular entries dated 11 December 2014, including telephone call to Jonathan*

Slater of Clayton Utz regarding resumption of ASIC examination of "FB". It can be inferred that the use of the pseudonym "FB" for the Applicant in the HWL Ebsworth invoices was not intended to, and did not, disguise the fact the services were provided to the Applicant, in circumstances where (a) the device used was transparent and involved the substitution of the Applicant's initials (EA) with the next letter in the alphabet (FB); (b) the first HWL Ebsworth invoice that referred to FB (dated 19 December 2014) annexed an invoice for services by Mr Silver that referred to the Applicant by name; and (c) the second and subsequent HWL Ebsworth invoices referred to the Applicant by name and then defined the Applicant as "FB".

226. On 22 December 2014, the Applicant disclosed to ASIC the subject matter of the October 2014 Complaint, and the December 2014 Complaint (**Second ASIC Disclosure**).

Particulars

Meeting between the Applicant and Colin Luxford and Emman Farroukh of ASIC, on or around 22 December 2014. The details of the conversation were recorded in Mr Schneider and Ms White's handwritten notes of the meeting with ASC dated 22 December 2014.

227. In the premises pleaded in paragraph [226] above in respect of the Second ASIC Disclosure:

- (a) the Applicant informed ASIC of his name before making the Second ASIC Disclosure;

Particulars

Meeting between the Applicant and Colin Luxford and Emman Farroukh of ASIC, on or around 22 December 2014

- (b) the Applicant had reasonable grounds to suspect that ANZ had manipulated the market in order to profit from in ANZ's BBSW Rate Set Exposure, and that ANZ may have contravened a provision of the Corporations legislation;
- (c) the Applicant considered that the information the subject of the Second ASIC Disclosure may assist ASIC to perform its duties in relation to ASIC and ANZ;
- (d) the Applicant made the Second ASIC Disclosure to ASIC in good faith.

228. From on or about 22 December 2014 ANZ knew that ASIC had conducted a further interview of the Applicant as part of the ASIC BBSW Investigation.

Particulars

On 22 December 2014, after making the Second ASIC Disclosure, the Applicant and his legal representatives entered the reception area of ASIC's premises on Market Street, Sydney, and saw Jonathan Slater, Clayton Utz, who asked the Applicant what he'd been discussing with ASIC. The Applicant was accompanied by his counsel Peter Silver and Robert Schneider of HWL Ebsworth. The inference arising from this fact, and the fact that Jonathan Slater of Clayton Utz was acting for ANZ in respect of the ASIC BBSW Investigation, is that Mr Slater disclosed to ANZ that he had seen the Applicant at ASIC's premises on 22 December 2014, and that the Applicant appeared to have been in the interview rooms at ASIC, together with the Applicant's legal representatives.

228A. On 4 January 2015, the Applicant became aware that the *Australian Financial Review (AFR)* and related newspapers intended to publish an article on Monday, 5 January 2015, which would name the Applicant as one of the Seven Stood Down Traders (**Proposed AFR Article**).

Particulars

Applicant's Affidavit in Reply affirmed 1 May 2014 at paragraphs [40]-[41].

228B. After becoming aware of the Proposed AFR Article, the Applicant:

- (a) did not provide any comment to the media; and
- (b) directed the media to contact Stephen Ries (ANZ Head of Media Relations).

228C. The Applicant's conduct as pleaded in paragraph [228B] above was undertaken in accordance with the Media Communication Direction.

228D. On or before 4 January 2015 (at a time and date presently not known to the Applicant) ANZ became aware that the AFR and related newspapers intended to publish the Proposed AFR Article.

Particulars

Applicant's Affidavit in Reply affirmed 1 May 2014 at paragraph [43].

Emails between Stephen Ries and Jonathan Shapiro sent on 4 January 2015 at 2:58pm and 3:00pm.

228E. At 2.38pm on 4 January 2015, the Applicant sent a text message to Stephen Ries to:

- (a) inform Mr Ries that the Applicant believed the AFR intended to name individuals the subject of the Press Release; and
- (b) in light of the Media Communication Direction, requested that ANZ ensure the Applicant's interests were protected.

Particulars

Applicant's Affidavit in Reply affirmed 1 May 2024 at paragraph [43].

228F. Mr Ries did not respond at any time to the Applicant's text message sent on 4 January 2015.

Particulars

Applicant's Affidavit in Reply affirmed 1 May 2024 at paragraph [44].

228G. On or about 4 January 2015, ANZ provided a comment to members of the media (**ANZ Media Comment**).

Particulars

Email from Stephen Ries to Jonathan Shapiro sent on 4 January 2015 at 2:58pm.

228H. The ANZ Media Comment:

- (a) did not characterise the Applicant as a whistleblower or a witness to relevant events in respect of the ASIC BBSW Investigation;
- (b) failed to characterise the Applicant as a whistleblower or a witness to relevant events and thereby implied or portrayed the Applicant as a suspect or target of the ASIC BBSW Investigation;
- (c) [Not used]
- (d) [Not used]

228I. [Not used]

228J. At 5.29pm on 4 January 2015 (after the deadline for the publication of the Proposed AFR Article) Bob Santamaria attempted to contact the Applicant and left a voicemail message informing the Applicant that ANZ had done its best to stop publication of the Applicant's name.

Particulars

Applicant's Affidavit in Reply affirmed 1 May 2024 at paragraph [46]-[48].

228K. At or around 6.30pm on 4 January 2015, the Applicant spoke to Mr Santamaria and was told by Mr Santamaria that the Proposed AFR Article had gone to print and it was too late to have the Applicant's name removed.

Particulars

Applicant's Affidavit in Reply affirmed 1 May 2024 at paragraph [49].

228L. [Not used]

228M. [Not used].

228N. On 5 January 2015, an article appeared on the front page and page 4 of the *Australian Financial Review* entitled 'ANZ Traders Sidelined During Probe' (**5 January 2015 AFR Article**).

228O. Also on 5 January 2015, the *Sydney Morning Herald* published an article entitled 'ANZ Traders Sidelined During ASIC Investigation' which contained the same or similar statements as the AFR Article (**5 January 2015 SMH Article**).

228P. The 5 January 2015 AFR Article and the 5 January 2015 SMH Article were published online.

Particulars

Article published on afr.com.au on 5 January 2015 entitled 'ANZ traders sidelined during ASIC investigation'.

Article published on smh.com.au on 5 January 2015 entitled 'ANZ traders sidelined during ASIC investigation'.

228Q. The 5 January 2015 AFR Article and the 5 January 2015 SMH Article identified the Applicant as one of the Seven Stood Down Traders.

228R. [Not used]

228S. [Not used]

228T. [Not used]

228U. [Not used]

228V. In the premises pleaded in paragraphs [157] to [228Q] by no later than January 2015, ANZ knew that the Applicant could be an important witness for ASIC in proceedings against ANZ arising out of the ASIC BBSW Investigation, and could give evidence on behalf of ASIC against ANZ in respect of:

- (a) ANZ's Rate Set Trading Practice and the STF Strategy Proposal;
- (b) the October 2011 Complaint;
- (c) the February 2013 Complaint;
- (d) the 17 July 2014 Complaint;
- (e) the 18 July 2014 Complaint;
- (f) the First ASIC Disclosure;
- (g) the October 2014 Complaint;
- (h) the December 2014 Complaint; and
- (i) the Second ASIC Disclosure.

Particulars

This knowledge is to be inferred from, and to be attributed to ANZ as a consequence of:

- (i) The facts, matters and circumstances pleaded in paragraphs [168], [176], [184] and [193] above in respect of ANZ's Rate Set Trading Practice and the STF Strategy Proposal, and the particulars thereto;*

- (ii) The facts, matters and circumstances pleaded in paragraphs [163]-[171] above in respect of the October 2011 Complaint, and the particulars thereto;
- (iii) The facts, matters and circumstances pleaded in paragraphs [173]-[176] above in respect of the February 2013 Complaint, and the particulars thereto;
- (iv) The facts, matters and circumstances pleaded in paragraph [184] above in respect of the 17 July 2014 Complaint, and the particulars thereto;
- (v) The facts, matters and circumstances pleaded in paragraph [193] above in respect of the 18 July 2014 Complaint;
- (vi) The facts, matters and circumstances pleaded in paragraphs [197]-[207] above in respect of the First ASIC Disclosure, and the particulars thereto;
- (vii) The facts, matters and circumstances pleaded in paragraphs [208]-[210] above in respect of the October 2014 Complaint, and the particulars thereto;
- (viii) The facts, matters and circumstances pleaded in paragraph [223] above in respect of the December 2014 Complaint, and the particulars thereto;
- (ix) The facts, matters and circumstances pleaded in paragraph [226] above in respect of the Second ASIC Disclosure, and the particulars thereto;
- (x) The seniority of the Applicant's position of employment within ANZ;
- (xi) The Standing Down;
- (xii) The Press Release;
- (xiii) [Not used].

228W. In the premises pleaded in paragraphs [157] to [228V] above, and by engaging in the conduct of the ANZ Media Comment, ANZ caused harm to the Applicant and or failed to avoid or reduce detriment to the Applicant.

Particulars

The detriment suffered by the Applicant included:

- (a) Damage to the Applicant's reputation;

(b) Damage to the Applicant's credibility;

(c) Damage to the Applicant's employment prospects at ANZ;

(d) Damage to the Applicant's employment prospects as a prospective employee in the Australian financial industry.

228X. Further or in the alternative to paragraph [228W] above, in the premises pleaded in paragraphs [157] to [228V] above, through the ANZ Media Comment, ANZ caused the Applicant's future employment with ANZ to become untenable.

228Y. In the premises pleaded in paragraphs [157] to [218] above, through the ANZ Media Comment, ANZ intended to cause detriment to the Applicant:

(a) because the Applicant had made the October 2011 Complaint;

(b) because the Applicant had made the February 2013 Complaint;

(c) because the Applicant had made the First ASIC Disclosure;

(d) because the Applicant had made the October 2014 Complaint;

(e) because the Applicant had made the December 2014 Complaint; and further, or in the alternative,

(f) because the Applicant had made the Second ASIC Disclosure.

in order:

(g) to make the Applicant a scapegoat in relation to the ASIC BBSW Investigation;

(h) to discourage the Applicant from being a witness for and assisting ASIC;

(i) to damage the Applicant's reputation and discredit the Applicant as a witness in support of any case brought by ASIC against ANZ arising out of the ASIC BBSW Investigation;

(j) to dissuade and discourage any employees of ANZ from assisting ASIC in the ASIC BBSW Investigation;

(k) to further ANZ's strategy to deny any wrongdoing or attempted wrongdoing the subject of the ASIC BBSW Investigation;

- (l) to characterise any attempted wrongdoing or attempted wrongdoing the subject of the ASIC BBSW Investigation as the unauthorised conduct of individual employees within the Global Markets Division of ANZ for which senior management and directors of ANZ could not be held personally responsible; and
- (m) to represent to ASIC, ANZ's shareholders and the public that senior management and directors of ANZ had dealt with and disposed of the employees who were responsible for any contravening conduct or attempted contravening conduct the subject of the ASIC BBSW Investigation.

Particulars to sub-paragraphs (a)-(m) above

This intention is to be inferred from, and to be attributed to ANZ, as a consequence of ANZ's knowledge of the following facts, matters and circumstances:

- (a) *The fact that ANZ senior management were aware of ANZ's Rate Set Trading Practice, which was the subject of the ASIC BBSW Investigation. ANZ senior management, including Mr Shayne Elliott (Chief Executive Officer, Institutional), Mr Mike Smith, (Chief Executive Officer of ANZ), Mr Steve Bellotti (Managing Director of Global Markets), and Mr Robert O'Callaghan (Global Head of Fixed Income), were consulted in respect of the STF Strategy Proposal by email on 9 March 2010. A reason advanced in that email in support of the STF Strategy Proposal was that relocation of the issuance function would enable the Institutional Division to control issuance for the purpose of supporting ANZ's rate set trading practice. It is to be inferred from the fact that senior management were consulted in relation to the STF Strategy Proposal that those senior management were informed of and aware of the existence of ANZ's rate set trading practice in March 2010 and of the support for facilitating and enhancing the said practice.*
- (b) *The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [168], [176], [183] and [193] above in respect of the Applicant speaking against ANZ engaging in conduct to manipulate the market to profit from ANZ's BBSW Rate Set Exposure, and the particulars thereto;*
- (c) *The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [163]-[171] above in respect of the October 2011 Complaint, and the particulars thereto;*

- (d) The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [173]-[176] above in respect of the February 2013 Complaint, and the particulars thereto;
- (e) the Applicant repeats the facts, matters and circumstances pleaded in paragraphs [181]-[182] above and the particulars thereto;
- (f) The Applicant repeats the facts, matters and circumstances pleaded in paragraph [184] above in respect of the 17 July 2014 Complaint, and the particulars thereto;
- (g) The Applicant repeats the facts, matters and circumstances pleaded in paragraph [193] above in respect of the 18 July 2014 Complaint;
- (h) The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [197]-[207] above in respect of the First ASIC Disclosure, and the particulars thereto;
- (i) The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [208]-[210] above in respect of the October 2014 Complaint, and the particulars thereto;
- (j) The Applicant repeats the facts, matters and circumstances pleaded in paragraph [223] above in respect of the December 2014 Complaint, and the particulars thereto;
- (k) The Applicant repeats the facts, matters and circumstances pleaded in paragraph [226] above in respect of the Second ASIC Disclosure, and the particulars thereto;
- (l) The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [215] to [218]- and [228A] to [228Q] above in respect of the ANZ Media Comment and the particulars thereto.

229. On or around January 2015, ASIC extended the ASIC BBSW Investigation to include the subject matter of the October 2014 Complaint.

Particulars

ASIC extended the ASIC BBSW Investigation to encompass possible breaches of s 1041G and s 1043A of the Corporations Act during a period that included the period of the October 2014 Complaint.

The inference arises from the s 33 Notice issued by ASIC to ANZ on 27 February 2015 which extended the ASIC BBSW Investigation to include possible breaches of s 1041G and s 1043A of the Corporations Act during a period that included the period of the October 2014 Complaint.

Further and better particulars will be provided after discovery.

230. Further and in the alternative to paragraph [228] above, from on or around 30 January 2015, ANZ knew that ASIC had conducted a further interview of the Applicant as part of the ASIC BBSW Investigation.

Particulars

- (i) *The inference arising from the fact that HWL Ebsworth was acting for the Applicant in respect of the ASIC BBSW Investigation at the cost of ANZ, and the fact that Clayton Utz was acting for ANZ in respect of the ASIC BBSW Investigation, is that the services provided by HWL Ebsworth to the Applicant in respect of the ASIC BBSW Investigation were recorded in invoices submitted by HWL Ebsworth to ANZ c/-Clayton Utz, and thereby Clayton Utz was kept updated about the Applicant's dealings with ASIC, and as the solicitors acting for ANZ in respect of the ASIC BBSW Investigation the further inference is that Clayton Utz was required to, and therefore would, pass on that information to ANZ, and therefore Project Arrow, by providing HWL Ebsworth's invoices to ANZ for payment, and by requesting that ANZ attend to payment of HWL Ebsworth's invoices submitted by HWL Ebsworth in respect of services provided by HWL Ebsworth to the Applicant.*
- (ii) *HWL invoice to ANZ c/- Clayton Utz dated 30 January 2015, in particular entries dated 22 December 2014. It can be inferred that Clayton Utz passed on to ANZ the invoice and the information on or about 30 January 2015 that the Applicant had been interviewed by ASIC on or about 22 December 2014. It can also be inferred that the use of the pseudonym "FB" for the Applicant in the HWL Ebsworth invoices was not intended to, and did not, disguise the fact the*

services were provided to the Applicant, in circumstances where (a) the device used was transparent and involved the substitution of the Applicant's initials (EA) with the next letter in the alphabet (FB); (b) the first HWL Ebsworth invoice that referred to FB (dated 19 December 2014) annexed an invoice for services by Mr Silver that referred to the Applicant by name; and (c) the second and subsequent HWL Ebsworth invoices referred to the Applicant by name and then defined the Applicant as "FB".

231. From on or around 30 January 2015, ANZ knew that ASIC was continuing to correspond with the Applicant, through the Applicant's solicitor, as part of the ASIC BBSW Investigation.

