

Form 59
Rule 29.02(1)

Affidavit

No. NSD719 of 2020

Federal Court of Australia
District Registry: New South Wales
Division: General

Etienne Alexiou

Applicant

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

Respondent

Affidavit of: **Adrian Matthew Went**

Address: 833 Collins Street, Docklands, Victoria 3008

Occupation: Group Treasurer

Date: 17 November 2023

Contents

Document number	Details	Paragraph	Page
1	Affidavit of Adrian Matthew Went affirmed on 17 November 2023	1 – 51	1
2	Annexure 'AMW-1', being a copy of the NCD issuance data in the period from January 2013 to March 2013	27	13
3	Annexure 'AMW-2', being a copy of the email from James Millen to me dated 20 February 2013	33	17
4	'Exhibit AMW-3', being an electronic copy of the data relating to ANZ's entry into FRAs and OIS contracts in the period from January 2013 to March 2013	41	

I, Adrian Matthew Went, of business address 833 Collins Street, Docklands, Victoria 3008, Group Treasurer, affirm:

1. I am employed by the Respondent, Australia and New Zealand Banking Group Limited (ANZ) in the position of Group Treasurer. I am authorised to make this affidavit on ANZ's behalf in relation to these proceedings.

2. I make this affidavit from my own knowledge, save where otherwise indicated. Where I depose to matters on the basis of information provided to me by other persons, I believe that information to be true.
3. 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.
4. 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

5. I commenced employment with ANZ in 1999. I have held my current role as Group Treasurer since July 2018. Prior to that, I held the following positions with ANZ:
 - (a) between 1999 and 2005, I held various positions within the Group Treasury division ranging from Analyst to Manager;
 - (b) between 2005 and 2006, I was a Manager in Market Risk Australia;
 - (c) between 2006 and March 2008, I was the Head of Market Risk for ANZ New Zealand;
 - (d) from March 2008 until January 2014, I was the Head of Balance Sheet Management within the Group Treasury division. My role was classified as Group 2 within ANZ's classification structure and I reported to Rick Moscati, Group Treasurer;
 - (e) from January to December 2014, I was the Acting Group Treasurer;
 - (f) from December 2014 to May 2015, I performed a specialised regulatory advisory role as Basel IV and Group Regulatory Change Project Lead; and
 - (g) from May 2015 until June 2018, I was the Global Head of Research and Analysis for the Financial Institutions Group.

The Group Treasury division at ANZ

6. During the period from 1 July 2011 to 30 September 2015 (the **Relevant Period**), Group Treasury had responsibility for ANZ's liquidity and funding management

globally. This included (and now includes) issuing debt instruments to fund the balance sheet, as well as the management of liquidity risk which includes ANZ's account with the Reserve Bank of Australia (the **RBA**) (referred to as the Exchange Settlement Account). Liquidity risk is the risk that ANZ is unable to meet its payment obligations as they fall due, including repaying depositors or maturing wholesale debt, or that ANZ has insufficient capacity to fund assets.

7. The Group Treasury division included (and now includes) a Short Term Funding Group (the **STFG**), a Long Term Funding Group (the **LTFG**) and the Balance Sheet Management Group (the **Balance Sheet Management Group**).
8. ANZ's liquidity and funding risk management framework (the **Liquidity and Funding Risk Framework**) was managed jointly by Group Treasury and Market Risk. A core objective of the Liquidity and Funding Risk Framework was to ensure that ANZ had sufficient liquidity to meet its obligations as they fell due across a wide range of operating circumstances.
9. ANZ's liquidity portfolio was held by the Liquidity Desk (the **Liquidity Desk**), which sat in the Balance Sheet Trading Group in the Global Markets business unit of ANZ (**Global Markets**). The Liquidity Desk was responsible for maintaining minimum levels of different types of securities in accordance with the Liquidity and Funding Risk Framework.
10. Members of the Group Treasury division, including the Group Treasurer, the Head of Funding, the Balance Sheet Management Group, the STFG and the LTFG, were largely based in Melbourne.
11. Employees in the STFG reported to Luke Davidson, Head of Group Funding. Luke Davidson reported to Rick Moscati.

The role of the Balance Sheet Management Group at ANZ

12. During the Relevant Period, the Balance Sheet Management Group's primary responsibilities were:
 - (a) policy and target setting for ANZ's balance sheet funding structure, including in relation to the proportions of short and long term funding; and
 - (b) developing, modelling and analysing the Liquidity and Funding Risk Framework, jointly with Market Risk.
13. The Balance Sheet Management Group did not execute transactions to ensure compliance with the requirements of the Liquidity and Funding Risk Framework and

was not involved in obtaining funding for ANZ on a day-to-day basis. That was the responsibility of the STFG and the LTFG. In the case of the liquidity portfolio, Global Markets was responsible.

