

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: **Richard John Huston**

Address: [REDACTED]

Occupation: Company Director

Date: 15 November 2023

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Filed on behalf of (name & role of party) Australia and New Zealand Banking Group Limited, the Respondent

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I, Richard John Huston, of [REDACTED],
Company Director, say on oath:

1. I was employed by the Respondent, Australia and New Zealand Banking Group Limited (**ANZ**), from May 2010 until January 2016.
2. I am currently employed by PepTcell Ltd, a pharmaceuticals research and development company based in London.
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 certain parts of the redacted affidavit of the Applicant (**Etienne**) affirmed on 21 December 2022 (the **Applicant's Affidavit**). In this affidavit, I refer and respond to some of those parts of the Applicant's Affidavit. I do not respond to all matters raised in the Applicant's Affidavit. The absence of a response to a matter in the Applicant's Affidavit should not be construed 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 May 2010, I commenced employment with ANZ in Hong Kong in the role of Global Head of FX (Foreign Exchange). In September 2010, the title of this position changed to Global Head of FX, Regional Head of Global Markets, Asia Pacific, Europe and America (**APEA**). In January 2011, the title of this position changed again to Regional Head, APEA, Global Markets.
7. In May 2013, I commenced in the role of Co-Head of Fixed Income.
8. In March 2014, I commenced in the position of Global Head of Fixed Income, Currency and Commodities (**FICC**).
9. In June 2014, I moved to London and began working as the Co-Head of Europe, Middle East & America and Co-Head of FICC. I remained in this position until I ceased employment with ANZ.
10. I was not based in Australia while I was employed by ANZ, but the nature of my roles meant that I attended ANZ's Australian offices frequently, including the Sydney office where Etienne was based.
11. In my role as Co-Head of Europe, Middle East & America and Co-Head of FICC, I was responsible for the Global Balance Sheet Trading business unit in Global Markets in the International and Institutional Banking division of ANZ.
12. I ceased employment with ANZ on 1 January 2016 due to redundancy.

Working relationship with Etienne

13. Prior to March 2013, Rob O'Callaghan, Global Head of Fixed Income, was Etienne's line manager. I became Etienne's line manager in March 2013 when Rob O'Callaghan ceased employment with ANZ.
14. During the period that Etienne reported to me, I spoke with him regularly about his work. As I was based in Hong Kong initially and later London, Etienne was also supervised locally by Steve Bellotti, Managing Director, Global Markets and Loans, to whom I reported.
15. In paragraph 76(d) of the Applicant's Affidavit, Etienne alleges that, on the evening of 4 December 2013, we went to dinner at a steak restaurant in Hong Kong. While I recall meeting with Etienne on or around this date to inform him that ANZ had promoted him to the newly created position of Global Head of Balance Sheet Trading, I ~~do not~~ recall ~~whether~~ I met him in Hong Kong ~~or another location~~. I strongly deny the allegation that, during ~~an alleged~~ dinner in Hong Kong on 4 December 2013, I touched Etienne's hand

and said "you like a bit of meat, don't you?". I reject any insinuation that I was sexually or romantically attracted to Etienne.

16. On 5 December 2013, ANZ announced Etienne's appointment to the role of Global Head of Balance Sheet Trading to all Global Markets staff in an email dated 5 December 2013. Now produced, shown to me and marked 'RJH-1' is a copy of my email to all Global Markets staff dated 5 December 2013.
17. I refer to paragraph 194 of the Applicant's Affidavit and Etienne's allegation that I was upset that, in or around January or February 2014, he was chosen by Andrew Geczy, CEO of the International and Institutional Banking division, to host the Executive Leadership Team conference in Singapore held by ANZ. I remember Etienne being chosen to present part of the conference in Singapore in 2014. I deny that I was upset that he was involved in the conference. Etienne was the head of the Global Markets Balance Sheet business. This was a promotion which I supported and I thought it was appropriate for him to be involved in the conference. Etienne was a subject matter expert on the Balance Sheet business and was therefore in the best position to talk to aspects of the business, which was a major topic of focus during the conference.
18. I refer to paragraph 100 of the Applicant's Affidavit, in which Etienne refers to his alleged performance review discussions with me in 2013 and 2014. In 2013 and 2014, I was not aware that Etienne had sent emails and Bloomberg chats of the type which were identified during ANZ's review of employee communications in early-2015 relating to potential breaches of the ANZ Code of Conduct and Ethics (the **Code of Conduct**).