Particular

- (i) *The inference arising from the fact that HWL Ebsworth was acting for the Applicant in respect of the ASIC BBSW Investigation at the cost of ANZ, and the fact that Clayton Utz was acting for ANZ in respect of the ASIC BBSW Investigation, is that the services provided by HWL Ebsworth to the Applicant in respect of the ASIC BBSW Investigation were recorded in invoices submitted by HWL Ebsworth to ANZ c/-Clayton Utz, and thereby Clayton Utz was kept updated about the Applicant's dealings with ASIC, and as the solicitors acting for ANZ in respect of the ASIC BBSW Investigation the further inference is that Clayton Utz was required to, and therefore would, pass on that information to ANZ, and therefore Project Arrow, by providing HWL Ebsworth's invoices to ANZ for payment, and by requesting that ANZ attend to payment of HWL Ebsworth's invoices submitted by HWL Ebsworth in respect of services provided by HWL Ebsworth to the Applicant.*
- (ii) *It can be inferred that the use of the pseudonym "FB" for the Applicant in the HWL Ebsworth invoices was not intended to, and did not, disguise the fact the services were provided to the Applicant, in circumstances where (a) the device used was transparent and involved the substitution of the Applicant's initials (EA) with the next letter in the alphabet (FB); (b) the first HWL Ebsworth invoice that referred to FB (dated 19 December 2014) annexed an invoice for services by Mr Silver that referred to the Applicant by name; and (c) the second and subsequent HWL Ebsworth invoices referred to the Applicant by name and then defined the Applicant as "FB".*

(iii) On this basis, it can be inferred that Clayton Utz passed the following invoices to ANZ, which contained the following information concerning the Applicant:

- (a) *HWL invoice to ANZ c/- Clayton Utz dated 30 January 2015, in particular entries dated 6, 14 and 15 January 2015, which included information that the Applicant was corresponding through HWL with ASIC on 6, 14 and 15 January 2015.*
- (b) *HWL invoice to ANZ c/- Clayton Utz dated 26 February 2015, in particular entries dated 28 January 2015 and 11 February 2015, which included information that the Applicant was corresponding through HWL with ASIC on 28 January 2015 and 11 February 2015.*
- (c) *HWL invoice to ANZ c/- Clayton Utz dated 31 March 2015, in particular entries dated 25 February 2015, 2, 9, 10, 11, 17, 25 and 26 March 2015, which included information that the Applicant was corresponding through HWL with ASIC on 25 February 2015, 2, 9, 10, 11, 17, 25 and 26 March 2015.*
- (d) *HWL invoice to ANZ c/- Clayton Utz dated 30 April 2015, in particular entries dated 15, 17, 20 and 28 April 2015, which included information that the Applicant was corresponding through HWL with ASIC on 15, 17, 20 and 28 April 2015.*
- (e) *HWL invoice to ANZ c/- Clayton Utz dated 28 May 2015, in particular entries dated 1, 11, 18, 21, 22 May 2015, which included information that the Applicant was corresponding through HWL with ASIC on 1, 11, 18, 21, 22 May 2015.*
- (f) *HWL invoice to ANZ c/- Clayton Utz dated 30 July 2015 in particular entries dated 22, 23, 24 and 27 July 2015, which included information that the Applicant was corresponding through HWL with ASIC on 22, 23, 24 and 27 July 2015.*
- (g) *HWL invoice to ANZ c/- Clayton Utz dated 31 August 2015 in particular entries dated 7, 10, 11, 12, 13, 25 and 26 August 2015, which included information that the Applicant was corresponding through HWL with ASIC on 7, 10, 11, 12, 13, 25 and 26 August 2015.*

(iv) On 2 February 2015, Jonathan Slater called Robert Schneider and asked whether the Applicant's legal representatives had heard anything further from ASIC, since they had seen one another at ASIC before Christmas. Robert Schneider informed Jonathan Slater that they had, but did not disclose the details of the correspondence. The inference arising from this fact, and that fact that Clayton Utz was acting for ANZ, is that Clayton Utz informed ANZ that ASIC and the Applicant continued to correspond in February 2015 about the ASIC BBSW Investigation. The details of the conversation were recorded in Robert Schneider's handwritten notes of the telephone call dated 2 February 2015.

232. On or around 23 February 2015 the Applicant and his solicitor Robert Schneider met with Bob Santamaria and Shayne Collins from ANZ, and Bob Santamaria from ANZ informed the Applicant that:

- (a) Project Arrow was being dealt with by ANZ at the highest level. Bob Santamaria was reporting to Mike Smith in his office every day. Mike Smith was reporting to the Chairman regularly and to the Board on a weekly basis;
- (b) the decision to stand down the Applicant had been debated at length by senior people within ANZ;
- (c) the Applicant's employment status was derivative of the bank's fundamental argument with ASIC;
- (d) there would probably be no decision on his position by ANZ until ANZ knows how it will end up with ASIC;
- (e) where ANZ ends up with the Applicant will be fundamentally derivative of where ANZ ends up with ASIC.

Particulars

- (i) *Conversation between the Applicant, Robert Schneider, Bob Santamaria and Shayne Collins on 23 February 2015. The details of the conversation were recorded in Robert Schneider's handwritten notes of the meeting dated 23 February 2015 and in an email to Peter Silver of counsel dated 2 March 2015.*
- (ii) *The inference arising from (a) above is that the Board of ANZ was kept up to date with developments affecting Project Arrow, for the purpose of being*

involved in decisions affecting Project Arrow and ANZ's response to ASIC's the ASIC BBSW Investigation.

- (iii) *The inference arising from (b) to (e) above is that ANZ was implying that if the Applicant made disclosures to ASIC that prejudiced ANZ's position then ANZ would cause detriment to the Applicant.*

233. At this same meeting on or around 23 February 2015, the Applicant made a complaint to ANZ that he did not believe that ANZ's reasons for the Standing Down were genuine and the Applicant requested that ANZ review the decision to impose the Standing Down so that he could return to normal duties (**February 2015 Complaint**).

Particulars

Conversation between the Applicant, Robert Schneider, Bob Santamaria and Shayne Collins. The details of the conversation were recorded in Robert Schneider's handwritten notes of the meeting dated 23 February 2015 and in an email to Peter Silver of counsel dated 2 March 2015.

234. On or around 26 February 2015, Richard Huston from ANZ informed the Applicant that the Applicant was being used by ANZ as a scapegoat in relation to the ASIC BBSW Investigation.

Particulars

Conversation between the Applicant and Richard Huston on 26 February 2015.

The inferences arising from this fact are that:

- (a) *ANZ had a plan to make the Applicant a scapegoat in relation to the ASIC BBSW Investigation;*
- (b) *Richard Huston was aware of this plan as a consequence of his role on Project Arrow; and*
- (c) *ANZ's intention was to make the Applicant a scapegoat in relation to the ASIC BBSW Investigation because the Applicant had made the October 2011 Complaint, the October 2014 Complaint and the First ASIC Disclosure.*

235. On or around 27 February 2015, ASIC issued ANZ with a notice under section 33 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**February 2015 Section 33 Notice**).

Particulars

ASIC notice to ANZ dated on or about 27 February 2015, which *inter alia* sought books in relation to an investigation regarding suspected contraventions of section 1043A(1) and (2) of the *Corporations Act* by ANZ and its current employees or members during the period from 1 September 2013 to 31 December 2014 in relation to trading of Division 3 financial products, namely Australian Dollar Interest Rate Derivatives.

236. On or around 3 March 2015 the Applicant sought the consent of ANZ to pay for Senior Counsel to act for the Applicant in respect of the ASIC BBSW Investigation.

Particulars

Email from the Applicant to Bob Santamaria on 3 March 2015.

237. On 6 March 2015 the Applicant's legal representatives informed Clayton Utz on behalf of ANZ that ASIC had required the Applicant to attend for a further compulsory interview of the Applicant as part of the ASIC BBSW Investigation and that ASIC was seeking information on high level targets.

Particulars

Conversation between the Peter Silver of counsel, Robert Schneider and Alexandra White of HWL and Nicholas Mavrakis of Clayton Utz. The details of the conversation were recorded in Robert Schneider and Alexandra White's handwritten notes of the telephone attendance dated 6 March 2015. The inference arising from the fact that Nicholas Mavrakis of Clayton Utz was acting for ANZ is that he passed on that information to ANZ.

238. On 6 March 2015, during the same conversation, Nicholas Mavrakis of Clayton Utz on behalf of ANZ informed the Applicant's legal representatives that Clayton Utz considered that some of the Applicant's emails were a problem.

Particulars

Conversation between the Peter Silver of counsel, Robert Schneider and Alexandra White of HWL and Nicholas Mavrakis of Clayton Utz. The details of the conversation were

recorded in Robert Schneider and Alexandra White's handwritten notes of the telephone attendance dated 6 March 2015. The inference arising from the fact that Nicholas Mavrakis of Clayton Utz was acting for ANZ and that Clayton Utz shared their view that the Applicant's emails were a problem is that the emails were a problem for ANZ in terms of the ASIC BBSW Investigation.

239. On or around 9 March 2015, ASIC issued the Applicant with a further s 19 Notice (**Second s 19 Notice**).
240. On or around 10 March 2015, ANZ's solicitors discussed with the Applicant's legal representatives the status of the BBSW Investigation and were informed that the "*client merely answering questions by ASIC is not a fair description of what had happened so far*" and that the purpose (of the disclosures by the Applicant) was for "*pursuing wrongdoing under the Corporations Act*" (the **Voluntary Assistance Representation**).

Particulars

Telephone conversation between Nicholas Mavrakis and Jonathan Slater of Clayton Utz for ANZ and Peter Silver of counsel, Robert Schneider and Alexandra White of HWL for the Applicant. The details of the conversation were recorded in Robert Schneider and Alexandra White's handwritten notes of the meeting dated 10 March 2015. The inference arising from the fact that Nicholas Mavrakis and Jonathan Slater of Clayton Utz were acting for ANZ is that they passed on the Voluntary Assistance Representation to ANZ.

The inferences arising from the Voluntary Assistance Representation are that:

- (i) *the Applicant was voluntarily assisting ASIC with the ASIC BBSW Investigation;*
- (ii) *the purpose of that assistance was to assist ASIC to identify breaches of the Corporations Act by ANZ; and*
- (iii) *the voluntary assistance that the Applicant was providing to ASIC could be damaging to ANZ.*

241. In or around March 2015 Sam Ellis from ANZ informed the Applicant that Sam Ellis was to be interviewed by ASIC in relation to the conduct subject of the October 2014 Complaint.

Particulars

Conversation between the Applicant and Sam Ellis in March 2015.

242. In the premises pleaded in paragraphs [157] to [241] above, from on or around March 2015 ANZ knew that the Applicant had made the Second ASIC Disclosure.

Particulars

This knowledge is to be inferred from, and to be attributed to ANZ as a consequence of:

- (a) The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [168], [176], [184] and [193] above in respect of the Applicant speaking against ANZ engaging in conduct to manipulate the market to profit from ANZ's BBSW Rate Set Exposure, and the particulars thereto;*
- (b) The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [163]-[171] above in respect of the October 2011 Complaint, and the particulars thereto;*
- (c) The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [173]-[176] above in respect of the February 2013 Complaint, and the particulars thereto;*
- (d) The Applicant repeats the facts, matters and circumstances pleaded in paragraph [184] above in respect of the 17 July 2014 Complaint, and the particulars thereto;*
- (e) The Applicant repeats the facts, matters and circumstances pleaded in paragraph [193] above in respect of the 18 July 2014 Complaint;*
- (f) The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [197]-[207] above in respect of the First ASIC Disclosure, and the particulars thereto;*
- (g) The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [208]-[210] above in respect of the October 2014 Complaint, and the particulars thereto;*

- (h) *The Applicant repeats the facts, matters and circumstances pleaded in paragraph [222] above in respect of the ASIC Request Representation, and the particulars thereto;*
- (i) [REDACTED]
[REDACTED]
[REDACTED]
- (j) *The Applicant repeats the facts, matters and circumstances pleaded in paragraph [226] above in respect of the Second ASIC Disclosure, and the particulars thereto;*
- (k) *The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [228] and [230] above in respect of the further interview ASIC conducted with the Applicant;*
- (l) *The Applicant repeats the facts, matters and circumstances pleaded in paragraph [240] above in respect of the Voluntary Assistance Representation;*
- (m) *ANZ's receipt of the February 2015 Section 33 Notice;*
- (n) *the inference that the February 2015 Section 33 Notice was distributed among the members of Project Arrow, including Bob Santamaria;*
- (o) *that Bob Santamaria convened and managed the Project Arrow committee and reported to the Board of ANZ and the Chief Executive Officer in his capacity as Group General Counsel; and*
- (p) *that Sam Ellis from ANZ referred to the fact that the ASIC BBSW Investigation had been so widened, the available inferences being:*
 - (i) *that Sam Ellis only had that information because he had acquired it from ANZ; and*
 - (ii) *that ANZ had that information at this time.*


243. In the premises pleaded in paragraphs [157] to [242] above from or around March 2015 ANZ knew that the Applicant could be an important witness for ASIC in proceedings against ANZ arising out of the ASIC BBSW Investigation, and give evidence on behalf of ASIC against ANZ in respect of:

- (a) ANZ's Rate Set Trading Practice and the STF Strategy Proposal;
- (b) the October 2011 Complaint;
- (c) the February 2013 Complaint;
- (d) the 17 July 2014 Complaint;
- (e) the 18 July 2014 Complaint;
- (f) the First ASIC Disclosure;
- (g) the October 2014 Complaint;
- (h) the December 2014 Complaint; and
- (i) the Second ASIC Disclosure.

Particulars

This knowledge is to be inferred from, and to be attributed to ANZ as a consequence of:

- (a) *The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [168], [176], [184] and [193] above in respect of the Applicant speaking against ANZ engaging in conduct to manipulate the market to profit from ANZ's BBSW Rate Set Exposure, and the particulars thereto;*
- (b) *The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [163]-[171] above in respect of the October 2011 Complaint, and the particulars thereto;*
- (c) *The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [173]-[176] above in respect of the February 2013 Complaint, and the particulars thereto;*
- (d) *The Applicant repeats the facts, matters and circumstances pleaded in paragraph [184] above in respect of the 17 July 2014 Complaint, and the particulars thereto;*

- (e) *The Applicant repeats the facts, matters and circumstances pleaded in paragraph [193] above in respect of the 18 July 2014 Complaint;*
- (f) *The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [197]-[207] above in respect of the First ASIC Disclosure, and the particulars thereto;*
- (g) *The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [208]-[210] above in respect of the October 2014 Complaint, and the particulars thereto;*
- (h) *The Applicant repeats the facts, matters and circumstances pleaded in paragraph [226] above in respect of the Second ASIC Disclosure, and the particulars thereto;*
- (i) *the seniority of the Applicant's position of employment within ANZ;*
- (j) *the Standing Down;*
- (k) *the Press Release;*
- (l) *The Applicant repeats the facts, matters and circumstances pleaded in paragraph [222] above in respect of the ASIC Request Representation, and the particulars thereto;*
- (m) 
- (n) *The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [228] and [230] above in respect of the further interview ASIC conducted with the Applicant;*
- (o) *The Applicant repeats the facts, matters and circumstances pleaded in paragraph [238] above in respect of the inference that ANZ believed that the Applicant's emails were a problem for ANZ, in terms of the ASIC BBSW Investigation;*
- (p) *The Applicant repeats the facts, matters and circumstances pleaded in paragraph [240] above in respect of the Voluntary Assistance Representation;*
- (q) *ANZ's receipt of the February 2015 Section 33 Notice;*

- (r) *the inference that the February 2015 Section 33 Notice was distributed among the members of Project Arrow, including Bob Santamaria;*
- (s) *that Bob Santamaria convened and managed the Project Arrow committee and reported to the Board of ANZ and the Chief Executive Officer in his capacity as Group General Counsel; and*
- (t) *that Sam Ellis from ANZ referred to the fact that the ASIC BBSW Investigation had been so widened, the available inferences being:

 - (i) *that Sam Ellis only had that information because he had acquired it from ANZ;*
 - (ii) *that ANZ had that information at this time.**

243A. On or about 28 May 2015 ANZ knew that ASIC had held a conference with the Applicant as part of the ASIC BBSW Investigation.