14. My responsibilities as the Head of Balance Sheet Management included:
 - (a) reporting and modelling ANZ's capital position;
 - (b) managing transfer pricing within ANZ;
 - (c) jointly with Market Risk, overseeing the Liquidity and Funding Risk Framework; and
 - (d) performing Treasury-specific functions for the Australia division (which excluded the International and Institutional Banking division).
15. As the Head of Balance Sheet Management, I was involved in reporting to ANZ's management in relation to its liquidity and funding position. I often attended meetings of ANZ's Group Asset and Liability Committee (the **GALCO**) and other internal forums. The GALCO's responsibilities included the oversight and strategic management of ANZ's balance sheet, liquidity and funding positions and capital management. Accordingly, the duties and responsibilities of my role as a senior leader in Group Treasury at that time required me to be aware of, and actively contribute to, all issues affecting Group Treasury. I was aware of ANZ's balance sheet, liquidity and funding positions and capital management as a result of my role as a senior leader in Group Treasury, through regular discussions with the Group Treasurer and the Head of Funding, and from my review of ANZ's liquidity and funding reporting.
16. My role also included the responsibility (with the Group Treasurer) to manage components of the interest rate risk in ANZ's variable mortgage book on behalf of the Chief Executive Officer for the Australia division, who was also the Chair of ANZ's Australian Asset and Liability Committee (the **AALCO**). The AALCO was a sub-committee of the GALCO. Interest rate risk represents the risk of changes in the value of fixed rate assets or liabilities as a result of changes in interest rates.

Short Term Funding Group

Role of the STFG

17. During the Relevant Period, the STFG was responsible for the liquidity and cash management of the Australian balance sheet. One of the STFG's principal functions and objectives was to ensure that ANZ maintained sufficient short term funding and liquidity to comply with prudential regulations and liquidity requirements administered by the Australian Prudential Regulation Authority (**APRA**), and with internal ANZ

liquidity compliance scenarios set by the ANZ Board (referred to as “Risk Appetite Settings”), as they applied to the Australian balance sheet. This liquidity and cash management function included the issuance of short term wholesale debt securities, known as Negotiable Certificates of Deposit (**NCDs**) or bank bills, into the domestic market. This was a material source of ANZ’s short term funding.

18. These functions and objectives required the STFG to monitor ANZ’s liquidity compliance against several stress scenarios and manage ANZ’s cash balances on a daily basis to ensure that ANZ had sufficient funding and liquidity to meet its obligations as they fell due.
19. The interest rate risk that resulted from the STFG issuing NCDs into the domestic market was internally transferred to the Mismatch Desk within Global Markets by operation of ANZ’s transfer pricing methodology. It was then the responsibility of the Mismatch Desk to manage that interest rate risk within the applicable limits. Retail or commercial interest rate risks were transferred to the Mismatch Desk so that the management of interest rate risk across different areas of the bank was centralised.

Management of NCD issuance

20. As stated at paragraph 17 above, the issuance of NCDs into the domestic market was a material source of ANZ’s short term funding, which was managed by the STFG. Short term NCDs were issued in different tenors, generally ranging from one month to one year. The STFG was responsible for making decisions, each day, as to whether to issue NCDs and, if so, in what volumes and tenors.
21. ANZ issued NCDs to wholesale investors (including investment managers, semi-government entities and large corporate institutions) and to other banks. One of the channels through which ANZ issued NCDs was the interbank or broker market, also known as the bank bill market.
22. There were a number of considerations relevant to decision-making about whether and when to issue NCDs and which had to be balanced. These considerations were as follows:
 - (a) The most important consideration was the need to ensure that ANZ remained compliant with the prudential and internal liquidity stress scenarios and management targets.
 - (b) Because movements in ANZ’s cash balances affected its liquidity compliance, the day-to-day management of ANZ’s cash balances was another important consideration in decision-making about issuance.

- (c) The STFG had to take into account the likely liquidity in the market at the relevant time, and in what tenors, to ensure that ANZ could obtain funding at a reasonable cost.
- (d) While the STFG did not have a profit and loss budget, the STFG was expected to manage its issuance of NCDs in a cost effective manner on behalf of ANZ. Subject to the need to maintain liquidity compliance at all times, there was sometimes a degree of flexibility about the precise timing of any issuance. If, for example, there was a large volume of NCDs due to reach maturity, the STFG might issue to replace these NCDs in advance of the maturity date (which was often referred to as “pre-funding”), on the maturity date or after the maturity date. It might pre-fund upcoming maturities (providing it had room to do so under its concentration limits), replace NCD maturities each day or issue additional NCDs on top of maturities, or hold off on issuing for a short period of time if, for example, the funding was not required.

