

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: **Mark William Carmody**  
Address: 833 Collins Street, Docklands, Victoria 3008  
Occupation: Head of Front Office Support and Governance  
Date: 13 November 2023

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I, Mark William Carmody, of business address 833 Collins Street, Docklands, Victoria 3008, Head of Front Office Support and Governance, affirm:

1. I am employed by the Respondent, Australia and New Zealand Banking Group Limited (**ANZ**), in the position of Head of Front Office Support & Governance. I am authorised to make this affidavit on ANZ's behalf.
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. 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**

4. In March 2005, I commenced employment with ANZ in the role of Manager, Funds Transfer Pricing and Liquidity Management. Between February and November 2008, I performed the role of Senior Manager – Credit and Strategic Reporting, Institutional Division.
5. From November 2008 to July 2012, I worked in the role of Head of Risk Reporting.
6. From July 2012 to October 2014, I was based in Singapore and worked in the role of Chief Risk Officer – Singapore.
7. In October 2014, I returned to Melbourne and from October 2014 to August 2017, I worked in the role of Head of Operational Risk Governance – Markets Risk. In this role, I was responsible for leading a second line risk team to oversee and test the first line management of operational risks within the Global Markets business.
8. In August 2017, I commenced in the role of Head of Business Governance.
9. In September 2020, I commenced in my current role of Head of Front Office Support and Governance for the Markets business. In this role, I am responsible for overseeing the management of non-financial risk for the Markets business (formerly referred to as “Global Markets”), including the effective management of conduct risk and broader operational risk. My role also includes responsibility for front office support, product development and business execution to support ANZ's strategic business objectives.

**Surveillance of Bloomberg chats in Global Markets at ANZ**

10. Bloomberg Terminal (**Bloomberg**) is a computer software system used by professionals in the financial services sector to monitor and analyse real-time financial market data and place trades on the electronic trading platform. The use of Bloomberg requires a paid licence. ANZ arranges and pays for the licences of employees who are required to access Bloomberg to perform their roles. Bloomberg offers a chat function that enables ANZ employees to communicate with each other and external parties. Only individuals who have a Bloomberg licence can use Bloomberg chat to communicate with each other. Employees are required to use Bloomberg in accordance with their contracts of employment, the ANZ Code of Conduct and Ethics (the **Code of Conduct**), the ANZ Use of Systems, Equipment and Information Policy, the ANZ Values, and any other applicable ANZ policies and procedures.
11. In the period from 1 July 2011 to 30 September 2015, the majority of front office employees in Global Markets had access to Bloomberg. Other than email, the primary electronic communication systems used by employees in the Global Markets business of ANZ in Australia in the period from 1 July 2011 to 30 September 2015 was Bloomberg chat.
12. As I describe below, in 2013, ANZ introduced a tactical communications surveillance approach to assist in monitoring compliance with market integrity rules and to promote best practice standards for its Singapore operations. In 2014, these surveillance operations were expanded to include in-scope roles in the Global Markets business in Australia.
13. Prior to about December 2013, ANZ did not have automated systems in place to monitor or screen the content of Bloomberg chats in any geography. There was a default compliance and surveillance function that notified Bloomberg users if their communication contained keywords that were prohibited by Bloomberg via a pop-up warning (sometimes called a “soft-block” function). However, the user had the choice either to acknowledge or ignore the warning and send the communication un-edited. ANZ was not notified when users received a warning that their communication contained a word prohibited by Bloomberg under this default function, or of the election made by the employee (to acknowledge or ignore the warning).

Project Condor

14. In 2013, the central bank of Singapore, the Monetary Authority of Singapore (the **MAS**), contacted ANZ in relation to an investigation of the Association of Banks in Singapore (**ABS**) benchmark rates, primarily the Singapore Dollar Swap Offer Rate (**SOR**) and the Singapore Interbank Offered Rate (**SIBOR**). The MAS required ANZ and other

participants in the industry, by specified dates, to make improvements to their governance and control environment for rate setting. The required improvements included the implementation of a surveillance program in Singapore to detect potential irregularities in the determination and submission of ABS benchmark rates, including any attempts to inappropriately influence the setting of those benchmarks. The communication channels within scope included Bloomberg.

