

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: **Federico (Fred) Massimiliano Pucci**

Address: 

Occupation: Lawyer and Risk Advisor

Date: 16 November 2023

Contents

Document number	Details	Paragraph	Page
1	Affidavit of Federico (Fred) Massimiliano Pucci sworn on 16 November 2023	1 – 53	2
2	Annexure 'FMP-1', being a copy of the Consequence Management Framework version 20121211	11	13
3	Annexure 'FMP-2', being a copy of my email to all Global Markets staff dated 3 February 2012	12	21
4	Annexure 'FMP-3', being a copy of the consequence management file note dated 16 December 2013	15	23
5	Annexure 'FMP-4', being a copy of the consequence management file note dated 15 January 2014	20	25

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Document number	Details	Paragraph	Page
6	Annexure 'FMP-5', being a copy of my email chain with David McGowan dated 18 July 2014 to 21 July 2014	29	27
7	Annexure 'FMP-6', being a copy of my email chain with Etienne dated 18 July 2014 to 29 July 2014	33	31

I, Federico (Fred) Massimiliano Pucci, of [REDACTED], Lawyer and Risk Advisor, say on oath:

1. I was employed by the Respondent, Australia and New Zealand Banking Group Limited (ANZ), from December 2010 until September 2017.
2. I am currently employed by Fantom Foundation in the position of General Counsel.
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 respond to some of the matters raised in those parts. I do not respond to every matter raised in the Applicant's Affidavit. The absence of any response to a matter raised in the Applicant's Affidavit should not be understood as an acceptance or admission of that matter.
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 December 2010, I commenced employment with ANZ in the role of Global Head of Business Risk Management.
7. From September 2012, I had the dual role of Head of Compliance – Global Markets and Head of Compliance – International and Institutional Banking. My roles were classified at Group 2 within ANZ's classification structure. I held these roles during the period the events described in this affidavit occurred.
8. In those roles, I was responsible for managing the compliance function for ANZ's Markets business (formerly referred to as "Global Markets"); managing the Compliance teams for ANZ's Institutional business outside of Australia and New Zealand; designing and advising on surveillance systems; managing regulatory relationships; and leading

[REDACTED]

[REDACTED]

the implementation of regulatory reform and process changes for ANZ's Markets business, among other duties.

9. In those roles, I jointly reported to Shayne Collins, Group General Manager, Markets Risk, and Freya Hone, General Counsel and General Manager Compliance, International and Institutional Banking. I later jointly reported to Shayne Collins and Mark Evans, Chief Compliance Officer. Shayne Collins in turn reported to Nigel Williams, Chief Risk Officer.

The compliance function within ANZ

10. The dual Head of Compliance roles were part of the "second line" compliance function within ANZ. The "second line" compliance function was external to individual business units within ANZ and was responsible for monitoring compliance with internal standards and providing guidance and oversight to the business.
11. The Global Markets business had an addendum to the Global Performance Improvement and Unacceptable Behaviour Policy called the "Consequence Management Framework". The Consequence Management Framework set out the process for determining consequences for risk and compliance breaches by employees in the Global Markets business unit. The process was jointly owned by the business and the Compliance team. The Consequence Management Framework provided, among other things, that any matter that was escalated under it had to be first reviewed by the line manager or business manager for the relevant employee to whom the matter pertained alongside the Compliance team. Now produced, shown to me and marked, 'FMP-1' is a copy of the Consequence Management Framework version 20121211.
12. The Consequence Management Framework was communicated to employees in Global Markets. For example, on 3 February 2012, I sent an email to all Global Markets staff in relation to breaches of ANZ's password-sharing policy. My email included a statement that ANZ had zero tolerance for breaches of its Code of Conduct and Ethics (the **Code of Conduct**) and the ANZ Use of Systems, Equipment and Information Policy (the **Use of Systems Policy**). My email also included a statement that Global Markets staff found to be in breach of these policies would be subject to the consequence management policy, which was a reference to the Consequence Management Framework. Now produced, shown to me and marked 'FMP-2' is a copy of my email to all Global Markets staff dated 3 February 2012.