Particulars

- (i) *The inference arising from the fact that HWL Ebsworth was acting for the Applicant in respect of the ASIC BBSW Investigation at the cost of ANZ, and the fact that Clayton Utz was acting for ANZ in respect of the ASIC BBSW Investigation, is that the services provided by HWL Ebsworth to the Applicant in respect of the ASIC BBSW Investigation were recorded in invoices submitted by HWL Ebsworth to ANZ c/-Clayton Utz, and thereby Clayton Utz was kept updated about the Applicant's dealings with ASIC, and as the solicitors acting for ANZ in respect of the ASIC BBSW Investigation the further inference is that Clayton Utz was required to, and therefore would, pass on that information to ANZ, and therefore Project Arrow, by providing HWL Ebsworth's invoices to ANZ for payment, and by requesting that ANZ attend to payment of HWL Ebsworth's invoices submitted by HWL Ebsworth in respect of services provided by HWL Ebsworth to the Applicant.*
- (ii) *HWL invoice to ANZ c/- Clayton Utz dated 28 May 2015, in particular entries dated 22 May 2015. It can be inferred that Clayton Utz passed the invoice on to Project Arrow and, that from on or about 28 May 2015, Project Arrow knew that the Applicant had conferred with ASIC on or about 22 May 2015. It can also be inferred that the use of the pseudonym "FB" for the Applicant in the HWL*

Ebsworth invoices was not intended to, and did not, disguise the fact the services were provided to the Applicant, in circumstances where (a) the device used was transparent and involved the substitution of the Applicant's initials (EA) with the next letter in the alphabet (FB); (b) the first HWL Ebsworth invoice that referred to FB (dated 19 December 2014) annexed an invoice for services by Mr Silver that referred to the Applicant by name; and (c) the second and subsequent HWL Ebsworth invoices referred to the Applicant by name and then defined the Applicant as "FB".

- (iii) *A further inference arising from this fact is that ANZ knew that the Applicant was voluntarily meeting with ASIC as part of the ASIC BBSW Investigation (that is, without compulsion).*

Disciplinary Action, Termination and Forfeitures of Deferred Equity

244. On or around 25 June 2015, ANZ advised the Applicant that it had initiated a disciplinary investigation into breaches by the Applicant of the Code and related policies between the period August 2011 to March 2013 in relation to the Applicant's communications on the Bloomberg Chat Platform and his work email account (**Disciplinary Investigation**).

Particulars

Meeting between the Applicant, Bob Santamaria and Shayne Collins on 25 June 2015.

Letter from Mark Evans to the Applicant on 25 June 2015.

244A. The Disciplinary Investigation occurred in circumstances in which the Applicant's future employment with ANZ had, by reason of ANZ's conduct, become untenable.

Particulars

The Applicant repeats paragraph [228X].

244B. In the premises of paragraph [244A]:

- (a) the Disciplinary Investigation was a pretence to identify a basis to terminate the Applicant's employment with ANZ; and or

(b) it was inevitable or in the alternative likely that the outcome of the Disciplinary Investigation would be a decision to terminate the Applicant's employment with ANZ, irrespective of whether the Disciplinary Investigation identified a proper basis to do so.

245. The matters subject of the Applicant's alleged breaches of the Code and related policies primarily concerned communications using the Bloomberg Chat Platform and the Applicant's ANZ email address between the Applicant and two friends.

Particulars

Appendix A to ANZ's letter of 25 June 2015, setting out the Applicant's communications which were "of most concern" to ANZ.

246. The participants other than the Applicant in the Bloomberg Chats which formed the basis of the Disciplinary Investigation were the Applicant's friends or associates outside of the workplace.

246A. [Not used]

246B. [Not used]

247. The Applicant drew the matters in paragraphs [113] to [115], amongst other things, to ANZ's attention during the Disciplinary Investigation.

Particulars

Letter Carrol O'Dea to ANZ, 17 August 2015

248. The outcome of the Disciplinary Investigation did not result in ANZ finding that the Applicant had engaged in serious misconduct warranting termination without notice.

248A. On or about 31 August 2015 ANZ knew that ASIC was proposing to meet with the Applicant as part of the ASIC BBSW Investigation.

Particulars

(i) *On 31 July 2015 the Applicant informed Bob Santamaria by email that ASIC had proposed to resume his section 19 examination on 17 August 2015.*

- (ii) *Telephone attendance between Robert Schneider and Jonathan Slater on 28 August 2015, in which Robert Schneider informed Jonathan Slater that the examination was scheduled for 17 August 2015 but had been postponed. The details of the conversation were recorded in Robert Schneider's handwritten notes dated 28 August 2015. The inference arising from the fact that Jonathan Slater of Clayton Utz was acting for ANZ is that he passed on the information that the Applicant was to be interviewed by ASIC to ANZ.*
- (iii) *The inference arising from the fact that HWL Ebsworth was acting for the Applicant in respect of the ASIC BBSW Investigation at the cost of ANZ, and the fact that Clayton Utz was acting for ANZ in respect of the ASIC BBSW Investigation, is that the services provided by HWL Ebsworth to the Applicant in respect of the ASIC BBSW Investigation were recorded in invoices submitted by HWL Ebsworth to ANZ c/-Clayton Utz, and thereby Clayton Utz was kept updated about the Applicant's dealings with ASIC, and as the solicitors acting for ANZ in respect of the ASIC BBSW Investigation the further inference is that Clayton Utz was required to, and therefore would, pass on that information to ANZ, and therefore Project Arrow, by providing HWL Ebsworth's invoices to ANZ for payment, and by requesting that ANZ attend to payment of HWL Ebsworth's invoices submitted by HWL Ebsworth in respect of services provided by HWL Ebsworth to the Applicant.*
- (iv) *Further, HWL invoice to ANZ c/- Clayton Utz dated 31 August 2015, in particular entries dated 26 August 2015. It can be inferred that Clayton Utz passed on to ANZ the invoice and the information on or about 31 August 2015 that the Applicant and ASIC were conferring on 26 August 2015 about a further meeting. It can also be inferred that the use of the pseudonym "FB" for the Applicant in the HWL Ebsworth invoices was not intended to, and did not, disguise the fact the services were provided to the Applicant, in circumstances where (a) the device used was transparent and involved the substitution of the Applicant's initials (EA) with the next letter in the alphabet (FB); (b) the first HWL Ebsworth invoice that referred to FB (dated 19 December 2014) annexed an invoice for services by Mr Silver that referred to the Applicant by name; and (c) the second and subsequent HWL Ebsworth invoices referred to the Applicant by name and then defined the Applicant as "FB".*

249. On 1 September 2015, ANZ terminated the Applicant's employment with notice pursuant to the 2013 Contract (**Termination**).

Particulars

2013 Contract, Clause 7 and Schedule 3

ANZ letter to the Applicant, 1 September 2015

ANZ engaged in conduct by terminating the employment of the Applicant, including the issuance of the letter dated 1 September 2015, which was signed by Mark Evans on behalf of ANZ. By inference of Mark Evans' role as a senior manager of ANZ and as a member of and reporting to Project Arrow, the Termination was conducted with the approval of senior executives in ANZ, including the members of Project Arrow.

250. The reason given for the Applicant's Termination with notice was that in light of the outcome of the Disciplinary Investigation, Mark Evans, the Chief Compliance Officer, was satisfied, amongst other things, that the Applicant's communications over the Bloomberg Chat Platform and his work email account constituted "unacceptable behaviour" in breach of the Code, the Policy and Values over the period August 2011 to September 2013.

Particulars

ANZ letter to the Applicant, 1 September 2015

251. On or before 3 September 2015:

- (a) the Board of Directors of ANZ delegated responsibility for determining how the Clawback Discretion was to be exercised in respect of the Termination to the ANZ Clawback Review Group (**CRG**);
- (b) the CRG formed the view that "in light of the conduct for which [the Applicant's] employment was terminated on 1 September 2015 the grant of deferred equity to [the Applicant] on 12 November 2012 and 22 November 2013 was not justified";
- (c) the CRG exercised, or purported to exercise, or recommended that the Board exercise, the Clawback Discretion to reduce the following equity awards by 100%:
 - (i) the 2012 short-term incentives, which involved 22,204 shares being forfeited;
 - (ii) the 2012 long-term incentive plan, which involved 14,129 shares being forfeited; and
 - (iii) the 2013 TIPP, which involved 49,386 shares being forfeited;

- (d) the Chair of the Human Resources Committee reviewed the exercise, or purported exercise, of the discretion pleaded above at sub-paragraph (c).

Particulars

Letter Andrew Géczy to the Applicant, 3 September 2015.

252. Further or in the alternative, the CRG (or alternatively ANZ):

- (a) did not consider whether the Applicant should be classified as a “good leaver” for the purposes of the ESAP and the terms governing retention of the 2012 and 2013 Performance Bonuses upon termination; or alternatively
- (b) formed the view that the Applicant should not be classified as a “good leaver”;

with the consequence that all unvested deferred equity held by the Trustee for the Applicant’s benefit was purportedly forfeited upon the Termination.

Particulars

Pursuant to the 2013 Contract, forfeiture of deferred equity upon termination was governed by the terms of the ESAP and the 2014 Performance and Remuneration Review. As pleaded above, those terms provided that unvested shares held in trust for the Applicant would be forfeited upon termination unless the Applicant was classified as a “good leaver”. By determining that the Applicant would not be classified as a “good leaver”, ANZ purportedly forfeited the Applicant’s unvested deferred equity.

253. On or around 3 September 2015, Andrew Geczy, the CEO, International & Institutional Banking, advised the Applicant that “in light of the conduct which resulted in the termination of [his] employment, ANZ has decided that the \$5,000,000 TIPP incentive provisionally awarded ... in the 2014 performance year will not be granted”.

254. On or around 3 September 2015, in giving effect to the decisions outlined in paragraphs [251], [252] and [253] above and by exercise of:

- (a) the Clawback Discretion;
- (b) its discretion to determine that the Applicant was not a “good leaver” for the purposes of the ESAP and the terms governing retention of the 2012 and 2013 Performance Bonuses upon termination;

- (c) its discretion not to award the Applicant any performance bonus;

the CRG purported to (or alternatively ANZ):

- (d) forfeited 110,411 shares held on trust for the Applicant being the deferred component of the 2012 and 2013 Performance Bonuses (**Forfeiture of the 2012 and 2013 Bonuses, otherwise the Forfeitures**); and

ANZ:

- (e) withheld \$5 million in 2014 Performance Bonuses provisionally awarded to the Applicant in November 2014 (**Withholding of the 2014 Bonus**).

Particulars

Letter Andrew Geczy to the Applicant, 3 September 2015

254A. In the premises pleaded in paragraphs [157] to [254] above, and by engaging in the conduct of the Termination, the Forfeitures, and the Withholding of the 2014 Bonus, ANZ caused detriment to the Applicant.

Particulars

The detriment suffered by the Applicant included:

- (a) *Termination of the Applicant's employment;*
- (b) *Reduction in income from the Forfeitures;*
- (c) *Reduction in income from the loss of the Withholding of the 2014 Bonus;*
- (d) *Damage to the Applicant's reputation;*
- (e) *Damage to the Applicant's credibility;*
- (f) *Damage to the Applicant's employment prospects as a prospective employee in the Australian financial industry.*

254B. In the premises pleaded in paragraphs [157] to [254] above, and by engaging in the conduct of the Termination, the Forfeitures, and the Withholding of the 2014 Bonus, ANZ intended to cause detriment to the Applicant:

- (a) because the Applicant had made the October 2011 Complaint;

- (b) because the Applicant had made the February 2013 Complaint;
- (c) because the Applicant had made the 17 July 2014 Complaint;
- (d) because the Applicant had made the 18 July 2014 Complaint;
- (e) because the Applicant had made the First ASIC Disclosure;
- (f) because the Applicant had made the October 2014 Complaint;
- (g) because the Applicant had made the December 2014 Complaint; and further, or in the alternative,
- (h) because the Applicant had made the Second ASIC Disclosure;

in order to:

- (i) make the Applicant a scapegoat in relation to the ASIC BBSW Investigation; ~~and~~
- (j) discourage the Applicant from assisting ASIC; ~~and~~
- (k) damage the Applicant's reputation and discredit the Applicant as a witness in support of any case brought by ASIC against ANZ arising out of the ASIC BBSW Investigation;
- (l) [Not used];
- (m) [Not used];
- (n) [Not used]
- ~~(k)~~(o) [Not used].


Particulars

That ANZ intended to engage in the conduct involved in the Termination, the Forfeitures and the Withholding of the 2014 Bonus in order to cause detriment to the Applicant because the Applicant had made a disclosure qualifying for protection under Part 9.4AAA of the Corporations Act and further, or in the alternative, under Part VIA of the Banking Act is to be inferred from the following:

- (a) *The fact that ANZ senior management were aware of ANZ's Rate Set Trading Practice as defined in paragraph [150] above. ANZ senior management, including Mr Mike Smith (Chief Executive Officer), Mr Shayne Elliott (Chief*

Executive Officer, Institutional), Mr Steve Bellotti (Managing Director of Global Markets) and Mr Robert O'Callaghan (Global Head of Fixed Income), were consulted in respect of a STF Strategy Proposal by email on 9 March 2010. A reason advanced in that email in support of the STF Strategy was that relocation of the issuance function would enable the Institutional Division to control issuance for the purpose of supporting ANZ's rate set trading practice. It is to be inferred from the fact that senior management were consulted in relation to the STF Strategy that those senior management were informed of and aware of the existence of ANZ's rate set trading practice in March 2010 and of the support for facilitating and enhancing the said practice.

- (b) The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [168], [176], [184] and [193] above in respect of the Applicant speaking against ANZ engaging in conduct to manipulate the market to profit from ANZ's BBSW Rate Set Exposure, and the particulars thereto;*
- (c) The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [163]-[171] above in respect of the October 2011 Complaint, and the particulars thereto;*
- (d) The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [173]-[176] above in respect of the February 2013 Complaint, and the particulars thereto;*
- (e) The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [184] above in respect of the 17 July 2014 Complaint, and the particulars thereto;*
- (f) The Applicant repeats the facts, matters and circumstances pleaded in paragraph [193] above in respect of the 18 July 2014 Complaint;*
- (g) The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [205]-[207] above in respect of the First ASIC Disclosure, and the particulars thereto;*
- (h) The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [208]-[210] above in respect of the October 2014 Complaint, and the particulars thereto;*

- (i) *the seniority of the Applicant's position of employment within ANZ;*
- (j) *The Applicant repeats the facts, matters and circumstances pleaded in paragraphs [215] above in respect of the Standing Down;*
- (k) *The Applicant repeats the facts, matters and circumstances pleaded in paragraph [218] above in respect of the Press Release;*
- (l) *The Applicant repeats the facts, matters and circumstances pleaded in paragraph [222] above in respect of the ASIC Request Representation;*
- (m) 
- (n) *The Applicant repeats the facts, matters and circumstances pleaded in paragraph [240] above in respect of the Voluntary Assistance Representation;*
- (o) *ANZ's receipt of the February 2015 Section 33 Notice;*
- (p) *the inference that the February 2015 Section 33 Notice was distributed among the members of Project Arrow, including Bob Santamaria;*
- (q) *that Bob Santamaria convened and managed the Project Arrow committee and reported to the Board of ANZ and the Chief Executive Officer in his capacity as Group General Counsel; and*
- (r) *that Sam Ellis from ANZ referred to the fact that the ASIC BBSW Investigation had been so widened, the available inferences being:*
 - (i) *that Sam Ellis only had that information because he had acquired it from ANZ; and*
 - (ii) *that ANZ had that information at this time.*
- (s) *The Applicant repeats the facts, matters and circumstances pleaded in paragraph [226] above in respect of the Second ASIC Disclosure;*
- (t) *the facts pleaded in paragraphs [163]-[168], [184], [191]-[193], [196]-[210] above that the Applicant was identified by ANZ as a person of importance in relation to ANZ's position in the ASIC BBSW investigation, despite having not*

traded or issued Bank Bills or NCDs in the BBSW rate set, input the BBSW rate or designed the process by which ANZ set the BBSW rate, because of his history of having made the October 2011 Complaint, the 17 July 2014 Complaint, the 18 July Complaint, the First ASIC Disclosure and the October 2014 Complaint;

(u) [REDACTED]
[REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

(iii) [REDACTED]
[REDACTED]
[REDACTED]

(iv) [REDACTED]
[REDACTED]
[REDACTED]

(v) *an inference arising from the facts referred to in the above particulars and the facts pleaded in paragraphs [184], [221], [232] and [234] above, that ANZ intended the conduct involved in the Termination, the Forfeitures and the Withholding of the 2014 Bonus to:*

(i) *make the Applicant a scapegoat in relation to the ASIC BBSW Investigation*

(ii) *discourage the Applicant from assisting ASIC; and*

(ii) *damage the Applicant's reputation in order to discredit the Applicant as a witness in support of any case against ANZ arising out of ASIC's the ASIC BBSW Investigation.*

Outcome of the ASIC BBSW Investigation

255. In March 2016, ASIC commenced proceedings in the Federal Court of Australia against ANZ alleging breaches of the Corporations Act and the ASIC Act (**BBSW Proceedings**).

