

Form 59  
Rule 29.02(1)

## Affidavit

No. NSD719 of 2020

Federal Court of Australia  
District Registry: NSW  
Division: General

**Etienne Alexiou**

Applicant

**Australia and New Zealand Banking Group Limited (ACN 005 357 522)**

Respondent

Affidavit of: **Andrew William Géczy**

Address:

Occupation: Chief Executive Officer, Heylo

Date: 16 November 2023

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I, Andrew William Géczy, of [REDACTED]

[REDACTED], say on oath:

1. I was employed by the Respondent, Australia and New Zealand Banking Group Limited (**ANZ**), from September 2013 until 2016.
2. I am currently based in London. I am the Chief Executive Officer of Heylo, one of the United Kingdom's leading shared ownership providers.
3. I make this affidavit from my own knowledge, save where otherwise indicated. Where I depose to matters on the basis of information provided to me by other persons, I believe that information to be true.
4. I have been shown parts of the redacted affidavit of the Applicant (**Etienne**) affirmed on 21 December 2022 (the **Applicant's Affidavit**). In this affidavit, I refer to and respond to a number of those parts of the Applicant's Affidavit. Where I do not respond to a part of the Applicant's Affidavit, it should not be construed as an acceptance or admission of the matters alleged in that part.
5. By making this affidavit, I do not intend to and have no instructions to waive privilege in any communication, or record of communication, that is the subject of privilege. Nothing in this affidavit ought to be construed as involving a waiver of privilege. To the extent that anything may be construed as a waiver of privilege, I withdraw and do not rely on that part of the affidavit.

#### **Employment history with ANZ**

6. In September 2013, I commenced employment with ANZ in Melbourne in the role of Chief Executive Officer (**CEO**), International and Institutional Banking. In this role, I was responsible for, and oversaw the International and Institutional Banking division of ANZ.
7. I ceased employment with ANZ on 31 January 2016.
8. I was not directly involved in managing or supervising Etienne, as he did not directly report to me. As Etienne was a senior employee in the International and Institutional Banking division, I knew him and interacted with him on a number of occasions during his employment with ANZ.



### The ASIC and ANZ BBSW Investigations

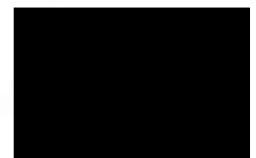
9. In or around October or November 2013, the Australian Securities and Investments Commission (**ASIC**) commenced an investigation in relation to ANZ's participation in the Bank Bill Swap Rate (**BBSW**) rate setting process (the **ASIC BBSW Investigation**). As a result of the ASIC BBSW Investigation, ANZ launched its own investigation into the matters that were the subject of the ASIC BBSW Investigation (the **ANZ BBSW Investigation**).
10. I was a member of an oversight group of a project titled "Project Arrow" given my role as CEO of the International and Institutional Banking division. I occasionally attended meetings of the oversight group and was also regularly kept informed of developments in the ASIC BBSW Investigation and the ANZ BBSW Investigation. However, I was not closely involved in preparing ANZ's response to the ASIC BBSW Investigation or in carrying out the ANZ BBSW Investigation.
11. I was responsible for making certain decisions in the context of the ASIC BBSW Investigation and the ANZ BBSW Investigation, including the decision to stand down Etienne and others from their employment, and award remuneration outcomes to Etienne and others on a provisional basis only, as I describe below. I consulted with other individuals within ANZ and notified them of my proposed course of action when making these decisions, but they did not make either decision or participate in the decision-making.

### Development of a risk based approach to the ASIC BBSW Investigation

#### Decision to award the 2014 remuneration outcome on a provisional basis

12. In November 2014, ANZ was due to communicate the outcome of the performance and remuneration review for the performance year from 1 October 2013 until 30 September 2014 to employees. As the ASIC BBSW Investigation and the ANZ BBSW Investigation were still in the early stages and the outcome of each was unknown at that time, as head of the business, I had to consider whether the investigations should impact the remuneration of any employees who were potentially relevant to the subject matter of those investigations.
13. This was not a pre-judgement of the outcome of either investigation or the culpability of individuals. Rather, it was a risk management process. As a result, the independent Risk function designed the process.
14. In taking a risk based approach to identifying the relevant employees, Shayne Collins, Group General Manager, Markets Risk, designed a set of criteria involving a "traffic light" system consisting of "Red", "Amber" and "Green" categories. Shayne Collins also

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

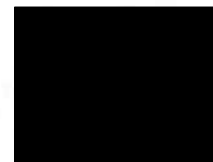


proposed the corresponding remuneration outcomes for employees in each of those categories.