CB 1974
ZNA.001.001.0834

CB 1698
ZNA.001.001.0641

2014 IIB G40 event

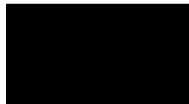
13. In paragraph 111 of the Applicant's Affidavit, Etienne alleges that following the welcome dinner for the International and Institutional Banking Group of 40 event (the **IIB G40 event**) in 2014, there was an exchange between him and another ANZ employee where



that employee is alleged to have sworn at Etienne. Etienne says that I was present at this dinner and witnessed the incident. While I was a member of the IIB G40 program, I do not recall attending the dinner on this particular occasion in 2014 or hearing another employee swear at Etienne.

Disciplinary investigation in December 2013

14. On 16 December 2013, I attended a telephone conference with Etienne and John Chase, Head of Operational Risk & Assurance, regarding the alleged disclosure of information to an external broker by a now former ANZ employee (the **Former Employee**) during a telephone discussion. The Australian Securities and Investments Commission (**ASIC**) notified ANZ of this matter and requested an explanation from ANZ by way of a notice issued under section 912C of the *Australian Securities and Investments Commission Act 2001* (Cth). It was not unusual for ASIC to request such explanations from ANZ from time to time. The request from ASIC prompted an internal investigation which I was involved in. I attended this meeting because my role was to investigate any matters concerning ANZ's compliance with its regulatory obligations.
15. The focus of the discussion during the telephone conference was whether the specific communication made by the Former Employee amounted to a breach of the Code of Conduct and the Global Markets Business Instruction Manual due to the inappropriate sharing of information. During this conference, Etienne, John Chase and I discussed the conduct of the Former Employee and it was agreed that the Former Employee should receive a written warning. Now produced, shown to me and marked 'FMP-3' is a copy of the consequence management file note dated 16 December 2013, which has been redacted to mask the identity of the Former Employee and the external party, who are not party to these proceedings, in order to maintain their privacy. CB 2503
ZNA.001.001.1253
16. After the telephone conference, I contacted Shayne Collins to notify him of the proposed disciplinary outcome and he agreed that it was appropriate to provide a written warning. As a result, Etienne provided the Former Employee with a written warning on 19 December 2013 for breaching the Code of Conduct and the Business Instruction Manual. A copy of the written warning is exhibited to the Applicant's Affidavit at pages 1013 – 1014. CB 2504
ALEX.001.001.0356
17. I refer to paragraph 189 of the Applicant's Affidavit. While I do not now remember the precise words spoken during the telephone call, I do not believe that Etienne specifically referred to section 1041E or any other provision of the *Corporations Act 2001* (Cth) (the **Corporations Act**). I deny saying during the telephone call, "we need to show [the Former Employee] support because he is in BBSW as well".



18. I refer to paragraph 190 of the Applicant's Affidavit. I did not raise the language used by the Former Employee as a topic of discussion during this meeting. The purpose of the meeting was as I describe above.

Disciplinary investigation in January 2014

19. The disciplinary investigation in December 2013 was not the only investigation I was involved in with Etienne, as the Head of Compliance for the Global Markets business. On 15 January 2014, I was involved in a separate disciplinary investigation into the conduct of the Former Employee relating to a comment he had made in a chat with a trader at another bank. The comment made by the Former Employee, as recorded in a chat dated 9 December 2013, was, "I dont [sic] want you blokes smashing the rate set on me".
20. I attended a meeting with Etienne, John Chase and Kathy Tingate, a HR Business Partner supporting Global Markets, to discuss whether the comment had, or was likely to have any economic and reputational impacts for ANZ and the appropriate disciplinary outcome. The consequence management file note records that Etienne identified and analysed the underlying swap transaction executed by the Former Employee as referred to in the chat, and concluded that the comment was a "careless reference" based on the Former Employee's experience and did not correlate with any actual knowledge, or any feature of the underlying transaction. It was decided that no further action was to occur beyond a management conversation between Etienne and the Former Employee during which he was to be reminded of his duty to be careful in voice and electronic communications. It was also agreed that a separate management discussion between a more senior member of the risk function and the Former Employee would occur. Now produced, shown to me and marked 'FMP-4' is a copy of the consequence management file note dated 15 January 2014, which has been redacted to mask the identity of the Former Employee, who is not party to these proceedings, in order to maintain their privacy.

CB 2519
ZNA.001.001.1256

ASIC BBSW Investigation and ANZ BBSW Investigation

21. From around late 2013, ANZ was responding to ASIC's investigation into the Bank Bill Swap Rate (BBSW) rate setting process (the **ASIC BBSW Investigation**). ANZ also commenced its own investigation into these matters (the **ANZ BBSW Investigation**). I was a member of the steering committee of a project established in connection with these investigations.