15. In response, the Global Markets business unit of ANZ initiated a project to review and improve the existing governance and control environment for the rate setting process for in-scope roles in the ANZ Singapore branch. This project was referred to internally as "Project Condor". I was involved in the design and implementation of this project in my role as Chief Risk Officer – Singapore, and as a member of the "Core Group", which provided oversight of remediation activities relating to the review that was being conducted at that time by the MAS. The Compliance team led the project. I worked with, and took instructions from, Sam Patkar, Head of Markets Compliance Asia, who was based in Singapore. Now produced, shown to me and marked '**MWC-1**' is a copy of the Global Markets, Project Condor Charter operative from July 2013.
16. Initially, the objective of Project Condor was to improve the ANZ Singapore branch's governance, risk management and internal controls over the submission process for ABS benchmarks. The scope of Project Condor included the implementation of a "tactical communications surveillance approach" (being the use of individual solutions that are designed and built by ANZ and configured to ANZ's systems) in respect of ANZ's communication channels used by Singapore staff who were involved in any ABS benchmark setting process. The tactical communications surveillance approach implemented under Project Condor in Singapore involved filtering and scanning communications using "Bloomberg Vault" (which I explain further below) to detect the use of specified keywords and phrases nominated by ANZ and, at the request of the MAS, conducting periodic audits of a sample of employee communications. A tactical communications surveillance approach can be contrasted with a strategic communications surveillance approach which involves the implementation of a single global solution that is scalable.
17. As stated in paragraph 13 above, prior to the implementation of a tactical communications surveillance approach, Bloomberg had a default "soft-block" function, but ANZ was not notified when its employees received these notifications. Bloomberg Vault was a generic compliance and surveillance function that was integrated into Bloomberg and could be customised by licensees. As part of the implementation of a tactical communications surveillance approach under Project Condor, Bloomberg Vault was configured to generate an alert notifying ANZ that the use of one or more of the

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specified keywords or phrases had been detected. Bloomberg Vault generated these alerts on a daily basis, and sent them to ANZ's Markets Compliance team for review. Markets Compliance then undertook a manual review of the communication which triggered the alert to determine whether there had been a breach of internal policy or any external requirements.

18. When ANZ started using Bloomberg Vault to generate alerts, the type of lexicon that triggered alerts was designed to detect trading related and benchmark submission activity that required escalation to ensure compliance with ANZ's regulatory obligations, including communications with the potential to influence benchmarks. Examples of such key words and phrases were "Fix", "Set", "Lower", "Higher", "Increase", "Decrease", "Reduce", "Highside", "Lowside", "High side", "Low side", "High", "Low" and "Submit". This lexicon evolved over time based on new words that were identified for inclusion.
19. By about December 2013, ANZ had implemented the tactical communications surveillance approach in respect of in-scope employees of Global Markets in the ANZ Singapore branch who were involved in the submission process for ABS benchmarks. The scope of the project was later expanded in 2014 to include sales and trading staff from Rates, FX (Foreign Exchange), the Commodities and Credit desks, Investor Sales and Structurers working in ANZ's Singapore operations.
20. In 2015, the lexicon was expanded in Singapore to include profanities. Now produced, shown to me and marked:
  - (a) **'MWC-2'** is a copy of the version of the Global Markets Singapore Electronic Communications Surveillance Procedure operative from 28 October 2015; and
  - (b) **'MWC-3'** is a copy of the version of the Global Markets Singapore Electronic Communications Surveillance Procedure operative from 28 January 2016.

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ZNA.001.001.2260

Surveillance of Bloomberg chats from 2014 in Global Markets, Australia

21. In 2014, ANZ expanded its tactical communications surveillance approach to include other countries, including Australia. This expansion aligned with the locations where ANZ Global Markets had its largest trading presence. I am aware of the expansion of the tactical communications surveillance approach to Australia at this time because I was a member of the global steering committee for the Surveillance Project (Strategic Implementation).
22. In or around August 2014, ANZ expanded the application of tactical communications surveillance to use Bloomberg Vault to filter the communications of approximately 250 employees in the Global Markets business in Australia. Etienne's role as Global Head of Balance Sheet Trading was in-scope. The lexicon introduced at this time in Australia

was focused on the detection of trading misconduct and benchmark related activity. Around the same time, ANZ also employed two surveillance analysts in Australia to support the review of communications alerts. Before this time, ANZ did not have a dedicated surveillance team in Australia.