15. In early-November 2014, I attended a meeting with Shayne Collins and other stakeholders including from the Legal and Human Resources teams (although I do not now recall who) to discuss the initial categorisation of employees and the proposed remuneration outcomes.
16. Following this meeting, Shayne Collins updated the "traffic light" analysis. I reviewed and approved the final categorisation of employees and the remuneration outcomes for each category. I do not recall the date on which I made the decision, but it was shortly after attending the meeting in early-November 2014 referred to in paragraph 15 above.
17. With respect to Etienne, I decided that his circumstances meant that he should be in the "Red" category based on his management position and responsibilities, the fact he had been interviewed by ASIC, and ANZ's review of his communications as analysed by Shayne Collins and reported to me.
18. For employees who were in the "Red" category with the highest potential relevance, I decided that the appropriate remuneration outcome was that their salary increases and incentives for the performance year ending 30 September 2014 would be provisionally awarded only and remain subject to the outcome of the ASIC BBSW Investigation and the ANZ BBSW Investigation.
19. The remuneration outcome for Etienne as a result of my decision to categorise him as "Red" was that his salary increase and incentive for the performance year (in the amount of \$5,000,000 (gross) under the 2014 Total Incentives Performance Plan (the **2014 TIPP Grant**)) was to be awarded on a provisional basis only. This was the remuneration outcome in respect of all Global Markets employees who were categorised as "Red" and was not specific to Etienne.

#### Decision to stand down Etienne

20. While the genesis of the "traffic light" system related to the remuneration outcomes for the performance year ending 30 September 2014, I also used the categorisation to assist me to make decisions regarding other employment impacts for the impacted employees.
21. At some time shortly after the meeting outlined above in November 2014, I decided that any Global Markets employees categorised as "Red" would also be stood down from their employment, and that this was an appropriate decision in relation to employees who met the criteria for this category (the **Stand Down Decision**). For the reasons I describe below, this was an action that I had been considering since the early stages of



the ASIC BBSW Investigation. As Etienne (along with six other employees) fell into the "Red" category, I decided to stand down Etienne.

22. In making the Stand Down Decision, I was not making any determination about whether those employees were going to be, or likely to be, culpable of any wrongdoing following the ASIC BBSW Investigation and the ANZ BBSW Investigation. Rather, I made the decision as a risk management response which, in my mind, sought to balance the risk to the organisation (operational, financial and reputational) associated with the investigations and the relevant employees' involvement in those investigations and the interests of the employees. By this, I mean that my decision was based on the following considerations which I believed needed to be accommodated and balanced:
  - (a) working as a trader potentially involves putting a significant amount of the Bank's capital at risk and is a difficult role, the performance of which places traders under a considerable degree of pressure. Traders in the Global Markets business of ANZ, which at that time included Etienne, made decisions that impacted the capital position of the bank, placed millions of dollars at risk on a day to day basis and could have consequences for ANZ's shareholders. I was concerned that the ASIC BBSW Investigation and the ANZ BBSW Investigation would weigh on the individuals involved and adversely affect their focus and judgement when performing the duties of their position. I considered that the temporary exclusion of those employees from the workplace was an appropriate response to manage the increased risk that I perceived could arise from those traders continuing to perform those roles while under the increased pressure associated with the investigations; and
  - (b) I wanted to give Etienne and the other "Red" employees in Global Markets the opportunity to focus on providing their response to the investigations, while continuing to receive ANZ's support, including payment of their full salary.
23. As stated above, Etienne was not the only person who I decided should be stood down. There were other employees from the Global Markets business unit who were classified as "Red" and whom I considered were in a similar position to Etienne.
24. In making the Stand Down Decision, I drew on my experience while employed at a major bank in London, where I was responsible for managing the bank's response to an external investigation into the manipulation of the BBSW equivalent, the London Inter-Bank Offered Rate ("LIBOR"). In that investigation, initially only one employee was identified and stood down in a similar manner. However, the scope of the investigation later expanded to include additional employees, all of whom were stood down from their employment while the investigation was carried out.