Alleged 18 July 2014 Complaint

22. On 18 July 2014, I received an email from Etienne in relation to a matter he had allegedly raised in 2011 (the **18 July 2014 Email**). I understand from the Second



Further Amended Statement of Claim that Etienne refers to this as the 18 July 2014 Complaint. The 18 July 2014 Email said:

Fred,

I would like to see what was recorded by group investigations when I disclosed a concern I had in BBSW back in late 2011.

I was interviewed by someone from that group (ex cop from Melb) and was subsequently told by Rob O'c that my concern had been looked at and was 'all fine'.

I am just wanting to check that this is the case, happy to discuss.

23. I understood from this email that when Etienne referred to "Rob O'c", Etienne was referring to Rob O'Callaghan, Global Head of Fixed Income, who was his former manager. I responded to Etienne on the same day and said that I would look into it. A copy of this email chain is annexed at pages 1020 – 1021 of the Applicant's Affidavit.
24. Prior to receiving the 18 July 2014 Email, I saw Etienne in the Sydney office. We had a discussion and he said words to the effect of I think I made a complaint to Rob and I met a guy with Rob who said they would look into it. I asked Etienne a number of questions about why he had spoken with Rob O'Callaghan in an attempt to identify that person. Although I do not now recall Etienne's precise response, I recall that he provided a physical description of a male employee, and that he said words to the effect that he worked in investigations at ANZ. The conversation continued in words to the following effect:

Me: Are you referring to David McGowan? Big, tall, bald bloke who looks like a cop?

Etienne: Yeah, maybe.

25. At the time of this conversation, David McGowan was the Head of Group Investigations at ANZ.
26. At the time of this conversation, if concerns were raised by employees within the bank relating to ANZ's compliance with the general law or the Corporations Act, those matters were escalated to the first and second line functions, and prior to 2012, to the Markets Risk team. In 2014, John Chase was the first line contact and I was the second line contact.
27. After receiving the 18 July 2014 Email, I contacted David McGowan. I asked him, in words to the effect, whether he had a record or recollection of meeting with Etienne, and to look at his diary. David McGowan told me, in words to the effect, that he did not recall having met Etienne. I also told him that Etienne had said that he was interviewed by an "ex-cop" when he first made the complaint to Rob O'Callaghan, in response to which David McGowan replied, in words to the effect, that he would never tell anyone that he

[27] underlined words: Admitted subject to a limitation under EA, 136 as evidence only of Mr Pucci's recollection of the words spoken by Mr McGowan, not the truth of the alleged representation made by Mr McGowan

CB 2565
ALEX.001.001.0381

was an "ex-cop". I had told Etienne that David McGowan was a former policeman during my discussion with Etienne prior to receiving the 18 July 2014 Email.

28. David McGowan also told me, in words to the effect, that he would make further enquiries to locate any record of the matter that Etienne had allegedly raised with Rob O'Callaghan in 2011. David McGowan subsequently sent me the following two emails:

[28] underlined words: Admitted subject to a limitation under EA, 136 as evidence only of Mr Pucci's recollection of the words spoken by Mr McGowan, not the truth of the alleged representation made by Mr McGowan

Friday, 18 July 2014 12:40 PM

All, I don't have a recollection of any meeting with this person or with Rob O'Callaghan – there is no record in the WPP database, no record on BOLD (GI use this as a case management tool), no record of any calendar bookings in my outlook (note that I was not in Sydney at all in late 2011), no email from my own archives that alludes to this matter, nor any reference in my handwritten day books.

...

Monday, 21 July 2014 3:00PM

All, a search of email archives based on relevant key words; 'complaint, whistleblowing, rate set, slaughter' was run over the weekend – this returned a total of 34 emails but only 2 exchanges between EA and RO'C – all emails appear business related and are attached for reference – none make reference to a meeting over BBSW concerns.

I also checked with Freya, who I reported to in 2011, but she has no recollection of any such meeting being called – had I been called into a meeting like this Freya would have certainly been advised.

If there was a meeting it did not involve anyone from Group Investigations.

...