256. In November 2017, Justice Jagot of the Federal Court made orders declaring that on eight separate occasions between December 2010 and October 2011 ANZ engaged in attempted unconscionable conduct by attempting to manipulate the BBSW in contravention of s 12CC(1) of the ASIC Act.

256A. [Not used]

256B. [Not used]

257. No finding of misconduct in relation to the matters subject of the ASIC BBSW Investigation or the Federal Court proceedings was ever made against the Applicant by ASIC, ANZ or the Federal Court.

257A. [Not used]

257B. [Not used]

257C. [Not used]

257D. [Not used]

257E. [Not used].

257F. [Not used].

257G. [Not used]

257H. [Not used]

257I. [Not used]

257J. [Not used]

257K. [Not used]

257L. [Not used]

257M. [Not used]

257N. [Not used]

257O. [Not used]

257P. [Not used]

257Q. [Not used]

257R. [Not used]

257S. [Not used]

257T. [Not used]

257U. [Not used]

257V. [Not used]

257W. [Not used]

257X. [Not used]

257Y. [Not used];

257Z. [Not used]

257AA. [Not used]

257AB. [Not used]

257AC. [Not used]

257AD. [Not used]

257AE. [Not used]

Breach of Contract

258. As pleaded at paragraph [251] above, the CRG (or alternatively ANZ) had responsibility for determining whether:

- (a) “the initial grant of equity was not justified” having regard to “information coming to light after the grant of the deferred equity”; and
- (b) the Applicant should be classified upon termination as a “good leaver” and thus entitled to retain unvested deferred equity.

259. In order to carry out its functions and duties in relation to the above determination, the CRG (or alternatively ANZ) had the following obligations:

- (a) to undertake and make all reasonable enquiries into the:
 - (i) facts, matters or circumstances relevant to the “information” which came to light after the grant of the deferred equity, including taking all reasonable steps to inform itself of the matters pleaded above, namely:
 1. the Applicant’s work performance history, including the Applicant’s Performance reviews, the Applicant’s invitation to participate, and participation, in the Leadership Program and ELP; including as pleaded above at paragraphs [42], [65] and [79] above;
 2. the environment and culture at ANZ and known to ANZ in relation to the use of the communications on the Bloomberg Chat Platform and work email accounts, including as pleaded above at paragraphs [122] to [135] above;
 3. the matters pleaded above at paragraphs [245] to [247] above concerning the Applicant’s working hours and friendship with the people he was communicating with on the Bloomberg Chat Platform and work email account;
 4. the Communication Representations, the Permissible Personal Use Representation, the Personal Use Representation, the Monitoring Representations and the Code Latitude Representations;
 5. the 2014 Communication Representation;
 6. the benefit that ANZ obtained from the Applicant’s reliance on the Communication Representations and the Code Latitude Representations, as pleaded above at paragraphs [131] and [135];
 7. the knowledge that ANZ and or the Compliance Group had in relation to the Applicant’s communications on the Bloomberg Chat Platform and work email account, as pleaded above at paragraphs [122] to [149];
 8. the fact that the Applicant had not been found to be involved in any manipulation of the BBSW by either ANZ or ASIC;

9. the nature of the Applicant's involvement in the ASIC BBSW Investigation, as pleaded above;
 10. the fact that the Applicant had not been terminated without notice for serious misconduct.
- (ii) Disciplinary Investigation, including the Applicant's response to that investigation, the scope of that investigation, and whether the Disciplinary Investigation took into the matters referred to above at (a);
 - (iii) whether to afford the Applicant an opportunity to be heard by the CRG (or alternatively ANZ) in relation to its exercise of the Clawback Discretion,
- (b) to abide by the Implied Reasonableness Obligation, the Implied Good Faith Obligation and the Implied Benefit Obligation in exercising the Clawback Discretion.
260. If the CRG (or alternatively ANZ) had acted in accordance with the obligations pleaded above, the CRG, acting reasonably:
- (a) knew or should have known all the circumstances in which the Clawback Discretion fell to be exercised, including the matters pleaded above at paragraph [259];
 - (b) would have formed the view that the information concerning the Applicant's communications on the Bloomberg Chat Platform during the period August 2011 to September 2013 did not come to light after the provision of the:
 - (i) 2012 Performance Bonuses;
 - (ii) 2013 Performance Bonuses;
 - (iii) the Applicant's participation in the Leadership Program;
 - (c) would have formed the view that the information concerning the Applicant's communications on the Bloomberg Chat Platform during the period August 2011 to September 2013 was either known to ANZ or was a matter within ANZ's knowledge when ANZ undertook the Applicant's performance reviews in 2012 and 2013;
 - (d) would have formed the view that the Applicant's alleged misconduct involved the use of ANZ's systems for personal communications of precisely the kind contemplated in the Employee Guide and Permissible Personal Use

Representation, such that it would be unreasonable to reduce the Applicant's remuneration on account of that conduct;

- (e) in turn, and in all the premises, would have formed the view that the grant of equity in 2012 and 2013 was justified.

261. In the premises, by making the decision that the initial grant of equity was not justified in either 2012 or 2013, the CRG (or alternatively ANZ) breached one or more of the Implied Reasonableness Obligation, the Implied Good Faith Obligation and the Implied Benefit Obligations.
262. In the premises, by taking into account information which came to light before one or more of the provision of the grant of equity in 2012 or 2013, the CRG's decision (or alternatively ANZ's decision) to exercise the Clawback Discretion and thereby to affect the Forfeiture of 2012 and 2013 Bonuses was beyond power.
263. In making a decision to affect the Withholding of the 2014 Bonus, ANZ had an obligation to inform itself of and take fully into consideration all facts, matters or circumstances relevant to whether the 2014 Performance Bonus should have been awarded and retained, including by having regard to the matters pleaded above at paragraph [259].
264. The ANZ did not inform itself of or take fully into consideration the facts, matters or circumstances pleaded above at paragraph [259].

Particulars

Letter Andrew Geczy to the Applicant, 3 September 2015

Further and better particulars to follow discovery and evidence

265. If ANZ had informed itself of and taken fully into consideration the facts, matters or circumstances pleaded above, ANZ acting reasonably would have:
- (a) awarded the 2014 Performance Bonus; and
 - (b) determined that the Applicant was a "good leaver" or was otherwise entitled to be awarded and retain the 2014 Performance Bonuses;

on the basis that the Applicant:

- (c) had not engaged in any conduct which was inconsistent with the culture or environment at ANZ in relation to communications over the Bloomberg Chat Platform or work email account;
 - (d) had engaged in communications over the Bloomberg Chat Platform or work email account which were:
 - (i) consistent with the culture or environment at ANZ;
 - (ii) known or knowable to ANZ or the Compliance Group;
 - (iii) permitted by the Personal Use Representation and the Permissible Personal Use Representation;
 - (iv) communications of a nature which had been expressly or tacitly authorised or approved by ANZ or the Compliance Group, in the manner pleaded above at paragraphs [122] to [149]
266. By failing to inform itself of and take fully into account the facts, matters or circumstances pleaded above at paragraph [259], or by failing to take reasonable steps to do so, ANZ breached the Implied Reasonableness Obligation, the Implied Good Faith Obligation and the Implied Benefit Obligation.
267. In the circumstances, ANZ, by:
- (a) the Forfeiture of the 2012 and 2013 Bonuses; and
 - (b) the Withholding of the 2014 Bonus;
- breached the 2013 Contract.
268. By reason of ANZ's breach of contract, the Applicant suffered loss or damage.

Particulars

The Applicant refers to and repeats the particulars to paragraph [343] below.

- 268A. Further, and in the alternative to paragraphs [258] to [268], ANZ breached the term of the 2013 Contract set out in paragraph [60](b) above by:
- (a) purporting to provisionally award and defer the final decision to award a bonus for the 2014 performance year as set out in paragraph [93] above; and

- (b) failing to award a performance bonus in 2014 based on the Applicant's performance in the 2014 performance year; and further, or in the alternative,
 - (c) failing to pay the cash component of a bonus for the 2014 performance year, and failing to allocated the equity component of the said bonus, in accordance with the applicable ANZ incentive schemes, including Variable Reward and Short-Term Incentive (sch 1).
- 268B. The Applicant has suffered loss or damage by reason of ANZ's breach of contract set out in paragraph [268A].

Particulars

The Applicant lost the opportunity to have a performance bonus for the 2014 performance year calculated, paid and allocated in 2014 in accordance with the applicable ANZ incentive schemes. The Applicant presently quantifies the value of this lost opportunity as being \$2,048,000, being the cash component of the 2014 Performance Bonus that was "provisionally" calculated, but not paid, in breach of the term set out in paragraph [60](b) above, and the value of the deferred equity that was "provisionally" calculated as aforesaid, being \$2,952,000.

Estoppel

269. The Applicant repeats paragraphs [122] to [149].
270. As a result of the Communication Representations, Code Latitude Representations, the Personal Use Representation, the Permissible Personal Use Representation and the Monitoring Representations during the period August 2011 to September 2013, the Applicant:
- (a) adopted the Communications Assumptions;
 - (b) relied to his detriment on the Communications Assumptions.

Particulars

The Applicant refers to and repeats the particulars to paragraphs [136] to [138] above

271. If ANZ were permitted to depart from or otherwise falsify the Communication Representations, Code Latitude Representations, the Personal Use Representation,

Permissible Personal Use Representation and the Monitoring Representations, the Communications Assumptions, the Applicant would suffer detriment.

Particulars

The Applicant refers to and repeats the particulars to paragraph [343] below.

272. In the premises, ANZ was estopped from departing from the Communications Assumptions by relying on the Applicant's purported non-compliance with the Code, Policy or Values during the period August 2011 to September 2013 as a basis for:
- (a) the Termination and the Forfeitures; and
 - (b) the Withholding of the 2014 Bonus.
273. In the alternative to paragraph [272] above, and having regard to the matters pleaded at paragraphs [269] to [271] above, the CRG (or alternatively ANZ), in exercising the Clawback Discretion to make the Forfeiture, was estopped from departing from the Communication Representations, Code Latitude Representations, the Personal Use Representation, the Permissible Personal Use Representation and the Monitoring Representations by finding:
- (a) that the grant of the 2012 and 2013 Performance Bonuses to the Applicant was "not justified" as at the date of Termination pursuant to:
 - (i) the Clawback Discretion in the 2011 Contract; and
 - (ii) the Clawback Discretion in the 2013 Contract.
274. In the alternative to paragraph [272] above, and having regard to the matters pleaded at paragraphs [269] to [271] above, ANZ was estopped from departing from the Communications Assumptions, the Code Latitude Representations, the Personal Use Representation, the Permissible Personal Use Representation and the Monitoring Representations by effecting the Withholding of the 2014 Bonus.

Waiver

275. The Applicant repeats the matters pleaded in paragraphs [122] to [149] and the 2014 Communication Representation.
276. In the premises, ANZ irrevocably waived any right it had to insist on compliance by the Applicant with the Code, Policy or Values or the guiding values and ethical standards

developed by ANZ when the Applicant was using the Bloomberg Chat Platform or work email account by, expressly or by implication, collectively or singularly:

- (a) making the Communications Representations;
- (b) making the Code Latitude Representations;
- (c) making the Personal Use Representation;
- (d) making the Permissible Personal Use Representation;
- (e) making the Monitoring Representations;
- (f) making the 2014 Communication Representation; or
- (g) Accessing and monitoring its employees use of the Bloomberg Chat Platform and work email accounts combined with not taking any steps to warn or sanction the Applicant for any of his communications on the Bloomberg Chat Platform or work email account over the period 2011 to September 2013.

277. In the further premises, ANZ irrevocably waived any rights it had to sanction the Applicant in September 2015 for any non-compliance with the Code, Policy or Values or the guiding values and ethical standards developed by ANZ when the Applicant was using the Bloomberg Chat Platform or work email account by, expressly or by implication, collectively or singularly:

- (a) making the Communications Representations;
- (b) making the Code Latitude Representations;
- (c) making the Personal Use Representation;
- (d) making the Permissible Personal Use Representation;
- (e) making the Monitoring Representations;
- (f) making the 2014 Communication Representation; or
- (g) ANZ's ability to access and monitor its employees use of the Bloomberg Chat Platform and work email accounts combined with not taking any steps to warn or sanction the Applicant for any of his communications on the Bloomberg Chat Platform or work email account over the period 2011 to September 2013.

Unconscionable conduct

278. The Applicant repeats the matters pleaded in paragraphs [122] to [149] and the 2014 Communication Representation.

279. In the premises, collectively or singularly, by:

- (a) making the Communications Representations;
- (b) making the Code Latitude Representations;
- (c) making the Personal Use Representation;
- (d) making the Permissible Personal Use Representation;
- (e) making the Monitoring Representations;
- (f) accessing and monitoring the Applicant's Bloomberg Chat Platform and work email account and not taking any steps to warn or sanction the Applicant for any of his communications on the Bloomberg Chat Platform or work email account over the period 2011 to September 2013;
- (g) making the 2014 Communication Representation;
- (h) standing the Applicant down from his employment from November 2014 in connection with the ASIC BBSW Investigation and then subjecting him to unrelated internal investigations for purported breaches of the Code, Policy and Values in which the Applicant was said to have engaged in years earlier;

ANZ put the Applicant, in relation to his communications on the Bloomberg Chat Platform and work email account, in a position where he was not able to make a judgement as to what was in his best interests.

280. The conduct of ANZ pleaded in paragraph [279] put the Applicant at a special disadvantage because, in depriving the Applicant of the capacity to make a judgment as to what was in his best interests, it caused the Applicant to:

- (a) make the Communications Assumptions;
- (b) disregard the risk that the Applicant's use of the common parlance of the market, or language consistent with the environment or culture at Global Markets as pleaded ~~above~~ at in paragraphs [133] to [135] above, on the Bloomberg Chat Platform and

work email account could be deemed a violation of the Code, Policy and or Values by ANZ;

- (c) disregard the risk that ANZ could impose sanctions on the Applicant for the language he was using on the Bloomberg Chat Platform.

281. As a result of the Applicant's special disadvantage, the Applicant worked for ANZ throughout the period 2011 to November 2014 without being in a position to make a judgment as to the possible consequences of his conduct on the Bloomberg Chat Platform and work email account, as pleaded in paragraphs [101] to [116], including whether it could expose the Applicant to sanction, including the purported forfeiture of his deferred equity entitlements.

282. At all relevant times, ANZ knew or ought to have known that the Applicant was operating under a special disadvantage in the manner pleaded in paragraphs [279] to [281] above.

283. At all relevant times, ANZ benefitted from the Applicant's not being able to make a judgement as to where his best interests in using the Bloomberg Chat Platform lay, since the Applicant's uninhibited use of the language of the market, or language consistent with the environment or culture in Global Markets, in undertaking his duties as pleaded above at paragraphs [101] to [121], including:

- (a) negotiating transactions with peers and colleagues over the Bloomberg Chat Platform and work email;
- (b) maintaining relationships with peers and colleagues over the Bloomberg Chat Platform and work email; and
- (c) observing trends in market sentiment as manifest in the behaviour of peers and colleagues through Bloomberg Chat Platform and work email;

enabled him to do his job more effectively and thus to enhance ANZ's attainment of its commercial objectives.

284. In the circumstances, ANZ's conduct in relying on purported misconduct by the Applicant over the period August 2011 to September 2013 on the Bloomberg Chat Platform and work email account to effect the Termination, the Forfeitures and the Withholding of the 2014 Bonus in 2015 exploited the special disadvantage at which the Applicant had been placed.

285. In the premises, it was unconscionable for ANZ to:

- (a) exercise the Clawback Discretion to purportedly forfeit unvested equity deferred under the 2012, 2013 and 2014 Performance Bonuses; and or
- (b) exercise its discretion not to award the 2014 Performance Bonus; and or
- (c) terminate the Applicant's employment

on the basis that the Applicant had failed to comply with the Code, Policy and Values.