25. The Stand Down Decision was a difficult one to make and one which weighed heavily on me. I recognised that the Stand Down Decision required me to weigh different risks to ANZ including loss of revenue and loss of employees. However, I considered that there was a business risk to ANZ whichever decision was made, because traders would either be stood down and unable to perform their role for the bank, or they would be at work and potentially distracted when performing their role.

#### Communication of my decisions

26. After making the decision to award the 2014 TIPP Grant on a provisional basis only and the Stand Down Decision, I wanted to ensure that senior leaders were available to communicate the decision and explain ANZ's reasons for making the decision. Richard Huston, Co-Head of Europe, Middle East & America and Co-Head of Fixed Income, Currency, Commodities, was Etienne's line manager at the time and so was responsible for informing Etienne about the decision to award the 2014 TIPP Grant on a provisional basis only and the Stand Down Decision.
27. After I had made the Stand Down Decision, I spoke with Steve Bellotti, Managing Director, Global Markets and Loans, and Eddie Listorti, Global Co-Head of Fixed Income, Currency and Commodities, Foreign Exchange, about the business impact of my decision. I took this step because the Stand Down Decision would mean that a number of senior and experienced employees in the Global Markets business would be unavailable to perform their roles. I wanted to ensure that Steve Bellotti and Eddie Listorti, as senior managers in the Global Markets business, were aware of the decision and to consult with them about whether ANZ needed to take any other actions due to the impact of the Stand Down Decision, such as decreasing our risk positions and going "off risk" by engaging in lower risk trades.

#### **Issue of the media release**

28. On 19 November 2014, after the Stand Down Decision was communicated to impacted employees, including Etienne, ANZ issued a media release announcing that seven traders had been stood down from their employment (the **Media Release**). The Media Release did not name Etienne or any other employee impacted by the Stand Down Decision. Now produced, shown to me and marked 'AWG-1' is a copy of the ANZ media release issued on 19 November 2014.
29. As the CEO of the International and Institutional Banking division, I was required to give my approval before the Media Release was issued. Paul Edwards, Group General Manager Corporate Communications, provided me and a number of other stakeholders with the Media Release which I approved for publication.

CB 2965  
ALEX.001.001.0600

30. I approved the issue of the Media Release because I considered it was important for ANZ to proactively communicate the Stand Down Decision to the market and the reasons for the decision. The objective was to confirm publicly that ANZ had made this decision to allow the ASIC BBSW Investigation and the ANZ BBSW Investigation to progress to their conclusion. Had the Media Release not been issued, there was the potential that external parties would speculate and form their own incorrect conclusions as to why the seven traders had been stood down, including that those traders had engaged in improper or illegal conduct or that ANZ had formed the view that those traders had engaged in such conduct. I was especially conscious of this risk because the Australian market was made up of a much smaller community of traders than comparable overseas markets, meaning it was likely that external parties would learn of the fact that seven traders had been stood down through informal channels. After approving the issue of the Media Release, I wrote to staff in the International and Institutional Banking division to inform them of the Stand Down Decision so they could hear about the development from me in the first instance (exhibited to the Applicant's Affidavit at pages 1231 to 1233).

CB 2974  
ALEX.001.001.0604

**Reasons for my decisions to award the 2014 TIPP Grant on a provisional basis, stand down Etienne and issue the Media Release**

31. I made the decision to award the 2014 TIPP Grant on a provisional basis only, the Stand Down Decision and the decision to issue the Media Release solely for the reasons I describe above. I did not target or single out Etienne in deciding to stand him down from his employment, provisionally award the 2014 TIPP Grant or issue the Media Release. As I describe above, Etienne was one of a number of impacted employees who were subject to the same treatment by ANZ.
32. There was no other reason for which I made the decision to award the 2014 TIPP Grant on a provisional basis only, the Stand Down Decision or the decision to issue the Media Release. Specifically, I deny that I made the decision to award the 2014 TIPP Grant on a provisional basis, the Stand Down Decision or the decision to issue the Media Release because of complaints and disclosures allegedly made by Etienne during his employment, including:
- (a) the October 2011 Complaint;
  - (b) the February 2013 Complaint;
  - (c) the 17 July 2014 Complaint;
  - (d) the 18 July 2014 Complaint;
  - (e) the October 2014 Complaint;