Interactions between the Balance Sheet Management Group and Global Markets

23. During the period that I was the Head of Balance Sheet Management, the Balance Sheet Management Group interacted with Global Markets for three main purposes, being:
- (a) the Head of Balance Sheet Management acted as the conduit between the Mortgages business in the Australia division of ANZ and Global Markets to manage interest rate risk on the mortgage portfolio. My role was to enter into internal derivative transactions with the Balance Sheet Trading Group within Global Markets on behalf of the Mortgages business in the Australia division to reduce the interest rate risk;
 - (b) Group Treasury made recommendations to the GALCO regarding the investment of capital and rate insensitive deposits, following which Group Treasury executed internal transactions with Global Markets as a way of investing that capital and rate insensitive deposits; and
 - (c) Group Treasury set certain financial parameters in order to manage ANZ's liquidity risk, which were then communicated to Global Markets to manage the liquidity portfolio within those financial parameters by buying or selling securities, such as government bonds.
24. As it relates to this issue, during periods when ANZ was hedging interest rate risk for the Mortgages business, there were typically daily interactions between Group

Treasury and Global Markets. During periods when ANZ was not hedging interest rate risk, interactions between Group Treasury and Global Markets were less frequent. The frequency was dependant on the transactions that Group Treasury were executing with Global Markets at the relevant time.

25. The interactions that I describe in paragraph 23 above included communicating with the Head of Balance Sheet Australia, within Global Markets. Between December 2012 and November 2013, Etienne held that role. As Etienne was based in Sydney, our communications were mostly by telephone and email.

Alleged February 2013 Complaint

Alleged withholding of bank bills

26. At paragraphs 161 – 162 of the Applicant’s Affidavit, Etienne alleges that, he observed that, in early February 2013, Group Treasury was not issuing bank bills with the frequency that Group Treasury would ordinarily issue them. In particular, he alleges that, in February 2013, he observed that Group Treasury had not issued bank bills in about a fortnight. Based on the context of this allegation, I understand that Etienne is referring to NCDs when he says “bank bills”.
27. I have reviewed the STFG’s issuance of NCD data in the period from January 2013 to March 2013 which has been extracted from ANZ’s records by ANZ’s Treasury Funding team (the **NCD issuance data**). Now produced, shown to me and marked ‘**AMW-1**’ is a copy of the NCD issuance data.
28. The NCD issuance data shows that the total volume of bank bills issued in each month during the period from January 2013 to March 2013 was as follows:
- (a) January 2013: \$8,464,000,000.
 - (b) February 2013: \$12,326,000,000.
 - (c) March 2013: \$14,000,000,000.
29. The NCD issuance data also shows that, excluding weekends and public holidays, bank bills were issued on each day during the period from January 2013 to March 2013 except on 14 January 2013.
30. Based on my review of the NCD issuance data in this period, I describe the issuance activity as being normal without extended periods of no issuance. The issuance activity does not indicate a decline in the frequency with which bank bills were issued in February 2013 when compared to January 2013 and March 2013.

CB 1991
ZNA.001.001.0841

31. As stated above, there were a number of considerations that informed the decision of the STFG to issue or not issue NCDs. In my experience, ANZ typically issued NCDs on most days in a broadly consistent way with some variation to account for these considerations. I do not recall Etienne contacting me in early February 2013 to raise a concern regarding the issuance of NCDs, nor do I have any recollection of Etienne raising the issuance activity with other members of the Group Treasury team.