23. The implementation of the tactical communications surveillance approach in Australia was led by Chris Cotterell, then Head of Surveillance. With effect from around September 2015, more than 600 “profanities” were included in the lexicon for Bloomberg and Reuters (a software system similar to Bloomberg) in Australia. This aligned with the expansion of the lexicon in Singapore to include profanities at around this time. I have been provided with copies of the Global Markets Electronic Communications Surveillance Procedure, which describes the expansion of the tactical communications surveillance approach in Australia, by Nick Braslin, Head of Surveillance. Now produced, shown to me and marked:

(a) **‘MWC-4’** is a copy of Version 0.2 of the Global Markets – Australia, Hong Kong & London Electronic Communications Surveillance Procedure operative from 29 August 2014;

CB 2708  
ZNA.001.001.1312

(b) **‘MWC-5’** is a copy of Version 0.3 of the Global Markets – Australia, Hong Kong & London Electronic Communications Surveillance Procedure operative from 14 October 2014;

CB 2811  
ZNA.001.001.1393

(c) **‘MWC-6’** is a copy of Version 0.4 of the Global Markets – Australia, Hong Kong & London Electronic Communications Surveillance Procedure operative from 4 March 2015;

CB 3430  
ZNA.001.001.1679

(d) **‘MWC-7’** is a copy of Version 0.5 of the Global Markets – Australia, Hong Kong, London & New Zealand Electronic Communications Surveillance Procedure operative from 29 June 2015;

CB 3741  
ZNA.001.001.1774

(e) **‘MWC-8’** is a copy of Version 0.6 of the Global Markets – Australia, Hong Kong, London & New Zealand Electronic Communications Surveillance Procedure operative from 10 August 2015;

CB 3884  
ZNA.001.001.1854

(f) **‘MWC-9’** is a copy of Version 0.7 of the Global Markets – Australia, Hong Kong, London & New Zealand Electronic Communications Surveillance Procedure operative from 13 August 2015;

CB 3941  
ZNA.001.001.1899

(g) **‘MWC-10’** is a copy of Version 0.8 of the Global Markets – Australia, Hong Kong, London & New Zealand Electronic Communications Surveillance Procedure operative from 28 September 2015;

CB 4172  
ZNA.001.001.2037

(h) 'MWC-11' is a copy of Version 0.9 of the Global Markets – Australia, Hong Kong, London & New Zealand, China & Taiwan Electronic Communications Surveillance Procedure operative from 18 November 2015;

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(i) 'MWC-12' is a copy of Version 0.10 of the Global Markets – Australia, Hong Kong, London & New Zealand, China & Taiwan Electronic Communications Surveillance Procedure operative from 15 December 2015; and

CB 4428  
ZNA.001.001.2797

(j) 'MWC-13' is a copy of Version 0.11 of the Global Markets – Australia, Hong Kong, London & New Zealand, China & Taiwan Electronic Communications Surveillance Procedure operative from 4 February 2016.

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24. The tactical communications surveillance approach was operative in Australia between in or around August 2014 and in or around February 2017, when the tactical communications surveillance approach was replaced by ANZ's strategic communications surveillance approach. This involved the implementation of a platform designed and built by an external vendor that allowed for the ingestion of multiple electronic communications channels to monitor and identify trading misconduct, conflicts of interest and breaches of the Code of Conduct via electronic communications channels.

Affirmed by the deponent )  
at Melbourne )  
in Victoria )  
on 13 November 2023 )  
Before me: )

Signature of deponent

[Redacted Signature]

Signature of witness

Name of witness: James David Wintle Sutherland

Qualification of witness: An Australian Legal Practitioner within the meaning of *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.