- (f) the February 2015 Complaint;
- (g) the First ASIC Disclosure;
- (h) the Second ASIC Disclosure; or
- (i) any other complaint or disclosure allegedly made by Etienne during the employment, including a complaint or disclosure allegedly made in December 2014,

as those terms are defined in the Second Further Amended Statement of Claim. My knowledge of these alleged complaints and disclosures at the time I made these decisions is described below.

#### **Termination of Etienne's employment**

33. At some point while Etienne and the other employees were stood down, I was informed by Mark Evans, Chief Compliance Officer, that a disciplinary process had been commenced in relation to Etienne following a review of his Bloomberg chats and emails for potential breaches of the ANZ Code of Conduct and Ethics (the **Code of Conduct**) (the **Code of Conduct Review**) and that Mark Evans would be leading this process (the **Disciplinary Process**). Mark Evans notified me of developments in the Disciplinary Process from time to time, but I did not participate in the Disciplinary Process. I was aware, based on my discussions with Mark Evans, that several other employees were the subject of an equivalent disciplinary process to the Disciplinary Process relating to Etienne's conduct.
34. At some point after Mark Evans informed me about the Disciplinary Process, but prior to the termination of Etienne's employment, I was informed by Mark Evans that he had determined that Etienne's conduct constituted unacceptable behaviour in breach of the Code of Conduct, the ANZ Values and the ANZ Use of Systems, Equipment and Information Policy and that, having regard to the seriousness of these breaches, the termination of Etienne's employment was the only appropriate outcome. Mark Evans informed me of these matters during a meeting in my office, although I cannot recall the date.
35. I did not make the decision to terminate Etienne's employment, nor did I participate in the decision-making process.

#### **The culture at ANZ**

36. At paragraph 80 of the Applicant's Affidavit, Etienne alleges that, based on his observation of the behaviour of other employees and managers in the Global Markets business during his employment with ANZ, he formed the view that it was acceptable to use coarse or lewd language in the workplace.
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37. I disagree that the use of coarse or lewd language and inappropriate conduct was the standard of behaviour accepted by ANZ or that it was in any way condoned, authorised or approved by ANZ. Like any organisation with a large workforce, there may have been instances of misbehaviour from time to time. However, Etienne's allegations are not consistent with, or reflective of, my experiences while at ANZ. I did not observe employees swearing regularly, drinking to excess, or taking drugs in the workplace or at work events.
38. In the Applicant's Affidavit, Etienne alleges that other senior managers engaged in unacceptable behaviour, such as drinking to excess. I did not observe this behaviour from the senior managers who reported to me.
39. The importance of appropriate conduct and employee behaviour within ANZ was reinforced through a program of work which was commenced around the time that I started my role at ANZ in September 2013, with the support of PwC, to analyse the existing risk culture and improve it. While this program of work was not specifically focused on individual behaviour and compliance with the Code of Conduct and ANZ policies, the objective was to improve the standard of individual conduct and the transparency between leaders and employees. Employees in the Global Markets business unit, including Etienne, attended sessions where leaders such as Eddie Listorti and Richard Huston, as well as external consultants from PwC, gave examples of behaviour that was unacceptable and that needed to be called out. The cultural review also involved workshops with groups of ANZ employees, which Etienne attended. I was committed to this project.
40. If I saw bad behaviour, it was my responsibility as a leader of the organisation to call it out and take action. I never condoned an employee's breach of the Code of Conduct, ANZ Values or ANZ policies. The management team that I led did not turn a blind eye. When misconduct was discovered, we acted on it.