Knowledge of, and involvement in, the ASIC BBSW Investigation and the ANZ BBSW Investigation

19. In or around late 2013, I was made aware by my line manager, Steve Bellotti, that:
 - (a) the Australian Securities and Investments Commission (**ASIC**) had commenced an investigation into ANZ in relation to ANZ's participation in the Bank Bill Swap Rate (**BBSW**) rate setting process (the **ASIC BBSW Investigation**); and
 - (b) ANZ had launched a concurrent investigation into the matters that were the subject of the ASIC BBSW Investigation (the **ANZ BBSW Investigation**).
20. As a member of the executive team in the Global Markets Group of the International and Institutional Banking division of ANZ, I was kept informed of developments in the ASIC BBSW Investigation and the ANZ BBSW Investigation from time to time. I was not actively involved in either investigation, and did not make any decisions regarding ANZ's response to the ASIC BBSW Investigation or the conduct of the ANZ BBSW Investigation.

Role in the decisions to stand down Etienne and defer his 2014 bonus

21. In 2014, a decision was made to stand down a group of ANZ employees from their employment, including Etienne. I did not make the decision to stand down Etienne or the other employees, but was informed of the decision after it had been made or at least was proposed to be made. I do not now recall who informed me of the decision. My only role in the process was to communicate the decision to some of the affected employees at meetings held in November 2014 in my capacity as the line manager for those employees, including Etienne.
22. In or around November 2014, I was presented with two letters for my signature by Human Resources. I do not now recall who from Human Resources provided me with those letters. Those letters recorded:
- (a) ANZ's decision to stand down Etienne from his employment pending the outcome of the ASIC BBSW Investigation and the ANZ BBSW Investigation (the **Stand Down Decision**). A copy of my signed letter to Etienne dated 19 November 2014 informing him of the Stand Down Decision is exhibited to the Applicant's Affidavit at page 1228; and
 - (b) ANZ's decision to provisionally award Etienne an incentive for the 2014 performance year pending the outcome of these investigations (the **Bonus Decision**). A copy of my signed letter to Etienne dated 19 November 2014 informing him of the Bonus Decision is exhibited to the Applicant's Affidavit at page 1227.
23. Before signing the letters, which were provided to me by Human Resources, I reviewed their contents. Although I did not make the Stand Down Decision or the Bonus Decision, I agreed with the decisions recorded in the letters.
24. On 19 November 2014, Kerrie Harris, Head of Human Resources, Global Markets and Loans, and I met with Etienne at ANZ's offices in Sydney. At the start of the meeting, I handed Etienne the two letters dated 19 November 2014 signed by me, which recorded the Stand Down Decision and the Bonus Decision.
25. During the meeting, I read from a set of talking points that had been prepared by Human Resources to assist me to communicate the decisions to Etienne. I was careful to read from the talking points and did not deviate from them when notifying Etienne of the Stand Down Decision and the Bonus Decision because I was not involved in making the decisions. Now produced, shown to me and marked '**RJH-2**' is a copy of the script that I read from during the meeting with Etienne on 19 November 2014.
26. I refer to paragraph 258 of the Applicant's Affidavit, in which Etienne alleges there was no specific discussion about his compliance with the Code of Conduct during our

meeting on 19 November 2014. There was no discussion with Etienne regarding his compliance with the Code of Conduct or ANZ Values or other policies at this meeting, because findings about these matters had not yet been made.

27. I deny the allegation in paragraph 261 of the Applicant's Affidavit that I told Etienne at this meeting that he was being stood down because ASIC would not accept graduates being stood down but required more senior executives to be stood down.
28. On 19 November 2014, after the Stand Down Decision was communicated to affected employees, including Etienne, ANZ issued a media release announcing that seven traders had been stood down (the **Media Release**). I did not make the decision to issue the Media Release, nor was I involved in the decision-making process that led to the issue of the Media Release by ANZ.
29. I refer to paragraph 261 of the Applicant's Affidavit and Etienne's allegations that during the meeting on 19 November 2014 we discussed the issue of a media release by ANZ. After I had conveyed the Stand Down Decision and the Bonus Decision to Etienne during this meeting, he raised the issue of any media release or disclosure that ANZ would make about the Stand Down Decision. However, I do not recall the precise terms of this discussion, whether I told Etienne that ANZ would be disclosing that seven traders had been stood down by way of the Media Release or whether he asked me to change its contents. These statements are not recorded in the script annexed at '**RJH-2**'.
30. On 20 November 2014, I received a letter from Etienne's solicitors, Carroll & O'Dea, regarding the Stand Down Decision, the Bonus Decision and the issue of the Media Release. I directed this correspondence to the ANZ Legal team, but I cannot now recall to whom I directed the letter. Now produced, shown to me and marked '**RJH-3**' is a copy of the letter from Carroll & O'Dea to me dated 20 November 2014.
31. I refer to paragraph 275 of the Applicant's Affidavit, in which Etienne alleges that he received a telephone call from me on 28 November 2014. I do not recall telephoning Etienne on 28 November 2014 or having a discussion with Etienne at this time.
32. I deny the allegation in paragraph 234 of the Second Further Amended Statement of Claim that I told Etienne on or around 26 February 2015 that he was being used as a "scapegoat" in the ASIC BBSW Investigation because he had made the alleged October 2011 Complaint, the October 2014 Complaint and the First ASIC Disclosure (as those terms are defined in the Second Further Amended Statement of Claim), and that I knew of that plan by virtue of my involvement on a committee by the name of "Project Arrow". As I state at paragraph 20 above, I was not actively involved in the ASIC BBSW