Election – Termination for Misconduct

286. The Applicant repeats paragraph [196(a)] above.

287. To the extent (which is not admitted) that ANZ had any right to terminate the Applicant's employment for misconduct, throughout the period from August 2011 to at least July 2014, ANZ knew or ought to have known:

- (a) the contents of the Applicant's Bloomberg Chats and emails which provided the occasion for that right; and
- (b) whether it had the right to terminate the Applicant's employment on the basis of that content.

288. By its conduct after the period from August 2011 to July 2014, and to September 2015, and in particular by:

- (a) awarding the 2012 Performance Bonuses on the basis among other things of the Applicant's demonstration of ANZ values; and
- (b) awarding the 2013 Performance Bonuses on the basis among other things of the Applicant's demonstration of ANZ values;
- (c) awarding the 2014 Performance Bonuses on the basis among other things of the Applicant's demonstration of ANZ values;
- (d) inviting the Applicant to participate, and his participation in, the Leadership Program and the ELP; and or
- (e) not terminating the Applicant's employment or adjusting his performance bonuses at any time prior to September 2015,

ANZ made an unequivocal choice to affirm the Applicant's contract and insist upon further performance by the Applicant under the 2013 Contract rather than to terminate the Applicant's contract.

289. When it elected to affirm the Applicant's employment in the manner pleaded above, ANZ lost any right to terminate the Applicant's employment on grounds of earlier misconduct or alternatively effect the Forfeitures or the Withholding of the 2014 Bonus.

Election – Forfeiture

290. The Applicant repeats paragraph [196(a)] above.

291. To the extent (which is not admitted) that ANZ had any right to exact the Forfeitures, throughout the period from August 2011 to at least July 2014, ANZ knew:

- (a) the contents of the Applicant's Bloomberg Chats and emails which provided that occasion for exacting the Forfeitures; and
- (b) whether it had the right to exact the Forfeitures.

292. By its conduct after the period from August 2011 to July 2014, and to September 2015, and in particular by:

- (a) awarding the 2012 Performance Bonuses on the basis among other things of the Applicant's demonstration of ANZ values; ~~and~~
- (b) awarding the 2013 Performance Bonuses on the basis among other things of the Applicant's demonstration of ANZ values;
- (c) awarding the 2014 Performance Bonuses on the basis among other things of the Applicant's demonstration of ANZ values;
- (d) inviting the Applicant to participate, and his participation in, the Leadership Program and the ELP; and or
- (e) not terminating the Applicant's employment or adjusting his performance bonuses at any time prior to September 2015,

ANZ made an unequivocal choice to affirm the Applicant's performance and insist upon further performance by the Applicant under the 2013 Contract bonus awards rather than exact the Forfeitures.

293. When it elected to affirm the Applicant's employment, ANZ waived any right to exercise the Clawback Discretion on grounds of earlier misconduct in September 2015.

Contraventions of Part 9.4AAA of the Corporations Act and the Banking Act

294. The Applicant repeats paragraphs [150] to [257].

295. At the time of the October 2011 Complaint, Robert O'Callaghan from ANZ:

- (a) was a senior manager of ANZ for the purposes of s 1317AA(1)(b) of the Corporations Act; or
- (b) further or alternatively, was a person authorised to receive disclosures for the purposes of s 1317AA(1)(b) of the Corporations Act;
- (c) further or alternatively, was a senior manager of ANZ for the purposes of s 52A(2) of the Banking Act; or
- (d) further or alternatively, was a person authorised to receive disclosures for the purposes of s 52A(2) of the Banking Act.

Particulars

Robert O'Callaghan was a senior manager of ANZ within the meaning of s 5 of the Banking Act and further or alternatively s 9 of the Corporations Act.

296. At the time of the February 2013 Complaint, Adrian Went from ANZ:

- (a) was a senior manager of ANZ for the purposes of s 1317AA(1)(b) of the Corporations Act; or
- (b) further or alternatively, was a person authorised to receive disclosures for the purposes of s 1317AA(1)(b) of the Corporations Act;
- (c) further or alternatively, was a senior manager of ANZ for the purposes of s 52A(2) of the Banking Act; or
- (d) further or alternatively, was a person authorised to receive disclosures for the purposes of s 52A(2) of the Banking Act.

Particulars

Adrian Went was a senior manager of ANZ within the meaning of s 5 of the Banking Act and further or alternatively s 9 of the Corporations Act.

297. At the time of the 17 July 2014 Complaint, Eddie Listorti from ANZ:

- (a) was a senior manager of ANZ for the purposes of s 1317AA(1)(b) of the Corporations Act; or
- (b) further or alternatively, was a person authorised to receive disclosures for the purposes of s 1317AA(1)(b) of the Corporations Act;
- (c) further or alternatively, was a senior manager of ANZ for the purposes of s 52A(2) of the Banking Act; or
- (d) further or alternatively, was a person authorised to receive disclosures for the purposes of s 52A(2) of the Banking Act.

Particulars

Eddie Listorti was a senior manager of ANZ within the meaning of s 5 of the Banking Act and further or alternatively s 9 of the Corporations Act.

298. At the time of the 18 July 2014 Complaint and the October 2014 Complaint, Fred Pucci from ANZ:

- (a) was a senior manager of ANZ for the purposes of s 1317AA(1)(b) of the Corporations Act; or
- (b) further or alternatively, was a person authorised to receive disclosures for the purposes of s 1317AA(1)(b) of the Corporations Act;
- (c) further or alternatively, was a senior manager of ANZ for the purposes of s 52A(2) of the Banking Act; or
- (d) further or alternatively, was a person authorised to receive disclosures for the purposes of s 52A(2) of the Banking Act.

Particulars

Fred Pucci was a senior manager of ANZ within the meaning of s 5 of the Banking Act and further or alternatively s 9 of the Corporations Act.

299. At the time of the October 2014 Complaint, John Chase from ANZ:

- (a) was a senior manager of ANZ for the purposes of s 1317AA(1)(b) of the Corporations Act; or
- (b) further or alternatively, was a person authorised to receive disclosures for the purposes of s 1317AA(1)(b) of the Corporations Act;
- (c) further or alternatively, was a senior manager of ANZ for the purposes of s 52A(2) of the Banking Act; or
- (d) further or alternatively, was a person authorised to receive disclosures for the purposes of s 52A(2) of the Banking Act.

Particulars

John Chase was a senior manager of ANZ within the meaning of s 5 of the Banking Act and further or alternatively s 9 of the Corporations Act.

300. At the time of the December 2014 Complaint, Shayne Collins from ANZ:

- (a) was a senior manager of ANZ for the purposes of s 1317AA(1)(b) of the Corporations Act; or
- (b) further or alternatively, was a person authorised to receive disclosures for the purposes of s 1317AA(1)(b) of the Corporations Act; or
- (c) further or alternatively, was a senior manager of ANZ for the purposes of s 52A(2) of the Banking Act; or
- (d) further or alternatively, was a person authorised to receive disclosures for the purposes of s 52A(2) of the Banking Act.

Particulars

Shayne Collins was a senior manager of ANZ within the meaning of s 5 of the Banking Act and further or alternatively s 9 of the Corporations Act.

October 2011 Complaint

301. In the premises pleaded in paragraphs [163] to [171] above, the October 2011 Complaint was a disclosure of information qualifying for protection under Part 9.4AAA of the Corporations Act and Division 1 of Part VIA of the Banking Act where:

- (a) the Applicant, was the discloser of the October 2011 Complaint, and an employee of ANZ (as pleaded in paragraph [1] above), satisfying each of s 1317AA(1)(a)(ii) of the Corporations Act and s 52A(1)(c) of the Banking Act;
- (b) was made to Robert O'Callaghan of ANZ:
 - (i) a senior manager of ANZ (as pleaded in paragraph [295] above), satisfying each of s 1317AA(1)(b)(iii) of the Corporations Act and s 52A(2)(a)(iii) of the Banking Act;
 - (ii) a person authorised by ANZ to receive disclosures of the kind of the October 2011 Complaint (as pleaded in paragraph [295] above), satisfying each of s 1317AA(1)(b)(iv) of the Corporations Act and s 52A(2)(a)(iv) of the Banking Act;
- (c) the Applicant informed Robert O'Callaghan of his name before making the October 2011 Complaint (as pleaded in paragraph [169(a)] above), satisfying each of s 1317AA(1)(b)(iv) of the Corporations Act and s 52A(2)(b) of the Banking Act;
- (d) the Applicant had reasonable grounds to suspect that ANZ may have contravened the Corporations legislation (as pleaded in paragraph [169(b)] above), satisfying s 1317AA(1)(d)(i) of the Corporations Act;
- (e) the Applicant had reasonable grounds to suspect that two employees of ANZ may have contravened the Corporations legislation (as pleaded in paragraph [169(b)] above), satisfying s 1317AA(1)(d)(ii) of the Corporations Act;
- (f) the information the subject of the October 2011 Complaint concerned misconduct or an improper state of affairs in relation to ANZ (as pleaded in paragraphs [169(c)] above), satisfying s 52A(2)(c)(i) of the Banking Act;
- (g) the Applicant considered that the information the subject of the October 2011 Complaint may assist Robert O'Callaghan to perform his duties in relation to ANZ (as

pleaded in paragraph [169(d)] above), satisfying s 52A(2)(c)(ii) of the Banking Act; and

- (h) the Applicant made the October 2011 Complaint in good faith (as pleaded in paragraph [169(e)] above), satisfying s 1317AA(1)(e) of the Corporations Act and s 52A(2)(d) of the Banking Act;

302. In the premises pleaded in paragraphs [157] to [254B] above, ANZ acted in contravention of each of s 1317AC(1) of the Corporations Act and s 52C(1) of the Banking Act, where:

- (a) ANZ engaged in the following conduct satisfying each of s 1317AC(1)(a) of the Corporations Act and s 52C(1)(a) of the Banking Act:

(i) the Standing Down (as pleaded in paragraph [215] above);

(ii) the Press Release (as pleaded in paragraph [218] above);

(ii)(a) [Not used];

(ii)(b) [Not used];

(ii)(c) the ANZ Media Comment (as pleaded in paragraph [228G] above);

(iii) the Termination (as pleaded in paragraphs [249] above);

(iv) the Forfeitures (as pleaded in paragraph [254] above);

(v) the Withholding of the 2014 Bonus (as pleaded in paragraph [254] above);

(vi) [Not used];

(vii) [Not used];

~~(v)~~(viii) [Not used]

- (b) the conduct of ANZ pleaded in sub-paragraph (a) above caused detriment to the Applicant (as pleaded in paragraphs [219] and [254A] above), satisfying each of s 1317AC(1)(b) of the Corporations Act and s 52C(1)(b) of the Banking Act;

- (c) ANZ intended that ANZ's conduct pleaded in sub-paragraph (a) cause detriment to the Applicant because of the October 2011 Complaint (as pleaded in paragraphs [220]

and [254B] above), satisfying each of s 1317AC(1)(c) of the Corporations Act and s 52C(1)(c) of the Banking Act;

- (d) ANZ engaged in the conduct pleaded in sub-paragraph (a) above because the Applicant made the October 2011 Complaint, where the October 2011 Complaint was a qualifying disclosure satisfying the requirements of each of s 1317AC of the Corporations Act and s 52A of the Banking Act (as pleaded in paragraphs [301] above).

February 2013 Complaint

303. In the premises pleaded in paragraphs [173] to [178] above, the February 2013 Complaint was a disclosure of information qualifying for protection under Part 9.4AAA of the Corporations Act and Division 1 of Part VIA of the Banking Act where:

- (a) the Applicant, was the discloser of the February 2013 Complaint, and an employee of ANZ (as pleaded in paragraph [1] above), satisfying each of s 1317AA(1)(a)(ii) of the Corporations Act and s 52A(1)(c) of the Banking Act;
- (b) was made to Adrian Went of ANZ:
 - (i) a senior manager of ANZ (as pleaded in paragraph [296(a)] above), satisfying each of s 1317AA(1)(b)(iii) of the Corporations Act and s 52A(2)(a)(iii) of the Banking Act;
 - (ii) a person authorised by ANZ to receive disclosures of the kind of the February 2013 Complaint (as pleaded in paragraph [296 (b)] above), satisfying each of s 1317AA(1)(b)(iv) of the Corporations Act and s 52A(2)(a)(iv) of the Banking Act;
- (c) the Applicant informed Adrian Went of his name before making the February 2013 Complaint (as pleaded in paragraph [178(a)] above), satisfying each of s 1317AA(1)(b)(iv) of the Corporations Act and s 52A(2)(b) of the Banking Act;
- (d) the Applicant had reasonable grounds to suspect that ANZ may have contravened the Corporations legislation (as pleaded in paragraph [178(b)] above), satisfying s 1317AA(1)(d)(i) of the Corporations Act;

- (e) the information the subject of the February 2013 Complaint concerned misconduct or an improper state of affairs in relation to ANZ (as pleaded in paragraph [178(c)] above), satisfying s 52A(2)(c)(i) of the Banking Act;
 - (f) the Applicant considered that the information the subject of the February 2013 Complaint may assist Adrian Went to perform his duties in relation to ANZ (as pleaded in paragraph [178(d)] above), satisfying s 52A(2)(c)(ii) of the Banking Act; and
 - (g) the Applicant made the February 2013 Complaint in good faith (as pleaded in paragraph [178(e)] above), satisfying s 1317AA(1)(e) of the Corporations Act and s 52A(2)(d) of the Banking Act;
304. In the premises pleaded in paragraphs [157] to [254B] above, ANZ acted in contravention of each of s 1317AC(1) of the Corporations Act and s 52C(1) of the Banking Act, where:
- (a) ANZ engaged in the following conduct satisfying each of s 1317AC(1)(a) of the Corporations Act and s 52C(1)(a) of the Banking Act:
 - (i) the Standing Down (as pleaded in paragraph [215] above);
 - (ii) the Press Release (as pleaded in paragraph [218] above);
 - (ii)(a) [Not used]
 - (ii)(b) [Not used]
 - (ii)(c) the ANZ Media Comment (as pleaded in paragraph [228G] above);
 - (iii) the Termination (as pleaded in paragraph [249] above);
 - (iv) the Forfeitures (as pleaded in paragraph [254] above);
 - (v) the Withholding of the 2014 Bonus (as pleaded in paragraph [254] above);
 - (vi) [Not used]
 - (vii) [Not used]
 - ~~(v)~~(viii) [Not used]

- (b) the conduct of ANZ pleaded in sub-paragraph (a) above caused detriment to the Applicant (as pleaded in paragraphs [219] and [254A] above), satisfying each of s 1317AC(1)(b) of the Corporations Act and s 52C(1)(b) of the Banking Act;
- (c) ANZ intended that ANZ's conduct pleaded in sub-paragraph (a) cause detriment to the Applicant because of the February 2013 Complaint (as pleaded in paragraphs [220] and [254B] above), satisfying each of s 1317AC(1)(c) of the Corporations Act and s 52C(1)(c) of the Banking Act;
- (d) ANZ engaged in the conduct pleaded in sub-paragraph (a) above because the Applicant made the February 2013 Complaint, where the February 2013 Complaint was a qualifying disclosure satisfying the requirements of each of s 1317AC of the Corporations Act and s 52A of the Banking Act (as pleaded in paragraph [303] above).