Alleged improper hedging of variable mortgage book

32. At paragraph 163 – 165 of the Applicant’s Affidavit, Etienne alleges that, on or around 19 February 2013, Rick Moscati told him that “ANZ Group Treasury would like to start hedging the variable mortgage book risk by paying BBSW and receiving OIS” . Further Etienne says that Rick Moscati then gave him “a series of dates, amounts and a target spread to transact at” and asked Etienne “if we could hedge about \$1 billion per day for the period from 20 February 2013 until 10 March 2013”. I am not aware of whether Rick Moscati made such comments to Etienne or gave such a direction to him. However, I would regard that type of direction from Rick Moscati, if it happened, to be a direction in the normal course of business. That is because, if Rick Moscati as Group Treasurer had assessed that it was a sensible time to hedge the portfolio, he would typically give a direction to do so to the Balance Sheet Trading Group within Global Markets.
33. On or around 20 February 2013, I received an email from James Millen, who at the time worked for ANZ in the Mismatch Desk, that confirmed ANZ’s entry into a series of Forward Rate Agreements (**FRAs**) and OIS (**Overnight Index Swap**) contracts commencing 20 February 2013 until 10 March 2013 (the **Millen Email**). Now produced, shown to me and marked ‘**AMW-2**’ is a copy of the email from James Millen to me dated 20 February 2013.
34. Group Treasury entered into FRAs and OIS contracts for the purposes of hedging the funding cost of mortgages so that its margins were more stable. The Millen Email indicates that there were transactions based on the Bank Bill Swap Rate (**BBSW**), FRA and OIS Rates.
35. Although I cannot recall the specific transactions described in the Millen Email, transactions to hedge the interest rate on behalf of the Australia division’s mortgage portfolio with Global Markets were in the normal course of business. A decision on whether to hedge interest rate risk was made each day by the Group Treasurer or the Balance Sheet Management Group. As described above, the Balance Sheet Management Group hedged interest rate risk internally with the Mismatch Desk. The

CB 2084
ALEX.001.001.0256

Mismatch Desk then made a decision whether to externalise (i.e. hedge) the interest rate risk to the market. Group Treasury did not have any visibility of the Mismatch Desk's decision to externalise this risk (and had no need to), and there was no direct impact to Group Treasury whether or not this happened. I do not know whether Etienne had equal offsetting transactions with the market, but that was his choice as to how he managed the risk.

36. Although the specific transactions described in the Millen Email were more material in size and do cover the hedging of future periods, I do not recall having any concerns about transactions of this size or type in or around February 2013, nor do I have any concerns having now reviewed the transactions at this time.

Alleged entry into transactions during rate setting window

37. At paragraphs 168 – 170 of the Applicant's Affidavit, Etienne alleges that, between 20 February 2013 and 10 March 2013, Group Treasury issued bank bills in the rate setting window in amounts which had the effect of widening the spread between the BBSW and OIS Rate and that the widening of this spread "allowed ANZ Australia Division to profit on the FRAs entered into with Global Balance Sheet Trading", as listed in the Millen Email. Based on the context of this allegation, I understand that Etienne is also referring to NCDs when he says "bank bills". As stated above, I regard the STFG's issuance of NCDs in the period from January 2013 to March 2013 to be normal activity, rather than a material increase or decrease in the supply or issuance of NCDs.
38. As stated above, there were a number of considerations that informed the decision of the STFG to issue or not issue NCDs which included the STFG's responsibility for ensuring that ANZ maintained sufficient short term funding and liquidity to comply with prudential regulations and liquidity requirements administered by APRA, as well as customer demand for the product. The decision by the Balance Sheet Management Group to hedge the mortgage portfolio by entering into FRAs and OIS contracts was executed with the intention of reducing the interest rate risk of the Mortgages business in the Australia division. These transactions by the STFG and the Balance Sheet Management Group had different objectives, were executed by different divisions within Group Treasury, which were segregated, and were not dependent upon or linked to each other.

Telephone call with Etienne in early 2013

39. I refer to paragraph 171 of the Applicant's Affidavit, in which Etienne says that he called me on or around late February 2013 or early March 2013. I do not recall having a

telephone call or discussion with Etienne in or around late February 2013 or early March 2013, or at any other time, during which he made the alleged February 2013 Complaint (as defined in the Second Further Amended Statement of Claim) or the statements in paragraph 171 of the Applicant's Affidavit, or where we discussed similar subject matter.

