

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: **Brenden James O'Connor**
Address: 242 Pitt Street, Sydney, New South Wales 2000
Occupation: Product Area Lead
Date: 14 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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[Version 3 form approved 02/05/2019]

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6	Annexure 'BJO-5', being a copy of an email chain between Peter Wollinski and the Markets Service Desk group email address, copying others including Sarah Thompson, dated 27 July 2011	16(e)	18

I, Brenden James O'Connor, of business address 242 Pitt Street, Sydney, New South Wales 2000, Product Area Lead, affirm:

1. I am employed by the Respondent, Australia and New Zealand Banking Group Limited (ANZ), in the position of Product Area Lead. 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 January 2010, I began working for ANZ in the role of Manager of Application Infrastructure.
5. In May 2014, I began working in the role of Senior Manager, Markets Infrastructure and Institutional Infrastructure, Market Data and Desktop Support.
6. In May 2020, my role title was changed to Product Area Lead, but my responsibilities remained the same. I currently report to Steen Retboll, Head of Markets Technology, Domain Leads Markets.
7. In my role as Product Area Lead, I am responsible for:
 - (a) managing the infrastructure and market data for ANZ's Markets business (formerly referred to as "Global Markets") globally;
 - (b) engaging with the Markets and Institutional business units to design and deliver the technology that enables the business' technology infrastructure;
 - (c) ANZ Markets' "business as usual" technology and the implementation of strategic technology programs which cover 18 geographies; and

- (d) working with senior management at ANZ to manage expenditure on market data and technology solutions.
8. The Desktop Support teams, which sit within the Markets Infrastructure and Institutional Infrastructure, Market Data and Desktop Support team, are responsible for supporting all Markets' desktop applications (such as the Bloomberg Terminal) and desktop hardware. The ANZ Desktop Support teams in Singapore, Hong Kong and Australia report to me.
 9. I am also responsible for the Markets Service Desk and the Market Data team. The Markets Service Desk provides first level technology support for all Markets users in Australia and Papua New Guinea. The Market Data team manages all key vendor data content to be used by end users in Markets and internal applications (such as data from Bloomberg globally).

Bloomberg Terminal

10. ANZ uses Bloomberg Terminal (**Bloomberg**), which is a market data terminal platform commonly used in the financial services industry. Bloomberg provides market data, research and messaging facilities for use by traders and sales staff.
11. As part of the platform, Bloomberg provides an instant messaging chat service (**Bloomberg Chat**). Bloomberg Chat allows users to send and receive instant messages to and from other users within their organisation and to and from users of other financial institutions. The chat function is used to share information and research and to confirm and execute trades.

Process to install Bloomberg applicable in 2011 when Etienne commenced employment

12. In July 2011, if an employee required Bloomberg to perform their role, Bloomberg was installed by ANZ on the employee's work desktop computer and/or their ANZ issued laptop. The installation activity was the responsibility of the Desktop Support teams that I worked with at the time. The Desktop Support teams report to me presently.
13. When the Applicant (**Etienne**) commenced employment in July 2011, there was a process for installing Bloomberg on an employee's desktop computer and/or laptop. In the role that I performed in July 2011 (Manager of Application Infrastructure), I was often asked by the stakeholders in Global Markets who I supported how to install Bloomberg on their ANZ work devices. While I did not administer the set-up process, I had knowledge of it as a result of providing technology support to these stakeholders. The process was as follows:
 - (a) The employee, their line manager or a delegated representative of the line manager submitted a request to the Markets Service Desk for access to Bloomberg. A request being made by the employee directly or from the

employee's line manager or delegated representative was common practice in 2011.