Investigation or the ANZ BBSW Investigation, and did not make any decisions regarding ANZ's response to the ASIC BBSW Investigation or the conduct of the ANZ BBSW Investigation. I was not privy to any concerns regarding Etienne's compliance with the Code of Conduct relating to his use of ANZ's communications systems.

33. During the period that Etienne remained stood down from his employment, my interactions with him were less frequent. I contacted Etienne from time to time to check in on him. I recall meeting with Etienne in Sydney at a restaurant or coffee shop near the ANZ office while he was stood down, but I do not recall the details of our discussion or when we met.

The culture in Global Markets at ANZ

34. I was aware of the standards of behaviour expected by ANZ, including because they were regularly communicated to me and other employees and we were routinely required to complete training on ANZ's policies. During the time that I managed Etienne in 2013 and 2014, I sent Etienne and my other reports email communications reminding them of the standards of behaviour expected by ANZ, as follows:
- (a) on 7 February 2013, Eddie Listorti, Global Head of Foreign Exchange and Commodities, and I sent an email to all Global Markets staff (which included Etienne) to reiterate the requirement to uphold high standards in every aspect of the business. The email gave an example of unacceptable behaviour as "Offensive language in bloomberg/reuters chats, emails and other forms of communications" and reminded employees to "Be judicious in your communications and be aware of the potential perception of what you write and say". Now produced, shown to me and marked 'RJH-4' is a copy of my and Eddie Listorti's email to all Global Markets staff dated 7 February 2013;
 - (b) on 19 June 2013, Eddie Listorti and I sent an email to all Global Markets staff (which included Etienne) relating to the outcome of a review by the Monetary Authority of Singapore. The email reminded employees of the importance of compliance with the Code of Conduct, asked that employees immediately review the Code of Conduct and the Global Markets Business Instruction Manual, and gave an example of unacceptable behaviour as "Offensive language in Bloomberg/Reuters chats, emails and other forms of communications". Now produced, shown to me and marked 'RJH-5' is a copy of my and Eddie Listorti's email to all Global Markets staff dated 19 June 2013; and
 - (c) on 7 February 2014, I forwarded an email chain to executives in Global Markets (which included Etienne) containing two earlier email reminders on the Code of



Conduct and the ANZ Use of Systems, Equipment and Information Policy (the **Use of Systems Policy**) sent to all Global Markets staff in ANZ's Hong Kong office. Now produced, shown to me and marked 'RZH-6' is a copy of my email to Global Markets executives dated 7 February 2014.