17 July 2014 Complaint

305. In the premises pleaded in paragraphs [184] to [185] above, the 17 July 2014 Complaint was a disclosure of information qualifying for protection under Part 9.4AAA of the Corporations Act and Division 1 of Part VIA of the Banking Act where:

- (a) the Applicant, was the discloser of the 17 July 2014 Complaint, and an employee of ANZ (as pleaded in paragraph [1] above), satisfying each of s 1317AA(1)(a)(ii) of the Corporations Act and s 52A(1)(c) of the Banking Act;
- (b) was made to Eddie Listorti of ANZ:
 - (i) a senior manager of ANZ (as pleaded in paragraph [297(a)] above), satisfying each of s 1317AA(1)(b)(iii) of the Corporations Act and s 52A(2)(a)(iii) of the Banking Act;
 - (ii) a person authorised by ANZ to receive disclosures of the kind of the 17 July 2014 Complaint (as pleaded in paragraph [298(b)] above), satisfying each of s 1317AA(1)(b)(iv) of the Corporations Act and s 52A(2)(a)(iv) of the Banking Act;
- (c) the Applicant informed Eddie Listorti of his name before making the 17 July 2014 Complaint (as pleaded in paragraph [185(a)] above), satisfying each of s 1317AA(1)(b)(iv) of the Corporations Act and s 52A(2)(b) of the Banking Act;

- (d) the Applicant had reasonable grounds to suspect that ANZ may have contravened the Corporations legislation (as pleaded in paragraph [185(b)] above), satisfying s 1317AA(1)(d)(i) of the Corporations Act;
- (e) the Applicant had reasonable grounds to suspect that two employees of ANZ may have contravened the Corporations legislation (as pleaded in paragraphs [185(b)] above), satisfying s 1317AA(1)(d)(ii) of the Corporations Act;
- (f) the information the subject of the 17 July 2014 Complaint concerned misconduct or an improper state of affairs in relation to ANZ (as pleaded in paragraphs [185(c)] above), satisfying s 52A(2)(c)(i) of the Banking Act;
- (g) the Applicant considered that the information the subject of the 17 July 2014 Complaint may assist Eddie Listorti to perform his duties in relation to ANZ (as pleaded in paragraph [185(d)] above), satisfying s 52A(2)(c)(ii) of the Banking Act; and
- (h) the Applicant made the 17 July 2014 Complaint in good faith (as pleaded in paragraph [185(e)] above), satisfying s 1317AA(1)(e) of the Corporations Act and s 52A(2)(d) of the Banking Act;

306. In the premises pleaded in paragraphs [157] to [254B] above, ANZ acted in contravention of each of s 1317AC(1) of the Corporations Act and s 52C(1) of the Banking Act, where:

- (a) ANZ engaged in the following conduct satisfying each of s 1317AC(1)(a) of the Corporations Act and s 52C(1)(a) of the Banking Act:
 - (i) the Standing Down (as pleaded in paragraph [215] above);
 - (ii) the Press Release (as pleaded in paragraph [218] above);
 - (ii)(a) [Not used]
 - (ii)(b) [Not used]
 - (ii)(c) the ANZ Media Comment (as pleaded in paragraph [228G] above);
 - (iii) the Termination (as pleaded in paragraph [249] above);
 - (iv) the Forfeitures (as pleaded in paragraph [254] above);
 - (v) the Withholding of the 2014 Bonus (as pleaded in paragraph [254] above);

(vi) [Not used]

(vii) [Not used]

~~(v)(viii)~~ [Not used]

- (b) the conduct of ANZ pleaded in sub-paragraph (a) above caused detriment to the Applicant (as pleaded in paragraph [219] and [254A] above), satisfying each of s 1317AC(1)(b) of the Corporations Act and s 52C(1)(b) of the Banking Act;
- (c) ANZ intended that ANZ's conduct pleaded in sub-paragraph (a) cause detriment to the Applicant because of the 17 July 2014 Complaint (as pleaded in paragraph [220] and [254B] above), satisfying each of s 1317AC(1)(c) of the Corporations Act and s 52C(1)(c) of the Banking Act;
- (d) ANZ engaged in the conduct pleaded in sub-paragraph (a) above because the Applicant made the 17 July 2014 Complaint, where the 17 July 2014 Complaint was a qualifying disclosure satisfying the requirements of each of s 1317AC of the Corporations Act and s 52A of the Banking Act (as pleaded in paragraph [305] above).

18 July 2014 Complaint

307. In the premises pleaded in paragraphs [193] to [194] above, the 18 July 2014 Complaint was a disclosure of information qualifying for protection under Part 9.4AAA of the Corporations Act and Division 1 of Part VIA of the Banking Act where:

- (a) the Applicant, was the discloser of the 18 July 2014 Complaint, and an employee of ANZ (as pleaded in paragraph [1] above), satisfying each of s 1317AA(1)(a)(ii) of the Corporations Act and s 52A(1)(c) of the Banking Act;
- (b) was made to Fred Pucci of ANZ:
 - (i) a senior manager of ANZ (as pleaded in paragraph [298(a)] above), satisfying each of s 1317AA(1)(b)(iii) of the Corporations Act and s 52A(2)(a)(iii) of the Banking Act;
 - (ii) a person authorised by ANZ to receive disclosures of the kind of the 18 July 2014 Complaint (as pleaded in paragraph [298(b)] above), satisfying each of s 1317AA(1)(b)(iv) of the Corporations Act and s 52A(2)(a)(iv) of the Banking Act;

- (c) the Applicant informed Fred Pucci of his name before making the 18 July 2014 Complaint (as pleaded in paragraph [195(a)] above), satisfying each of s 1317AA(1)(b)(iv) of the Corporations Act and s 52A(2)(b) of the Banking Act;
 - (d) the Applicant had reasonable grounds to suspect that ANZ may have contravened the Corporations legislation (as pleaded in paragraph [195(b)] above), satisfying s 1317AA(1)(d)(i) of the Corporations Act;
 - (e) the Applicant had reasonable grounds to suspect that two employees of ANZ may have contravened the Corporations legislation (as pleaded in paragraphs [195(b)] above), satisfying s 1317AA(1)(d)(ii) of the Corporations Act;
 - (f) the information the subject of the 18 July 2014 Complaint concerned misconduct or an improper state of affairs in relation to ANZ (as pleaded in paragraph [195(c)] above), satisfying s 52A(2)(c)(i) of the Banking Act;
 - (g) the Applicant considered that the information the subject of the 18 July 2014 Complaint may assist Fred Pucci to perform his duties in relation to ANZ (as pleaded in paragraph [195(d)] above), satisfying s 52A(2)(c)(ii) of the Banking Act; and
 - (h) the Applicant made the 18 July 2014 Complaint in good faith (as pleaded in paragraph [195(e)] above), satisfying s 1317AA(1)(e) of the Corporations Act and s 52A(2)(d) of the Banking Act;
308. In the premises pleaded in paragraphs [157] to [254B] above, ANZ acted in contravention of each of s 1317AC(1) of the Corporations Act and s 52C(1) of the Banking Act, where:
- (a) ANZ engaged in the following conduct satisfying each of s 1317AC(1)(a) of the Corporations Act and s 52C(1)(a) of the Banking Act:
 - (i) the Standing Down (as pleaded in paragraph [215] above);
 - (ii) the Press Release (as pleaded in paragraph [218] above);
 - (ii)(a) [Not used]
 - (ii)(b) [Not used]
 - (ii)(c) the ANZ Media Comment (as pleaded in paragraph [228G] above);
 - (iii) the Termination (as pleaded in paragraph [249] above);

(iv) the Forfeitures (as pleaded in paragraph [254] above);

(v) the Withholding of the 2014 Bonus (as pleaded in paragraph [254] above);

(vi) [Not used]

(vii) [Not used]

~~(v)~~(viii) [Not used]

- (b) the conduct of ANZ pleaded in sub-paragraph (a) above caused detriment to the Applicant (as pleaded in paragraph [219] and [254A] above), satisfying each of s 1317AC(1)(b) of the Corporations Act and s 52C(1)(b) of the Banking Act;
- (c) ANZ intended that ANZ's conduct pleaded in sub-paragraph (a) cause detriment to the Applicant because of the 18 July 2014 Complaint (as pleaded in paragraph [220] and [254B] above), satisfying each of s 1317AC(1)(c) of the Corporations Act and s 52C(1)(c) of the Banking Act;
- (d) ANZ engaged in the conduct pleaded in sub-paragraph (a) above because the Applicant made the 18 July 2014 Complaint, where the 18 July 2014 Complaint was a qualifying disclosure satisfying the requirements of each of s 1317AC of the Corporations Act and s 52A of the Banking Act (as pleaded in paragraph [307] above).

October 2014 Complaint

309. In the premises pleaded in paragraphs [208] to [211] above, the October 2014 Complaint was a disclosure of information qualifying for protection under Part 9.4AAA of the Corporations Act and Division 1 of Part VIA of the Banking Act where:

- (a) the Applicant, was the discloser of the October 2014 Complaint, and an employee of ANZ (as pleaded in paragraph [1] above), satisfying each of s 1317AA(1)(a)(ii) of the Corporations Act and s 52A(1)(c) of the Banking Act;
- (b) was made to each of Fred Pucci and John Chase of ANZ:
 - (i) where each of Fred Pucci and John Chase was a senior manager of ANZ (as pleaded in paragraphs [298(a)] and [299(a)] above), satisfying each of s 1317AA(1)(b)(iii) of the Corporations Act and s 52A(2)(a)(iii) of the Banking Act;

- (ii) where each of Fred Pucci and John Chase was a person authorised by ANZ to receive disclosures of the kind of the October 2014 Complaint (as pleaded in paragraphs [299(b)] and [299(b)] above), satisfying each of s 1317AA(1)(b)(iv) of the Corporations Act and s 52A(2)(a)(iv) of the Banking Act;
 - (c) the Applicant informed each of Fred Pucci and John Chase of his name before making the October 2014 Complaint (as pleaded in paragraph [211(a)] above), satisfying each of s 1317AA(1)(b)(iv) of the Corporations Act and s 52A(2)(b) of the Banking Act;
 - (d) the Applicant had reasonable grounds to suspect that ANZ may have contravened the Corporations legislation (as pleaded in paragraph [211(b)] above), satisfying s 1317AA(1)(d)(i) of the Corporations Act;
 - (e) the Applicant had reasonable grounds to suspect that two employees of ANZ may have contravened the Corporations legislation (as pleaded in paragraph [211(b)] above), satisfying s 1317AA(1)(d)(ii) of the Corporations Act;
 - (f) the information the subject of the October Complaint concerned misconduct or an improper state of affairs in relation to ANZ (as pleaded in paragraph [211(c)] above), satisfying s 52A(2)(c)(i) of the Banking Act;
 - (g) the Applicant considered that the information the subject of the October 2014 Complaint may assist each of Fred Pucci and John Chase to perform his duties in relation to ANZ (as pleaded in paragraph [211(d)] above), satisfying s 52A(2)(c)(ii) of the Banking Act; and
 - (h) the Applicant made the October 2014 Complaint in good faith (as pleaded in paragraph [211(e)] above), satisfying s 1317AA(1)(e) of the Corporations Act and s 52A(2)(d) of the Banking Act;
310. In the premises pleaded in paragraphs [157] to [254B] above, ANZ acted in contravention of each of s 1317AC(1) of the Corporations Act and s 52C(1) of the Banking Act, where:
- (a) ANZ engaged in the following conduct satisfying each of s 1317AC(1)(a) of the Corporations Act and s 52C(1)(a) of the Banking Act:
 - (i) the Standing Down (as pleaded in paragraph [215] above);
 - (ii) the Press Release (as pleaded in paragraph [218] above);

(ii)(a) [Not used]

(ii)(b) [Not used]

(ii)(c) the ANZ Media Comment (as pleaded in paragraph [228G] above);

(iii) the Termination (as pleaded in paragraph [249] above);

(iv) the Forfeitures (as pleaded in paragraph [254] above);

(v) the Withholding of the 2014 Bonus (as pleaded in paragraph [254] above);

(vi) [Not used]

(vii) [Not used]

~~(v)~~(viii) [Not used]

- (b) the conduct of ANZ pleaded in sub-paragraph (a) above caused detriment to the Applicant (as pleaded in paragraphs [219] and [254A] above), satisfying each of s 1317AC(1)(b) of the Corporations Act and s 52C(1)(b) of the Banking Act;
- (c) ANZ intended that ANZ's conduct pleaded in sub-paragraph (a) cause detriment to the Applicant because of the October 2014 Complaint (as pleaded in paragraphs [220] and [254B] above), satisfying each of s 1317AC(1)(c) of the Corporations Act and s 52C(1)(c) of the Banking Act;
- (d) ANZ engaged in the conduct pleaded in sub-paragraph (a) above because the Applicant made the October 2014 Complaint, where the October 2014 Complaint was a qualifying disclosure satisfying the requirements of each of s 1317AC of the Corporations Act and s 52A of the Banking Act (as pleaded in paragraph [309] above).

First ASIC Disclosure

311. In the premises pleaded in paragraphs [197] to [207] above, the First ASIC Disclosure was a disclosure of information qualifying for protection under Part 9.4AAA of the Corporations Act where:

- (a) the Applicant, was the discloser of the First ASIC Disclosure, and an employee of ANZ (as pleaded in paragraphs [1] above), satisfying each of s 1317AA(1)(a)(ii) of the Corporations Act and s 52A(1)(c) of the Banking Act;

- (b) the First ASIC Disclosure was made to ASIC (as pleaded in paragraph [205] and [206] above), satisfying each of s 1317AA(1)(b)(i) of the Corporations Act;
 - (c) the Applicant had reasonable grounds to suspect that ANZ may have contravened the Corporations legislation (as pleaded in paragraph [206(b)] above), satisfying s 1317AA(1)(d)(i) of the Corporations Act;
 - (d) the Applicant had reasonable grounds to suspect that two employees of ANZ may have contravened the Corporations legislation (as pleaded in paragraph [206(b)] above), satisfying s 1317AA(1)(d)(ii) of the Corporations Act; and
 - (e) the Applicant made the First ASIC Disclosure in good faith (as pleaded in paragraph [206(d)] above), satisfying s 1317AA(1)(e) of the Corporations Act;
312. In the premises pleaded in paragraphs [157] to [254B] above, ANZ acted in contravention of s 1317AC(1) of the Corporations Act, where:
- (a) ANZ engaged in the following conduct satisfying s 1317AC(1)(a) of the Corporations Act:
 - (i) the Standing Down (as pleaded in paragraph [215] above);
 - (ii) the Press Release (as pleaded in paragraph [218] above);
 - (ii)(a) [Not used]
 - (ii)(b) [Not used]
 - (ii)(c) the ANZ Media Comment (as pleaded in paragraph [228G] above);
 - (iii) the Termination (as pleaded in paragraph [249] above);
 - (iv) the Forfeitures (as pleaded in paragraph [254] above);
 - (v) the Withholding of the 2014 Bonus (as pleaded in paragraph [254] above);
 - (vi) [Not used]
 - (vii) [Not used]
 - ~~(viii)~~ [Not used]

- (b) the conduct of ANZ pleaded in sub-paragraph (a) above caused detriment to the Applicant (as pleaded in paragraphs [219] and [254A] above), satisfying s 1317AC(1)(b) of the Corporations Act;
- (c) ANZ intended that ANZ's conduct pleaded in sub-paragraph (a) cause detriment to the Applicant because of the First ASIC Disclosure (as pleaded in paragraphs [220] and [254B] above), satisfying s 1317AC(1)(c) of the Corporations Act;
- (d) ANZ engaged in the conduct pleaded in sub-paragraph (a) above because the Applicant made the First ASIC Disclosure, where the First ASIC Disclosure was a qualifying disclosure satisfying the requirements of s 1317AC of the Corporations Act (as pleaded in paragraph [311] above).

December 2014 Complaint

313. [REDACTED]
[REDACTED]
[REDACTED]

(a) [REDACTED]
[REDACTED]
[REDACTED]

(b) [REDACTED]

(i) [REDACTED]
[REDACTED]
[REDACTED]

(ii) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(iii) [REDACTED]
[REDACTED]
[REDACTED]

- (c) [REDACTED]
[REDACTED]
[REDACTED]
- (d) [REDACTED]
[REDACTED]
[REDACTED]
- (e) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- (f) [REDACTED]
[REDACTED]
[REDACTED]

314. In the premises pleaded in paragraphs [157] to [254B] above, ANZ acted in contravention of each of s 1317AC(1) of the Corporations Act and s 52C(1) of the Banking Act, where:

- (a) ANZ engaged in the following conduct satisfying each of s 1317AC(1)(a) of the Corporations Act and s 52C(1)(a) of the Banking Act:
- (i) [Not used]
 - (ii) the ANZ Media Comment (as pleaded in paragraph [228G] above);
 - (iii) the Termination (as pleaded in paragraph [249] above);
 - (iv) the Forfeitures (as pleaded in paragraph [254] above);
 - (v) the Withholding of the 2014 Bonus (as pleaded in paragraph [254] above);
 - (vi) [Not used]
 - (vii) [Not used]
 - ~~(v)~~(viii) [Not used]
- (b) the conduct of ANZ pleaded in sub-paragraph (a) above caused detriment to the Applicant (as pleaded in paragraphs [219] and [254A] above), satisfying each of s 1317AC(1)(b) of the Corporations Act and s 52C(1)(b) of the Banking Act;

- (c) ANZ intended that ANZ's conduct pleaded in sub-paragraph (a) cause detriment to the Applicant because of the December 2014 Complaint (as pleaded in paragraphs [220] and [254B] above), satisfying each of s 1317AC(1)(c) of the Corporations Act and s 52C(1)(c) of the Banking Act;
- (d) ANZ engaged in the conduct pleaded in sub-paragraph (a) above because the Applicant made the December 2014 Complaint, where the December 2014 Complaint was a qualifying disclosure satisfying the requirements of each of s 1317AC of the Corporations Act and s 52A of the Banking Act (as pleaded in paragraph [313] above).