#### **Clawback and forfeiture of Etienne's deferred equity**

41. As a result of Mark Evans' findings in the Disciplinary Process, he recommended to the Clawback Review Group (the **CRG**) that Etienne's deferred equity be adjusted downwards to zero. This recommendation was made on the basis that the CRG had authority delegated to it by the ANZ Board to clawback an employee's deferred equity if the CRG became aware of facts and circumstances that, had they been known at the time, would have meant the employee would not have been awarded the equity.
42. As the CEO of the International and Institutional Banking division of ANZ, before Mark Evans' recommendation could be taken to the CRG for decision, I was required to consider the recommendation and whether I supported it.

43. On 27 August 2015, Mark Evans sent me an email attaching a memorandum entitled "Etienne Alexiou – Proposed Clawback of Deferred Equity", dated 27 August 2015 which provided an overview of the Code of Conduct Review and the Disciplinary Process. Mark Evans also provided me with a sample of Etienne's communications containing offensive language and other inappropriate content. I read the memorandum and the sample communications. Now produced, shown to me and marked 'AWG-2' is a copy of the email from Mark Evans to me dated 27 August 2015 and attachments.
44. Mark Evans' memorandum indicated that he proposed to recommend to the CRG that the following tranches of Etienne's equity be clawed back:
- (a) a tranche of shares of a short term incentive awarded to Etienne as an outcome of Etienne's performance and remuneration review for the performance year from 1 October 2011 until 30 September 2012;
  - (b) a tranche of shares of a long-term incentive awarded to Etienne as an outcome of the performance year from 1 October 2011 until 30 September 2012; and
  - (c) two tranches of shares of a Total Incentives Performance Plan Grant incentive awarded to Etienne as an outcome of Etienne's performance and remuneration review for the performance year from 1 October 2012 until 30 September 2013 (the **2013 TIPP Grant**).
45. Mark Evans' memorandum also indicated that as a result of the termination of Etienne's employment he would automatically forfeit a further tranche of shares of the 2013 TIPP Grant.
46. After considering the materials provided to me, and only those materials, I supported the clawback of Etienne's deferred equity. My agreement with and support of that recommendation was not because Etienne made alleged complaints and disclosures to ANZ and ASIC during his employment (including the alleged complaints and disclosures listed in paragraph 32 above). I considered the clawback of Etienne's deferred equity to be an appropriate consequence for the conduct that he had been found to have engaged in and I made my decision to support Mark Evans' recommendation on that basis alone.
47. On 28 August 2015, I sent Mark Evans an email confirming that I agreed with his recommendation. Now produced, shown to me and marked 'AWG-3' is a copy of my email to Mark Evans dated 28 August 2015.

CB 4051  
ZNA.001.001.1968

CB 4094  
ZNA.001.001.2010

#### **Withholding the 2014 TIPP Grant**

48. As a consequence of the decision to terminate Etienne's employment, a decision had to be made regarding the 2014 TIPP Grant of \$5,000,000 (gross) that had been

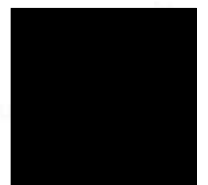


provisionally awarded to Etienne as an outcome of his performance and remuneration review for the performance year from 1 October 2013 until 30 September 2014.

49. In light of the findings of the Disciplinary Process, Mark Evans also recommended that ANZ not grant the 2014 TIPP Grant. I was informed of Mark Evans' recommendation via an email from Margot Dargan, Group General Manager, Executive Remuneration in the Group Human Resources team, on 28 August 2015. In that email, Margot Dargan informed me that, as the CEO of the International and Institutional Banking division at ANZ, the decision as to whether to award an incentive was mine because remuneration outcomes needed to be approved by the head of the division before they could be paid to employees. Now produced, shown to me and marked 'AWG-4' is a copy of the email from Margot Dargan to me dated 28 August 2015.
50. I considered Mark Evans' recommendation and the materials provided to me previously relating to the clawback of Etienne's deferred equity. I agreed with the recommendation because I considered that the withholding of the 2014 TIPP Grant was also an appropriate consequence for the conduct that Etienne had been found to have engaged in. I made my decision that the 2014 TIPP Grant should be withheld from Etienne on that basis alone, and not because Etienne made alleged complaints and disclosures to ANZ and ASIC during his employment (including the alleged complaints and disclosures listed in paragraph 32 above). I responded to Margot Dargan's email on 28 August 2015 to confirm my decision that the 2014 TIPP Grant was to be withheld. In my email to Margot Dargan, I said "I am supportive of the clawback". In retrospect, I should not have used the word "clawback" because the 2014 TIPP Grant had not yet been awarded. Now produced, shown to me and marked 'AWG-5' is a copy of my email to Margot Dargan dated 28 August 2015.
51. I did not target or single out Etienne when I decided to apply an adverse remuneration outcome. I do not remember making the decision to withhold the incentives of other Global Markets employees in relation to whom findings were made in the Code of Conduct Review, but as I have stated above, it was my responsibility as the CEO of the International and Institutional Banking division (which included the Global Markets business) to make any such decisions.
52. On 3 September 2015, I sent Etienne a letter by email which:
- (a) confirmed ANZ's decision to exercise its discretion to reduce the tranches of shares in paragraph 44 above by 100% to zero;
  - (b) confirmed the automatic forfeiture of the tranche of shares in paragraph 45 above; and
  - (c) confirmed ANZ's decision not to award the 2014 TIPP Grant.