35. I refer to paragraph 76(a) of the Applicant's Affidavit, in which Etienne alleges that I regularly and frequently used words in Etienne's hearing such as "cunt" and "fuck". I accept that I occasionally used swear words in the workplace, but I deny that I regularly or frequently used the word "cunt". When I attended ANZ's Australian offices, I occasionally heard swear words being exchanged between employees. Having said this, I only spent a limited amount of time at ANZ's Australian offices.
36. I refer to paragraph 197 of the Applicant's Affidavit, in which Etienne alleges that I called him from my ANZ desk telephone on or about 14 March 2014 and said words to the effect "when I was a kid I was in the scouts and we had a rule that the first person to speak is a cunt". I told Etienne the anecdote described in this paragraph on a date I do not recall. The anecdote concerned my experience with an army sergeant during training in Army Corps when I was at school in the 1970s. The anecdote was to the effect that, as an officer, if you say nothing everyone will say you are a cunt, so you may as well open your mouth and prove it. While I don't remember using the word "cunt", it is possible that I did because I was quoting someone else and this was part of the anecdote. The message behind the anecdote was to have courage in your convictions despite what others think.
37. When I visited Australia during my employment with ANZ, alcohol was consumed at some team and client events. At no time did I observe any drug taking while at ANZ, whether at the office or at social events. At paragraph 103(b) of the Applicant's Affidavit, Etienne alleges that he was told about a dinner meeting in or around October 2011 of the Global Markets senior leadership team which I had attended, during which attendees "sculled glasses of brandy between courses and went to a strip bar after dinner". I do not recall sculling glasses of brandy at a dinner and subsequently attending a strip club with the senior leadership team. I recall there were one or two occasions when, after work had concluded for the day, I went out with some of the employees whom I worked with at ANZ for a meal or a drink following which we attended a strip club, although I cannot recall which of my colleagues attended the strip club with me. These attendances were spontaneous and occurred during the course of after-work social interactions between people who worked at ANZ. I deny that these occasions were events authorised or organised by ANZ or condoned by ANZ. Other than the fact that I

and the other people who attended the strip club on these occasions knew each other through work, these occurrences had no connection with ANZ.

38. I disagree with Etienne's suggestion at paragraph 101 of the Applicant's Affidavit that the ANZ Global Markets business unit did not take its policies seriously. As a manager within Global Markets, I was personally involved in investigating and sanctioning employees for non-compliance with ANZ policies, the Code of Conduct, and ANZ Values, and had knowledge of other disciplinary processes conducted by Global Markets. On some occasions, I informed Etienne when disciplinary processes were on foot. For instance, on 11 February 2014, I was notified of the recommended disciplinary consequences for two employees who had been found to have used inappropriate language in Reuters chats in breach of the Code of Conduct. I forwarded this email to Etienne on 12 February 2014. Now produced, shown to me and marked 'RJH-7' is a copy of my email to Etienne dated 12 February 2014, which has been redacted to mask the identity of current and former employees of ANZ apart from Etienne, in order to maintain the privacy of each of those other people who are not party to these proceedings.
39. Etienne was himself disciplined by ANZ in 2015 for inappropriate behaviour following an incident at a client event in November 2014 at a time prior to being stood down from his employment. As his line manager, I was directly involved in this process. It was alleged that, on 13 November 2014, Etienne had attended an ANZ client event at the Tilbury Hotel in Woolloomooloo and interacted inappropriately and intimately with another ANZ employee, a secretary (whose name has been redacted in the annexures to this affidavit in order to maintain her privacy), and was intoxicated in an area visible to other ANZ employees and clients. It was alleged that this behaviour was in breach of:
- (a) Principle 1 of the Code of Conduct: We act in ANZ's best interests and value ANZ's reputation; and
 - (b) Principle 7 of the Code of Conduct: We comply with the Code, the law and ANZ policies and procedures.
40. Due to the sexual nature of the behaviour alleged (kissing), ANZ also considered that it was potentially in breach of ANZ's Equal Employment Opportunity, Bullying and Harassment Policy (the **EEO Policy**). ANZ did not find that Etienne had breached the EEO Policy on the basis that the evidence indicated that the interaction between Etienne and the female employee was consensual.
41. Following an investigation, it was found that Etienne had kissed the other ANZ employee at the client event while seated on a couch and that by engaging in this conduct and

being intoxicated, Etienne had breached Principles 1 and 7 of the Code of Conduct. Etienne was issued with a verbal warning in relation to these behaviours. I discussed the matter with a representative of Human Resources who had undertaken the factual investigation and interviewed Etienne and other staff present at the event and, in around February 2015, decided it was appropriate to issue Etienne with a verbal warning. This was primarily on the basis that Etienne had co-operated with the investigation and at that time had not previously had a disciplinary outcome recorded against him. In issuing the warning, I also took into account that, although the client event took place before Etienne was stood down from his employment, he was under personal stress as a result of being stood down from his employment at the time he received the warning.