Second ASIC Disclosure

315. In the premises pleaded in paragraphs [208] to [211] and [226] to [227] above, the Second ASIC Disclosure was a disclosure of information qualifying for protection under Part 9.4AAA of the Corporations Act where:

- (a) the Applicant, was the discloser of the Second ASIC Disclosure, and an employee of ANZ (as pleaded in paragraph [1] above), satisfying each of s 1317AA(1)(a)(ii) of the Corporations Act and s 52A(1)(c) of the Banking Act;
- (b) the Second ASIC Disclosure was made to ASIC (as pleaded in paragraph [226] and [227(a)] above), satisfying each of s 1317AA(1)(b)(i) of the Corporations Act;
- (c) the Applicant had reasonable grounds to suspect that ANZ may have contravened the Corporations legislation (as pleaded in paragraph [227(b)] above), satisfying s 1317AA(1)(d)(i) of the Corporations Act; and
- (d) the Applicant made the Second ASIC Disclosure in good faith (as pleaded in paragraphs [227(d)] above), satisfying s 1317AA(1)(e) of the Corporations Act;

316. In the premises pleaded in paragraphs [157] to [254B] above, ANZ acted in contravention of s 1317AC(1) of the Corporations Act, where:

- (a) ANZ engaged in the following conduct satisfying s 1317AC(1)(a) of the Corporations Act:
 - (i) [Not used]
 - (ii) the ANZ Media Comment (as pleaded in paragraph [228G] above);

- (iii) the Termination (as pleaded in paragraph [249] above);
- (iv) the Forfeitures (as pleaded in paragraph [254] above);
- (v) the Withholding of the 2014 Bonus (as pleaded in paragraph [254] above);
- (vi) [Not used]
- (vii) [Not used]
- (v)(viii) [Not used]

- (b) the conduct of ANZ pleaded in sub-paragraph (a) above caused detriment to the Applicant (as pleaded in paragraphs [219] and [254A] above), satisfying s 1317AC(1)(b) of the Corporations Act;
- (c) ANZ intended that ANZ's conduct pleaded in sub-paragraph (a) cause detriment to the Applicant because of the Second ASIC Disclosure (as pleaded in paragraphs [220] and [254B] above), satisfying s 1317AC(1)(c) of the Corporations Act;
- (d) ANZ engaged in the conduct pleaded in sub-paragraph (a) above because the Applicant made the Second ASIC Disclosure, where the Second ASIC Disclosure was a qualifying disclosure satisfying the requirements of s 1317AC of the Corporations Act (as pleaded in paragraph [315] above).

Damage and Compensation

317. Because of the contraventions of ANZ:

- (a) of s 1317AC(1) of the Corporations Act and s 52C(1) of the Banking Act in respect of the October 2011 Complaint (as pleaded in paragraph [302] above);
- (b) of s 1317AC(1) of the Corporations Act and s 52C(1) of the Banking Act in respect of the February 2013 Complaint (as pleaded in paragraph [304] above);
- (c) of s 1317AC(1) of the Corporations Act and s 52C(1) of the Banking Act in respect of the 17 July 2014 Complaint (as pleaded in paragraph [306] above);
- (e) of s 1317AC(1) of the Corporations Act and s 52C(1) of the Banking Act in respect of the 18 July 2014 Complaint (as pleaded in paragraph [308] above);

- (f) of s 1317AC(1) of the Corporations Act in respect of the First ASIC Disclosure (as pleaded in paragraph [312] above);
- (g) of s 1317AC(1) of the Corporations Act and s 52C(1) of the Banking Act in respect of the October 2014 Complaint (as pleaded in paragraph [310] above);
- (h) of s 1317AC(1) of the Corporations Act and s 52C(1) of the Banking Act in respect of the December 2014 Complaint (as pleaded in paragraph [314] above);
- (i) of s 1317AC(1) of the Corporations Act in respect of the Second ASIC Disclosure (as pleaded in paragraph [316] above);

or one of more of them, the Applicant suffered damage, and ANZ is liable to compensate the Applicant under either or both of s 1317AD of the Corporations Act and s 52D of the Banking Act in respect of:

- (i) the Standing Down;
- (ii) the Press Release;
- (ii)(a) [Not used];
- (ii)(aa) [Not used];
- (ii)(aaa) the ANZ Media Comment;
- (ii)(iii) the Termination;
- (iii)(iv) the Forfeitures; and
- (iv)(v) the Withholding of the 2014 Bonus; and
- (v)(vi) [Not used].

Particulars of damage

The Applicant has suffered damage because of ANZ's contraventions of s 1317AC(1) of the Corporations Act and s 52C(1) of the Banking Act as follows:

- (aa) Distress to the Applicant and adverse impact on his mental health and his family;
- (a) *Damage to the Applicant's reputation;*

- (b) *Damage to the Applicant's credibility;*
- (c) *Damage to the Applicant's employment prospects as a prospective employee in the Australian financial industry;*
- (d) *The loss of the value of the 2012 performance bonus unvested equity, comprising the value of the deferred equity as at the "vesting dates", as follows:*
 - i. *22,204 shares which would have vested on 12 November 2014 at \$31.90 per share;*
 - ii. *14,129 shares which would have vested on 12 November 2015 at \$26.49 per share.*
- (e) *The loss of the value of the 2013 performance bonus unvested equity, comprising the value of the deferred equity as at the "vesting dates", as follows:*
 - i. *24,683 shares which would have vested on 22 November 2014 at \$31.87 per share;*
 - ii. *24,683 shares which would have vested on 22 November 2015, \$27.85 per share;*
 - iii. *24,683 shares which would have vested on 22 November 2016, \$27.87 per share.*
- (f) *The loss of the value of the 2014 performance bonus, comprising:*
 - i. *cash in the sum of \$2,048,000;*
 - ii. *deferred equity to the value of \$2,952,000 as it vested on 21 November 2015, 21 November 2016 and 21 November 2017.*
- (ff) *[Not used]*
- (g) *The loss of opportunity to reinvest the unvested equity and cash components as identified above in order to make a profit or capital gain.*
- (h) *The loss of opportunity to earn income (including performance bonuses)*
- (i) *Interest pursuant to the Federal Court of Australia Act 1976 (Cth) and order 35 rule 8 of the Federal Court Rules.*

Further and better particulars to be provided after expert evidence.

Contraventions of the Fair Work Act

318. The Applicant repeats paragraphs [157] to [254B].
319. The making of the October 2011 complaint was the exercise of a workplace right by the Applicant or indicated a proposed exercise of a workplace right in relation to the Applicant's employment within the meaning of s 341 of the Fair Work Act.

Particulars

The October 2011 Complaint related to a workplace right to make a complaint in relation to his employment – s 341(1)(c)(ii) of the Fair Work Act

320. The making of the February 2013 complaint was the exercise of a workplace right by the Applicant or indicated a proposed exercise of a workplace right in relation to the Applicant's employment within the meaning of s 341 of the Fair Work Act.

Particulars

The February 2013 Complaint related to a workplace right to make a complaint in relation to his employment – s 341(1)(c)(ii) of the Fair Work Act

321. The making of the 17 July 2014 complaint was the exercise of a workplace right by the Applicant or indicated a proposed exercise of a workplace right in relation to the Applicant's employment within the meaning of s 341 of the Fair Work Act.

Particulars

The 17 July 2014 Complaint related to a workplace right to make a complaint in relation to his employment – s 341(1)(c)(ii) of the Fair Work Act

322. The making of the 18 July 2014 Complaint was the exercise of a workplace right by the Applicant or indicated a proposed exercise of a workplace right in relation to the Applicant's employment within the meaning of s 341 of the Fair Work Act.

Particulars

The 18 July 2014 Complaint related to a workplace right to make a complaint in relation to his employment – s 341(1)(c)(ii) of the Fair Work Act

323. The making of the October 2014 Complaint was the exercise of a workplace right by the Applicant or indicated a proposed exercise of a workplace right in relation to the Applicant's employment within the meaning of s 341 of the Fair Work Act.

Particulars

The October Complaint related to a workplace right to make a complaint in relation to his employment – s 341(1)(c)(ii) of the Fair Work Act

324. The making of the December 2014 Complaint was the exercise of a workplace right by the Applicant or indicated a proposed exercise of a workplace right in relation to the Applicant's employment within the meaning of s 341 of the Fair Work Act.

Particulars

The December 2014 Complaint related to a workplace right to make a complaint in relation to his employment – s 341(1)(c)(ii) of the Fair Work Act

325. The making of the February 2015 complaint was the exercise of a workplace right by the Applicant or indicated a proposed exercise of a workplace right in relation to the Applicant's employment within the meaning of s 341 of the Fair Work Act.

Particulars

The February 2015 Complaint related to a workplace right to make a complaint in relation to his employment – s 341(1)(c)(ii) of the Fair Work Act

326. The Applicant repeats paragraph [215] and says that the Standing Down constituted adverse action contrary to the protections in s 342 item 1 (b) and (c) of the Fair Work Act.

Particulars

ANZ injured the Applicant in his employment in that it failed to permit the Applicant to continue working and the Applicant was thereby deprived of the increase in salary to \$485,000 effective 1 October 2014 in accordance with the 2014 Performance and Remuneration Review.

ANZ altered the position of the Applicant to his prejudice in that it refused to pay to the Applicant the cash component of the 2014 Performance Bonuses

ANZ injured the Applicant in his employment in that it failed to permit the Applicant to continue working and performing his duties thereby depriving him of the opportunity to earn bonuses in the 2014/5 review period, and to exercise and improve his skill to enhance his bonus-earning capacity for future years.

ANZ deprived the Applicant of the satisfaction of performing his duties and the feeling of self-worth generated by gainful employment

ANZ injured the Applicant in his employment in that it caused the Applicant significant emotional and psychological distress.

327. ANZ took this adverse action against the Applicant because the Applicant had a workplace right, had exercised a workplace right or proposed to exercise a workplace right contrary to the protections under s 340(1)(a)(i), (ii) and (iii) of the Fair Work Act.

Particulars

October 2011 Complaint

February 2013 Complaint

17 July 2014 Complaint

18 July 2014 Complaint

October 2014 Complaint

December 2014 Complaint

February 2015 Complaint

327A. The Applicant repeats paragraphs [216A] to [220] and [228A] to [228Y] and says that:

(a) [Not used];

(b) [Not used];

(c) the ANZ Media Comment;

(d) [Not used].

constituted adverse action contrary to the protections under s 342 Item 1 (b) and (c) of the Fair Work Act.

Particulars

ANZ injured the Applicant in his employment, and altered the position of the Applicant to his prejudice, by engaging in the conduct of the ANZ Media Comment in circumstances where that conduct damaged the Applicant's employment prospects at ANZ, or alternatively caused the Applicant's future employment prospects to become untenable or substantially less secure.

ANZ injured the Applicant in his employment, and altered the position of the Applicant to his prejudice, by damaging the Applicant's reputation.

Further, ANZ altered the position of the Applicant to his prejudice in that the conduct damaged the Applicant's prospects as a prospective employee in the Australian financial industry.

ANZ injured the Applicant in his employment in that it caused the Applicant significant emotional and psychological distress.

327B. ANZ took this adverse action against the Applicant because the Applicant had a workplace right, had exercised a workplace right or proposed to exercise a workplace right contrary to the protections under s 340(1)(a)(i), (ii) and (iii) of the Fair Work Act.

Particulars

October 2011 Complaint

February 2013 Complaint

17 July 2014 Complaint

18 July 2014 Complaint

October 2014 Complaint

December 2014 Complaint

February 2015 Complaint

328. The Applicant repeats paragraphs [244] and says that ANZ's decision to institute the Disciplinary Investigation constituted adverse action contrary to the protections under s 342 item 1 (b) and (c) of the Fair Work Act.

Particulars

ANZ injured the Applicant in his employment by instituting the Disciplinary Investigation despite the Communications Representations and the Code Latitude Representation.

ANZ altered the position of the Applicant to his detriment by instituting the Disciplinary Investigation when he was entitled to assume that the subject matter of the investigation had already been dealt with by ANZ with no adverse findings against him.

ANZ's action caused the Applicant significant emotional and psychological stress.

329. ANZ took this adverse action against the Applicant because the Applicant had a workplace right, had exercised a workplace right or proposed to exercise a workplace right contrary to the protections under s 340(1)(a)(i), (ii) and (iii) of the Fair Work Act.

Particulars

October 2011 Complaint

February 2013 Complaint

17 July 2014 Complaint

18 July 2014 Complaint

October 2014 Complaint

December 2014 Complaint

February 2015 Complaint

330. The Applicant repeats paragraphs [245] to [250] and says that the Termination constituted adverse action contrary to the protections in s 342 item 1 (b) and (c) of the Fair Work Act.

Particulars

ANZ dismissed the Applicant from his employment.

331. ANZ took this adverse action against the Applicant because the Applicant had a workplace right, had exercised a workplace right or proposed to exercise a workplace right contrary to the protections under s 340(1)(a)(i), (ii) and (iii) of the Fair Work Act.

Particulars

October 2011 Complaint

February 2013 Complaint

17 July 2014 Complaint

18 July 2014 Complaint

October 2014 Complaint

December 2014 Complaint

February 2015 Complaint

332. The Applicant repeats paragraphs [250] to [254] and says that the Forfeitures constituted adverse action contrary to the protections in s 342 item 1 (b) and (c) of the Fair Work Act.

Particulars of Adverse Action

ANZ forfeited shares held on trust for the Applicant.

333. ANZ took this adverse action against the Applicant because the Applicant had a workplace right, had exercised a workplace right or proposed to exercise a workplace right contrary to the protections under s 340(1)(a)(i), (ii) and (iii) of the Fair Work Act.

Particulars

October 2011 Complaint

February 2013 Complaint

17 July 2014 Complaint

18 July 2014 Complaint

October 2014 Complaint

*December 2014 Complaint**February 2015 Complaint*

334. The Applicant makes a claim for compensation pursuant to s 545(2)(b) of the Fair Work Act against ANZ for the losses suffered by the Applicant because of the contraventions pleaded at paragraphs [318] to [333] above.

335. The Applicant seeks the imposition of penalties pursuant to s 546 of the Fair Work Act in relation to the adverse action pleaded at paragraphs [326], [328], [330] and [332].

336. The Applicant seeks an order that any penalties awarded pursuant to paragraph [335] above be paid to the Applicant.

337. The Applicant seeks an order that interest is paid on any amounts awarded pursuant to paragraph [336] above.

Relief Against Forfeiture

338. The Clawback Discretion was meant to secure performance of a primary stipulation of the 2011 Contract and the 2013 Contract.

339. In exacting the Forfeitures in reliance on the Clawback Discretion, ANZ surprised the Applicant.

340. To the extent required, compensation is available to restore the Applicant to the position which it would have occupied had the Forfeiture not occurred.

341. The Applicant repeats paragraph [233] and says that he was at all material times ready, willing and able to perform his obligations under the 2011 and 2013 Contract.

342. In the premises, the Court should exercise its discretion to grant relief against the Forfeitures.

Loss and Damage

343. By reason of:

(a) the Press Release;

(aa) [Not used];

(b) the Standing Down;

(bb) [Not used]

(bbb) the ANZ Media Comment;

(c) the Termination

(d) the Forfeitures;

(e) the Withholding of the 2014 Bonus;

(ee) [Not used];

(f) ANZ's breaches of contract;

(g) ANZ's equitable breaches as pleaded above;

(h) ANZ's contraventions of Pt 9.4AAA of the Corporations Act and or section 52C of the Banking Act;

(i) ANZ's contraventions of the Fair Work Act;

the Applicant has suffered loss and damage.

Particulars

The loss of the value of the 2012 performance bonus unvested equity, comprising:

(a) *the value of the deferred equity as at the "vesting dates", as follows:*

- i. 22,204 shares which would have vested on 12 November 2014 at \$31.90 per share;*
- ii. 14,129 shares which would have vested on 12 November 2015 at \$26.49 per share.*

The loss of the value of the 2013 performance bonus unvested equity, comprising:

(b) *the value of the deferred equity as at the "vesting dates", as follows:*

- i. 24,683 shares which would have vested on 22 November 2014 at \$31.87 per share;*

- ii. 24,683 shares which would have vested on 22 November 2015, \$27.85 per share;
- iii. 24,683 shares which would have vested on 22 November 2016, \$27.87 per share.