CB 4086  
ZNA.001.001.2002

CB 4093  
ZNA.001.001.2009



53. Now produced, shown to me and marked 'AWG-6' is a copy of my letter to Etienne dated 3 September 2015.

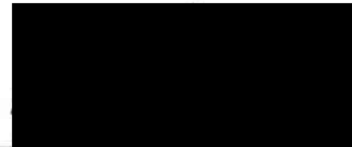
CB 4141  
ALEX.001.001.1237

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

54. I did not have any knowledge of the alleged complaints and protected disclosures referred to in the Second Further Amended Statement of Claim.
55. At some point during my employment with ANZ (which commenced in September 2013), I became aware that, during his employment, Etienne raised the issue of the relationship between the Balance Sheet Trading division and the Group Treasury division of ANZ and the segregation of the functions performed by these divisions. This is a "border crossing" issue that is, based on my working experience, a common issue that arises in large banks. I am now aware as a result of my participation in this proceeding that the relationship between the Balance Sheet Trading division and the Group Treasury division of ANZ was allegedly raised by Etienne with Rob O'Callaghan in October 2011. The fact that Etienne had expressed a view or a concern about the structure of the bank was not a reason why I made my decisions in relation to his employment, as described in this affidavit.
56. I was also aware that ASIC had interviewed a number of ANZ employees, including Etienne, as part of the ASIC BBSW Investigation. However, I did not know the content of Etienne's discussions with ASIC, including that he allegedly made the First ASIC Disclosure and the Second ASIC Disclosure. The fact that Etienne had met with or co-operated with ASIC was not a reason why I made my decisions in relation to his employment, as described in this affidavit.
57. I did not make the alleged decision to commence the Disciplinary Process or the Termination decision as those terms are defined in the Second Further Amended Statement of Claim. My involvement in the alleged Standing Down decision; the decision to issue the Press Release; the Forfeitures decision; and the Withholding of the 2014 Bonus decision again as those terms are defined in the Second Further Amended Statement of Claim is as outlined in this affidavit.
58. I refer to the allegation at paragraph 194 of the Applicant's Affidavit that, in January or February 2014, I invited Etienne to host the next Extended Leadership Team (ELT) conference in Singapore. I deny that I extended such an invitation to Etienne. I was the host of that ELT conference. While Etienne attended the conference and there were opportunities for employees of Etienne's seniority to chair a breakout room or present on a topic on stage, he was not the formal host of the ELT conference.

59. I refer to the allegation at paragraph 208 of the Applicant's Affidavit that Etienne inferred from a conversation with Eddie Listorti that I had read parts of Etienne's Bloomberg chat history by 17 July 2014. I cannot recall whether I had read any parts of Etienne's Bloomberg chat history by 17 July 2014.

Sworn by the deponent  
at London  
in England, United Kingdom  
on 16 November 2023  
Before me:



Signature of deponent



Signature of witness

Name of witness: PHILIPPA ANNE SLANEY

Qualification of witness: NOTARY PUBLIC (ENGLAND & WALES)

Notary Public, London, England  
(Philippa Anne Slaney)



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