29. Now produced, shown to me and marked 'FMP-5' is a copy of my email chain with David McGowan dated 18 July 2014 to 21 July 2014.

CB 2567
ZNA.001.001.1289

30. I did not speak with Rob O'Callaghan about whether Etienne had raised this matter with him in October 2011 because, by the date of Etienne's email, Rob O'Callaghan had left ANZ.

31. My enquiries, as described above, uncovered no record that Etienne had raised a concern in or around October 2011 with Rob O'Callaghan, or that David McGowan or anyone else from Group Investigations had met with Etienne in or around October 2011.

32. On 28 July 2014, I sent an email to Etienne in response to the 18 July 2014 email in the following terms:

Etienne, they could not find anything so far. I have you found any record / diary entry that might help? Do you think Rob engaged them directly, or



could he have engaged them via someone else? Do you remember anything else about that meeting in Rob's offices?

33. Etienne responded to the above email to say "[let's] catch up next week when I'm back in the office". I do not recall meeting with Etienne the following week, and he did not raise this matter with me again. Now produced, shown to me and marked 'FMP-6' is a copy of my email chain with Etienne dated 18 July 2014 to 29 July 2014.

CB 2589
ZNA.001.001.1308

Alleged October 2014 Complaint

Meeting with Etienne and John Chase

34. In October 2014, I received a telephone call from Etienne who said words to the effect that he wanted to raise something with me that he had seen on a Bloomberg chat. During this telephone call, Etienne did not say that the chat involved Neil Lynch and an employee in ANZ Group Treasury, or that a comment was made to the effect that the ANZ Rates Trading team were pushing the market ahead of an issuance that night.
35. Whenever an employee requested to escalate a matter such as this to me, my usual practice was to schedule a meeting with them to learn more about the issue, and make further enquiries or commence an investigation depending on what was required in the specific circumstances of the case. It was not unusual for employees to raise matters that they considered warranted further investigation with John Chase and/or me as members of the Compliance team, and this is how I would have expected Etienne to have dealt with the concern allegedly raised with Rob O'Callaghan in 2011.
36. After receiving this call, John Chase and I met with Etienne in a meeting room in the Sydney office of ANZ. Etienne proceeded to describe a Bloomberg chat between a trader in the Balance Sheet Trading Group and an employee from Group Treasury regarding something that a basis swaps trader in the Rates Trading team had said or was doing in connection with a specific trading event. I understood that Etienne was recounting second-hand information he had received from a direct report about a matter that was unrelated to his role.
37. The specific trading event Etienne described was that ANZ was going to market and issuing bonds and to hedge the deal the ~~traders~~ ^{team} ~~from the Balance Sheet Trading Group~~ ^{Group Treasury} were pre-hedging with ANZ's basis swaps traders. The Rates Trading team was part of the Global Markets division and was separate to the Balance Sheet Trading Group.
38. Etienne then said words to the effect that:
- (a) he was concerned that the basis swaps trader was using information that he had learned from the Group Treasury division of ANZ to the disadvantage of Group Treasury;



- (b) the reason why Etienne had this concern was because in the Bloomberg Chat, the Group Treasury employee said to the trader from the Balance Sheet Trading Group "can you tell Sammy to stop pushing basis" ("Sammy" being the basis swaps trader); and
- (c) the statement referred to in sub-paragraph (b) above was a concern to him as it implied that the basis swaps trader was, in pre-hedging activity, moving the basis swap curve to the disadvantage of the Group Treasury division at ANZ. That is because the cost of the swap executed by the basis swaps trader adds to the all in cost of the bond to Group Treasury.

39. I understand from the Second Further Amended Statement of Claim that Etienne refers to this as the October 2014 Complaint.
40. In paragraphs 243 to 245 of the Applicant's Affidavit, Etienne says that, during the meeting, he excused himself and made a telephone call to Luke Davidson, Head of Group Funding. I recall that Etienne made a telephone call during the meeting within my hearing, but he did not announce who he was calling. While Etienne was on the phone, I heard him say words to the effect of, did Sammy know? and then, once he finished the telephone call, telling John Chase and me, "yep, he knew". I understood this to mean that the basis swaps trader knew that Group Treasury was planning an issuance. I do not recall whether I heard Etienne make the statements referred to in paragraph 244 of the Applicant's Affidavit.
41. Based on my initial discussion with Etienne during this meeting, prior to forming a view as to whether the conduct was improper or contrary to ANZ's regulatory obligations, I wanted to understand the timing of each of the interactions, who knew of the bond issuance, what the terms were and when the issuance occurred.
42. In response to paragraph 246 of the Applicant's Affidavit, I deny that I said to Etienne "why is this a problem?" or "well at least your complaint will be recorded this time". While I do not now recall the precise details of our conversation, I recall asking Etienne several probing questions to understand his concerns.