Subsequent entry into FRAs and OIS contracts

40. At paragraph 172 of the Applicant's Affidavit, Etienne alleges that to his knowledge, from the date of the alleged February 2013 Complaint, ANZ did not enter into FRAs or sell bank bills in a manner which allowed ANZ's Australia Division to profit from FRAs.
41. I have reviewed the data relating to ANZ's entry into FRAs and OIS contracts from January 2013 to March 2013 which has been extracted from ANZ's system, Murex, by the Treasury Finance team (the **FRA and OIS contracts data**). Now produced, shown to me and marked '**Exhibit AMW-3**' is an electronic copy of the FRA and OIS contracts data.
42. Based on my review of the FRA and OIS contracts data, the Balance Sheet Management Group did not appear to enter into FRAs in the period immediately after February 2013 but continued to enter into OIS contracts with the Mismatch Desk as a way to continue hedging interest rate risk. While the type of hedging trade was different, the FRA and OIS contracts data indicates that the Balance Sheet Management Group did not cease looking for the same opportunity to hedge the interest rate risk on behalf of ANZ's Australia division as there was no impropriety associated with doing so. It was the function of the Balance Sheet Management Group to seek to reduce interest rate risk on behalf of the Australia division at its discretion.
43. Etienne appears to be suggesting that the issuance of NCDs by ANZ changed supply and demand in the market to such an extent that it resulted in a move in the BBSW, and by entering into derivative transactions (FRAs and OIS contracts), ANZ was improperly taking advantage of that.
44. ANZ funded (and now funds) its balance sheet in part by issuing products such as NCDs and bonds to wholesale investors. As stated above, the issue of NCDs was the responsibility of the STFG. In the case of NCDs, ANZ paid the wholesale investor an interest rate (BBSW). The BBSW Rate was therefore an input cost into a loan (such as a mortgage) to a customer of ANZ.
45. One of the two components of the BBSW Rate was the market's expectation regarding changes to the RBA cash rate. If the market expected the cash rate to increase, all

CB 1994
ZNA.001.001.0844

other matters being equal, the BBSW Rate increased. As the BBSW Rate and the cash rate were not the same, there was residual risk to the Australia division if the cash rate did not increase or was yet to increase. The cost of funding increased due to the movement in the BBSW, but the cost was typically not passed on to the customer by ANZ because the cash rate was unchanged.

46. At the time, the Balance Sheet Management Group sought to manage the interest rate risk to the Australia division by entering into internal derivative transactions with the Mismatch Desk based on the OIS Rate. The OIS Rate was equal to the market expectation component of the BBSW Rate. Including the impact of these hedges, instead of paying the BBSW Rate (which represents the funding cost inclusive of the market's future expectations of the cash rate), the Australia division paid the BBSW Rate, received the OIS Rate (of an equivalent tenor as BBSW, which in this case was 90 days) and paid the cash rate. The net impact was that its margins were more stable.
47. I disagree that ANZ's transacting in FRAs or the sale of bank bills allowed ANZ's Australia division to profit. As stated above, the NCD issuance data does not support this. Further, as stated at paragraph 38 above, the decision to issue bank bills was separate from the decision to enter into FRAs and were made by separate divisions of Group Treasury (the STFG Group and the Balance Sheet Management Group respectively). Based on this separation and the NCD issuance data, I do not accept Etienne's assertion that there was an improper connection between the issuance of NCDs and entry into FRAs and OIS contracts.

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

48. Etienne did not make the following alleged complaints or disclosures, identified in the Second Further Amended Statement of Claim, to me:
- (a) the October 2011 Complaint;
 - (b) the 17 July 2014 Complaint;
 - (c) the 18 July 2014 Complaint;
 - (d) the October 2014 Complaint;
 - (e) the February 2015 Complaint;
 - (f) the First ASIC Disclosure;
 - (g) the Second ASIC Disclosure; and
 - (h) a complaint allegedly made in December 2014.

- 49. Prior to my involvement in these proceedings, I was not aware that Etienne made the alleged complaints or disclosures described in paragraph 48 to others within ANZ, or to the Australian Securities and Investments Commission, during his employment.
- 50. As described in paragraph 39 above, I do not recall having a telephone call or discussion with Etienne in or around late February 2013 or early March 2013, or at any other time, during which he made the alleged February 2013 Complaint (as defined in the Second Further Amended Statement of Claim) or the statements in paragraph 171 of the Applicant’s Affidavit, or where we discussed similar subject matter.
- 51. I was not a decision-maker in relation to the alleged: Standing Down; commencement of the Disciplinary Investigation; Termination decision; Forfeitures decision; or Withholding of the 2014 Bonus decision as those terms are defined in the Second Further Amended Statement of Claim. I was not a decision-maker in respect of the issue of the Press Release. However, I saw a copy of the Press Release prior to it being published as one of the seven impacted employees stood down by ANZ was in the Group Treasury division.

Affirmed by the deponent)
 at Melbourne)
 in Victoria)
 on 17 November 2023)
 Before me:)



Signature of deponent



Signature of witness

Name of witness: James David Wintle Sutherland

Qualification of witness: An Australian Legal Practitioner within the meaning of the *Legal Profession Uniform Law (Victoria)*

This document was affirmed via audio-visual link. An electronic copy of this document and not the original has been used when completing the jurat requirements under section 27(1) of the *Oaths and Affirmations Act 2018 (Vic)*.

The requirements for witnessing by audio-visual link under section 12 of the *Electronic Transactions (Victoria) Act 2000 (Vic)* have been met.