42. I considered the conduct to be serious because Etienne had attended the event as a senior representative of ANZ and his behaviour had the potential to damage the reputation of ANZ. ANZ found that he had attended the event in a state of intoxication and kissed a more junior, female employee in public. The behaviour had been described in the investigation report by other ANZ employees at the event as "too close for a client function". Now produced, shown to me and marked 'RJH-8' is a copy of the investigation report relating to the incident involving Etienne in November 2014, which has been redacted to mask the identity of current and former employees of ANZ apart from Etienne, in order to maintain the privacy of each of those other people, who are not party to these proceedings.
43. On 26 February 2015, I met with Etienne in person in Sydney to deliver the findings of the investigation and issue the warning. During the meeting, I explained to Etienne that ANZ takes these matters seriously, particularly given his status as a senior employee and Group 2 manager of ANZ, and that a repeat of this behaviour or further breaches may result in further disciplinary action. I also told Etienne that disciplinary outcomes may have an impact on his performance and remuneration review outcome in relation to whether he has met the required standards of risk, compliance and behaviour. Etienne said that he understood that his behaviour had breached the Code of Conduct and that there would not be a repeat of the behaviour. Now produced, shown to me and marked 'RJH-9' is a copy of the file note of my meeting with Etienne on 26 February 2015, which has been redacted to mask the identity of the other employee, who is not party to these proceedings, in order to maintain her privacy.
44. On 21 July 2014, I received an email from Kate Turner, Senior Employee Relations Advisor, which notified me that ANZ's Data Loss Protection monitoring processes had detected that Etienne had sent a restricted document external to ANZ's systems. At that time ANZ's Information Security Standard detected when employees sent confidential or

restricted information to personal email accounts such as Gmail and issued an alert to the responsible department for investigation and, if necessary, escalation. The email from Kate Turner directed me to review the document and respond immediately if I considered it to be a serious breach of ANZ's policies, or speak to Etienne regarding the breach and counsel him on ANZ's expectations moving forward. I had already spoken with Etienne about this matter to reinforce the requirements under ANZ's policy when I received this email. Now produced, shown to me and marked 'RJH-10' is a copy of the email chain between me and Kate Turner dated 21 July 2014 to 25 July 2014.

45. I refer to paragraph 67 of the Applicant's Affidavit, in which Etienne alleges that I called him in 2014 in relation to a complaint about employees of Global Markets in ANZ Korea viewing pornography in the dealing room. I do not recall a discussion with Etienne in these terms.
46. I refer to paragraphs 111 and 112 of the Applicant's Affidavit, in which Etienne alleges that, after the 2014 ANZ International and Institutional Banking Group of 40 (IIB G40) welcome dinner, Ben Gulliver behaved inappropriately towards him. I was not present at the IIB G40 welcome dinner. I do not recall contacting Etienne by telephone on the day immediately following the 2014 IIB G40 welcome dinner and having a discussion to the effect alleged. I recall a discussion with Etienne about the incident but not the timing of the discussion.

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

47. Etienne alleges that he made complaints and protected disclosures to ANZ and ASIC during his employment. I was Etienne's line manager from 2013. Etienne did not make the following complaints and disclosures referred to in the Second Further Amended Statement of Claim to me:
- (a) the October 2011 Complaint;
 - (b) the February 2013 Complaint;
 - (c) the 17 July 2014 Complaint;
 - (d) the 18 July 2014 Complaint;
 - (e) the October 2014 Complaint;
 - (f) the February 2015 Complaint;
 - (g) the First ASIC Disclosure;
 - (h) the Second ASIC Disclosure; and
 - (i) a complaint or disclosure allegedly made by Etienne in December 2014.
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- 48. Some time after I commenced as Co-Head of FICC, Etienne informed me that he had previously raised a concern with Rob O'Callaghan in relation to the subject matter of the alleged October 2011 Complaint, but I do not recall the specifics of this discussion. I recall asking if compliance were aware and he said they were.
- 49. I was also aware that Etienne had raised the relationship between different divisions of ANZ (which I understand to be the subject of the alleged October 2014 Complaint). I do not recall how I became aware of this or when.
- 50. I was otherwise unaware of the subject matter of the alleged complaints and disclosures referred to in paragraph 47 above until my involvement in these proceedings.
- 51. I did not make the alleged: Standing Down decision; the decision to issue the Press Release; the decision to commence the Disciplinary Investigation; the Termination decision; the Forfeitures decision; or the Withholding of the 2014 Bonus decision as defined in the Second Further Amended Statement of Claim, nor did I participate in the internal decision-making process that led to those decisions being made. My involvement in the Standing Down decision is as described in this affidavit.

Sworn by the deponent
 at London
 in England, United Kingdom
 on 15 November 2023
 Before me:

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)
)

[Redacted Signature]

Signature of deponent

[Redacted Signature]

Signature of witness

Name of witness: PHILIPPA ANNE SLANEY

Qualification of witness: NOTARY PUBLIC (ENGLAND & WALES)

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