Investigation of the alleged October 2014 Complaint

43. Following the meeting with Etienne, consistent with the Compliance team's normal process when a concern such as this was raised by an employee, I commenced an investigation.
44. As part of the investigation:
- (a) I requested, from the Markets Surveillance team, a copy of the Bloomberg chat that Etienne had referred to between the trader in the Balance Sheet Trading Group and



the employee from Group Treasury, together with other communications between the basis swaps trader and the Group Treasury division and the basis swaps trader's trading activity;

- (b) I had a discussion with the basis swaps trader's line manager at the time, Rakesh Jampala, Head of Linear Rates Trading, to find out what the trading positions were in the book at the time and to obtain pricing data to help evaluate it; and
- (c) I instructed William Cotterell, Global Head – Trade & eComms Surveillance, to analyse the trading positions for me with the support of other members of the surveillance team.

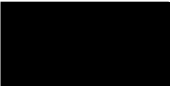

Outcome of the investigation

- 45. Following the investigation, which took approximately three months, I discussed my findings with Shayne Collins in 2015. I do not recall whether I informed Mark Evans about the matter raised by Etienne or the outcome of my investigation. The outcome was that no disciplinary action was warranted, but some improvements could be made to internal controls.
- 46. I also considered whether the communication indicated non-compliance with ANZ's legal and regulatory obligations and obtained legal advice with respect to that issue. I refer to paragraph 5 above, and repeat that I do not intend to waive privilege over that advice.
- 47. I considered Etienne's referral to be helpful and the type of matter that he would be expected to raise with me.
- 48. I did not follow-up with Etienne during my investigation or advise him of the outcome. This was because it was not necessary to consult with Etienne during the investigation as it pertained to the Rates Trading department, and their practices with Group Treasury.

Knowledge of alleged complaints and disclosures made by Etienne and involvement in decisions relating to his employment

- 49. As stated in paragraph 22 above, Etienne notified me on 18 July 2014 that he had raised a concern with Rob O'Callaghan in late 2011, although I did not find any record of this based on the enquiries I made in 2014.



50. Other than my knowledge of this matter and the alleged October 2014 Complaint, referred to in paragraphs 34 to 48 above, prior to my involvement in this proceeding, I was not aware that Etienne had made (if he did) any complaints or protected disclosures. In particular, I was not aware that Etienne made (if he did) the following complaints or disclosures referred to in the Second Further Amended Statement of Claim:
- (a) the February 2013 Complaint;
 - (b) the February 2015 Complaint;
 - (c) the First ASIC Disclosure,
 - (d) the Second ASIC Disclosure; and
 - (e) a complaint or disclosure made by Etienne in December 2014.
51. At paragraph 216 of the Applicant's Affidavit, Etienne claims that Eddie Listorti told him that he had made me aware of the alleged 17 July 2014 Complaint as referred to in the Second Further Amended Statement of Claim on 18 July 2014. I do not recall having a discussion about it at that time. While I recall discussing this complaint with Eddie Listorti some time later than July 2014, I do not recall when that discussion occurred.
52. Apart from the matter to which I refer at paragraph 53 below, I was not involved in, nor did I make the alleged: Standing Down decision; the decision to issue the Press Release; the decision to commence the Disciplinary Investigation; the Termination decision; the Forfeitures decision; or the Withholding of the 2014 Bonus decision as those terms are defined in the Second Further Amended Statement of Claim.
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53. I was informed in around November 2014 that Etienne and six other employees were to be stood down shortly before this decision was publicly announced. I do not now recall who informed me of that decision. I did not have any input into the decision to stand down Etienne or the six other employees from their employment.

Sworn by the deponent
at Tumut
in New South Wales
on 16 November 2023
Before me:

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Signature of deponent

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)
)
Signature of witness

Name of witness: REBECCA ELIZABETH HARTSHORNE

Qualification of witness: SOLICITOR