The loss of the value of the 2014 performance bonus, comprising:

- (c) cash in the sum of \$2,048,000;
- (d) deferred equity to the value of \$2,952,000 as it vested on 21 November 2015, 21 November 2016 and 21 November 2017.

In the alternative, the loss of opportunity at having a performance bonus awarded and paid in 2014 as set out in paragraph [268B] above.

The loss of opportunity to reinvest the unvested equity and cash components as identified above in order to make a profit or capital gain.

Interest pursuant to the Federal Court of Australia Act 1976 (Cth) and order 35 rule 8 of the Federal Court Rules.

The Applicant repeats and relies upon the particulars to paragraph [317] above.

Further and better particulars to be provided after expert evidence.

344. Further to the matters pleaded above at paragraph [343], the Applicant pleads as follows.
345. At all relevant times, ANZ knew or should reasonably have known that, in the circumstances of the high-profile nature of the ASIC BBSW Investigation, it was reasonably likely or foreseeable that, given the Applicant's Standing Down:
- (a) the media could infer or obtain information that the Applicant was one of the seven traders identified in the Press Release;
 - (b) the identity of the Applicant as one of the "seven staff involved in markets trading step down pending completion of the investigation into practices to 2013" would be of interest to the media.
346. In the circumstances of the matters pleaded at paragraph [345], ANZ knew or should reasonably have known, that the Press Release could cause adverse reputational harm to

the Applicant as it could indicate to a reasonable person that the Applicant was involved in trading activity within ANZ relating to the manipulation of the BBSW Rate-Set

347. Over the period 19 November 2014 to 28 February 2019, the Applicant was identified (indirectly or directly) in media articles and reports as a person that had been stood down or terminated by ANZ in relation or in connection to his involvement in the ASIC BBSW Investigation or as a person relevant to ASIC's ~~the~~ ASIC BBSW Investigation on numerous occasions.

Particulars

Particulars identified at Amended Schedule B, attached

348. In the premises of the matters at paragraphs [345]-[347], as a direct or indirect result of one or more of the Press Release, the Standing Down, the ANZ Media Comment, or the Termination, the Applicant sustained reputational harm.
349. As a consequence of the reputational harm pleaded at paragraph [348], it was difficult, amongst other things, for the Applicant to obtain a job comparable to his position at ANZ.

Particulars

Further and better particulars to follow expert evidence.

350. As a result of the matters pleaded above at paragraphs [343] and [348], the Applicant suffered loss or damage under s 1317AD of the Corporations Act and s 52D of the Banking Act.

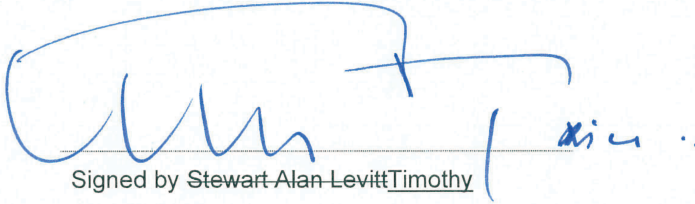
Particulars

The loss of opportunity to earn income (including performance bonuses)

Further and better particulars to follow expert evidence.

350A. [Not used]

Date: ~~24 February 2022~~ ~~11 July 2022~~ 14 March 2025



Signed by ~~Stewart Alan Levitt~~ Timothy Randolph Price

Randolph Price

Lawyer for the Applicant

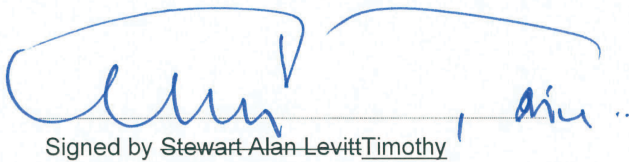
This pleading was prepared by Gideon Gee and settled by Anthony McInerney Ian Neil SC.

This pleading was settled by Christopher Withers SC and Jonathan Burnett.

Certificate of lawyer

I Stewart Alan Levitt Timothy Randolph Price certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~24 February 2022~~ ~~11 July 2022~~ 14 March 2025



Signed by ~~Stewart Alan Levitt~~ Timothy Randolph Price

Randolph Price

Lawyer for the Applicant

Amended Schedule A**Name**

No	Name	Firm/Division of ANZ	Position
1.	Bellotti, Steve	ANZ Institutional Division	Head of Global Markets and Loans
2.	Budrewicz, Mark	ANZ	Trader, Balance Sheet
3.	Chase, John	ANZ Institutional Division	Business Manager Balance Sheet Trading and Head of Governance
4.	Chronican, Philip	ANZ Retail Division	CEO ANZ Australia, Australia division
5.	Collier, Sean	ANZ Group Treasury	Senior Manager, Funding and Liquidity
6.	Collins, Shayne	ANZ Institutional Division	Head of Market Risk
7.	Davidson, Luke	ANZ Treasury Division	Head of Group Funding
8.	Dodd, Michael	ANZ	Trader
9.	Elliott, Shayne	ANZ Institutional Division	Group Managing Director, then Chief Financial

			Officer, then Chief Executive Officer
10.	Ellis, Sam	ANZ Institutional Division	Trader, Interest Rate Swaps
11.	Evans, Mark	ANZ	Chief Compliance Officer
12.	Farroukh, Emman	ASIC	Investigator
13.	Geczy, Andrew	ANZ Institutional Division	CEO, International & Institutional Banking
14.	Harris, Kerrie	ANZ	ANZ Head of Human Resources, Global Markets
15.	Heathwood, Andrew	ANZ	Chief Risk and Compliance Officer, Americas
16.	Huston, Richard	ANZ Institutional Division	Co-head Fixed Income, Currencies and Commodities. / Co-CEO North America and Europe
17.	King, Daniel	ANZ Institutional Division	Head of Human Resources – Global Markets
18.	[Not used]	[Not used]	[Not used]
19.	Listorti, Eddie	ANZ Institutional Division	Co-head Fixed Income, Currency and Commodities
20.	Luxford, Colin	ASIC	Investigator
21.	Lynch, Neil	ANZ Institutional Division	Trainee Trader, Balance Sheet and Trader, Balance Sheet.
22.	Marriott, Peter	ANZ Group Treasury	Chief Financial Officer ANZ Group Treasury
23.	Marshall, Duncan	ANZ Institutional Division	Head of Market Risk Australia
24.	Mavrakis, Nick Nicholas	Clayton Utz	Solicitor acting for ANZ

25.	McCaughan, Alexandra	Clayton Utz	Lawyer
26.	McGowan, David	ANZ Investigations	Head of Group Investigations
27.	Millen, James	ANZ Institutional Division	Trainee Trader – Balance Sheet Trading / Trader – Balance Sheet Trading
28.	Morris, Matthew	ANZ Institutional Division	Head of Australia New Zealand Linear Rates and Head of Mismatch Trading, Balance Sheet
29.	Moscatti, Rick	ANZ Group Treasury	Group Treasurer
30.	[Not used]	[Not used]	[Not used]
31.	O'Callaghan, Robert	ANZ Institutional Division	Global Head of Fixed Income, Applicant's Line Manager to March 2013
32.	Pritchard, Jason	ANZ Institutional Division	Head of Balance Sheet Australia and Proprietary Trader Balance Sheet
33.	Pucci, Fred	ANZ Institutional Division	Head of Compliance – Global Markets
34.	Santamaria, Bob	ANZ	Group General Counsel and Company Secretary
35.	Schneider, Robert	HWL Ebsworth	Partner
36.	Seymor, Doug	ANZ	Trader
37.	Silver, Peter		Counsel
38.	Slater, Jonathan	Clayton Utz	Solicitor acting for ANZ
39.	Smith, Michelle	ANZ Global Markets	Global Head of Legal, Global Markets

40.	Smith, Mike	ANZ	Chief Executive Officer
41.	Went, Adrian	ANZ Group Treasury	Deputy Group Treasurer / Head of Balance Sheet Management.
42.	White, Alexandra	HWL Ebsworth	Partner
43.	Williams, Nigel	ANZ Institutional Division	Group Chief Risk Officer
44.	Woodward, Paul	ANZ	ANZ's trader in Prime Bank Bills

Amended Schedule "B"

	Date	Title	Publisher
1	<u>2011.12.08</u>	<u>ANZ cuts interest rates for mortgages and small business lending by 025pa</u>	<u>ANZ Media Release</u>
4	<u>2</u> 2014.11.19	Media Release ANZ continuing to cooperate with ASIC review of interbank BBSW rate trading	ANZ Media Release
2	<u>3</u> 2014.11.19	ANZ traders stood down over interest rate rigging probe	The Sydney Morning Herald
3	<u>4</u> 2015.01.05	ANZ traders sidelined during ASIC investigation	The Sydney Morning Herald
4	<u>5</u> 2015.01.05	ANZ trader sidelined during probe	Australian Financial Review (front page)
5	<u>6</u> 2015.01.06	High stakes in bank rate scandal	The Sydney Morning Herald
6	<u>7</u> 2015.01.06	ASIC in probe of senior trader	The Australian
7	<u>8</u> 2015.04.20	Bank hearing to probe rate rigging	Australian Financial Review
8	<u>9</u> 2015.06.03	ASIC considers criminal sanction for poor financial company culture	ABC News

9	<u>10</u>	2015.07.24	ASIC slams defensive and legalistic bankers over rate-rigging inquiry Woolrich	ABC News
40	<u>11</u>	2015.07.31	Update on BBSW matter	ANZ Media Release
44	<u>12</u>	2015.11.01	Point Piper mansion back on the market after just 18 months	Domain
42	<u>13</u>	2015.11.01	Mansion back on the market for \$8m	The Sun-Herald
43	<u>14</u>	2015.11.20	ANZ Banks extreme Steve Bellotti departs	Australian Financial Review
44	<u>15</u>	2016.01.05	ASIC Probe of Senior Trader	Australian Financial Review
45	<u>16</u>	2016.01.15	ANZ Bank Sued by Two Traders Fired Over Offensive Messages	Bloomberg
46	<u>17</u>	2016.01.15	Inside ANZs toxic culture: the high-octane world of dealing rooms	Australian Financial Review
47	<u>18</u>	2016.01.15	Sacked ANZ staff pursue bank for millions	SBS News
48	<u>19</u>	2016.01.15	Sacked ANZ trader says bank tolerated drugs, strip clubs	Australian Financial Review
49	<u>20</u>	2016.01.15	Sacked ANZ trader says bank tolerated drugs, strip clubs	The Sydney Morning Herald
20	<u>21</u>	2016.01.15	Why the women at ANZ Bank felt they had to shut up and play along	Australian Financial Review
24	<u>22</u>	2016.01.16	Alexiou, O'Connor revelations prompt ANZ crackdown on misbehaving bankers	The Sydney Morning Herald
22	<u>23</u>	2016.01.16	ANZ faces \$30m suit over strippers coke and wads of cash	The Daily Telegraph
23	<u>24</u>	2016.01.16	Shayne Elliott on Twitter Strong inclusive culture	Twitter @ANZ
24	<u>25</u>	2016.01.17	ANZ chief executive Shayne Elliott labels strip club visits unacceptable	The Sydney Morning Herald
25	<u>26</u>	2016.01.18	Former ANZ traders sell and upsize Sydney mansions	Australian Financial Review
26	<u>27</u>	2016.01.19	ANZ Scandal – Strip Clubs and Boardroom sexism	Australian Financial Review
27	<u>28</u>	2016.01.22	Can culture be blamed for bankers behaving badly?	The Australian
28	<u>29</u>	2016.01.27	HR: The unanswered question in the ANZ strip club scandal	Australian financial Review

29 <u>30</u>	2016.01.29	ANZ trading scandal exposes flaws in banks incentives	Australian Financial Review
30 <u>31</u>	2016.01.29	The fight between ANZ and sacked banker Patrick O'Connor is over	Business Insider
31 <u>32</u>	2016.01.30	Sacked Bond Trader Patrick O'Conner drops ANZ Action	The Australian
32 <u>33</u>	2016.02.04	Like a Samwise Gamgee, Alexiou tilts at ANZ	Australian Financial Review
<u>34</u>	<u>2016.02.04</u>	<u>An awkward Friday for Bloomberg buddies of sacked ANZ trader Etienne Alexiou</u>	<u>Australian Financial Review</u>
33 <u>35</u>	2016.02.06	ANZ traders scandal drags in other banks	The Sydney Morning Herald
34 <u>36</u>	2016.02.06	ANZ toxic culture claims	Australian Financial Review
35 <u>37</u>	2016.02.06	Message scandal nails CBA trader	The Australian
36 <u>38</u>	2016.02.06	Sex chats claim a second bank trader	The Australian
37 <u>39</u>	2016.02.11	ASIC boss to banks: Plead Guilty	The Australian
38 <u>40</u>	2016.02.12	ANZs Eddie Listorti steps down from global markets team	The Sydney Morning Herald
39 <u>41</u>	2016.02.16	'I can imagine ANZ and CBA compliance guys reading this chat...'	Daily Mail
40 <u>42</u>	2016.02.22	Key to Baird's success is across the ditch	Australian Financial Review
41 <u>43</u>	2016.04.03	Alpha Culture in bond markets inner circle	Australian Financial Review
42 <u>44</u>	2016.034.04	ANZ rejects ASIC allegations regarding bank trading and bank bill swap rate	ANZ Media Release
43 <u>45</u>	2016.05.03	ASIC Suit over rigging raises bar	The Australian
44 <u>46</u>	2016..05.03	Corporate cop accuses ANZ of rate rigging	The Australian
45 <u>47</u>	2016..05.03	ASIC v ANZ 'Set the rate as high as f..kin possible'	The Australian
46 <u>48</u>	2016.05.03	A case built on corporate chat	The Australian
47 <u>49</u>	2016.03.19	Drugs strippers and toxic culture Australian bank sued for \$30m	Irish Times
48 <u>50</u>	2016.04.15	ANZ reinstates suspended traders	Australian Financial Review
49 <u>51</u>	2016.04.15	ANZ reinstates traders	The Sydney Morning Herald
50 <u>52</u>	2016.04.15	ANZ reinstates four traders following BBSW investigation	The Australian

51 <u>53</u>	2016.04.28	Sex, drugs and unsecured bonds: Behind the next ANZ trader allegations	The Sydney Morning Herald
52 <u>54</u>	2016.05.18	Westpac rates traders roll the dice in the BBSW casino	The Sydney Morning Herald
53 <u>55</u>	2016.05.25	ANZ traders admit BBSW a measure of who has the bigger balls	The Sydney Morning Herald
54 <u>56</u>	2016.07.13	Etienne Alexiou ANZ avoids payout as trader drops \$30m suit	The Australian
55 <u>57</u>	2016.07.13	Sacked trader dropped ANZ lawsuit to protect family	The Sydney Morning Herald
56 <u>58</u>	2016.08.24	Former ANZ trader threatened by bank over rate-rigging scandal - RN - ABC News	ABC News
57 <u>59</u>	2016.12.09	Bill Gates takes trip to cattle country	The Australian
58 <u>60</u>	2016.12.21	Before he was Eddie at ANZ, he was Eduardo at Dresdner Kleinwort	Australian Financial Review
59 <u>61</u>	2017.03.11	Sacked ANZ trader reveals buyers of lush home	The Sydney Morning Herald
60 <u>62</u>	2017.05.29	ANZ's controversial ex-trader starts fund	Australian Financial Review (front page)
61 <u>63</u>	2017.05.30	Rio chief Jean-Sebastien Jacques loses go-to man Ben Mitchell	The Australian
62 <u>64</u>	2017.11.10	Court Approves ANZ and ASIC settlement over bank trading and the Bank Bill Swap Rate	ANZ Media Release
63 <u>65</u>	2017.11.11	Sorry if this offends you	Australian Financial Review
64 <u>66</u>	2018.03.08	ASIC sheds more light on Commonwealth Banks alleged rate-rigging	ABC News
65 <u>67</u>	2018.07.21	At fault ANZ Bank apologises for questioning in sexual harassment	The Guardian
66 <u>68</u>	2018.12.14	Documents reveal knowledge of ANZ rate - Rigging programme went right to the top	ABC News
67 <u>69</u>	2019.07.17	Slaughter' house: the scandal inside ANZ	ABC News