- (b) If the request was submitted by the employee's line manager or their delegated representative, the Markets Service Desk then notified the Market Data team of the new Bloomberg licence request. If the request was made by the employee directly, the request first required the approval of the employee's line manager before the Markets Service Desk notified the Market Data team.
 - (c) Once the Market Data team was notified of a new request for a Bloomberg licence, a Market Data representative contacted Bloomberg to request and set up a new licence for the employee under ANZ's Bloomberg licence account.
 - (d) Bloomberg then issued an order number for the new Bloomberg licence to the Market Data representative, who forwarded it to the Desktop Support team. Bloomberg also sent a B-Unit (a physical device used to verify a user's identity when logging into Bloomberg) and a Bloomberg keyboard directly to the Desktop Support team (or another nominated delegate).
 - (e) When the B-Unit and Bloomberg keyboard were received, the Desktop Support team installed Bloomberg on the employee's desktop computer and/or laptop.
 - (f) Once the installation of Bloomberg was completed, the Desktop Support team notified the employee of the Bloomberg order number and provided the B-Unit and Bloomberg keyboard to the employee. The employee was then required to contact the external Bloomberg support desk by telephone to activate their Bloomberg licence using the order number. The employee then created their login ID, password and registered their thumbprint on their Bloomberg keyboard using the Bloomberg application. After these steps were completed, the employee was able to login to Bloomberg on their desktop computer in the ANZ office to set up their B-Unit by completing a fingerprint scan on the B-Unit. Once the B-Unit had been successfully set up, the employee had the capability to access Bloomberg in the ANZ office or remotely via an ANZ issued laptop.
14. In 2011, the Markets Service Desk and Desktop Support team did not install Bloomberg on BlackBerry mobile phones issued by ANZ to employees or an employee's personal mobile phone. Bloomberg was only installed on desktop computers and laptops.
15. If an employee wanted to access Bloomberg on their ANZ BlackBerry mobile phone, or a personal mobile phone, it was possible for the employee to arrange to install the software themselves and contact Bloomberg directly for assistance with the installation. ANZ did not have any systems in place to monitor or prevent an employee from installing Bloomberg on their ANZ BlackBerry mobile phone or a personal mobile phone.

Installation of Bloomberg on Etienne's ANZ devices

16. In July 2011, Etienne was approved to access Bloomberg on his ANZ desktop computer, prior to commencing employment at ANZ on 8 August 2011. Etienne's Bloomberg licence request was approved by John Chase, Head of Business Management, Global Markets. I have obtained copies of emails relating to the installation of Bloomberg on Etienne's ANZ devices which are stored on ANZ's email archives. Now produced, shown to me and marked:

- (a) **'BJO-1'** is an email chain between John Chase and Sarah Thompson, Executive Assistant to Rob O'Callaghan – Global Head of Fixed Income, dated 14 July 2011 in which John Chase approved the purchase of a new Bloomberg licence for Etienne;
- (b) **'BJO-2'** is an email chain between Sarah Thompson, Peter Wollinski, Senior Administration Manager – Global Markets, and the Markets Service Desk group email address dated 14 July 2011 in which Sarah Thompson notified Peter Wollinski of Etienne's start date and requested that he organise a "high end" computer and "BT phone" (a British Telecom desktop phone used by Global Markets employees) for Etienne. Peter Wollinski subsequently forwarded the email to the Markets Service Desk group email address and provided instructions for Etienne's desktop computer and requested that computer monitors and a BT phone login be arranged for him;
- (c) **'BJO-3'** is an email from Sarah Thompson to the Markets Service Desk group email address dated 20 July 2011 attaching the email annexed at **'BJO-1'** and a New Staff Member Form for Etienne;
- (d) **'BJO-4'** is an email from Patricia Mihalopoulos, Infrastructure Services and Implementation Manager, to the Markets Service Desk group email address dated 26 July 2011 providing the order number for Etienne's Bloomberg licence; and
- (e) **'BJO-5'** is an email chain between Peter Wollinski and the Markets Service Desk group email address, copying others including Sarah Thompson, dated 27 July 2011. In the email chain, Peter Wollinski requested that equipment be installed for Etienne and a BT login arranged. Sarah Thompson responded to the email confirming that a BT login had been organised for Etienne. The email attached the email exchange annexed at **'BJO-2'**.

CB 1484
ZNA.001.001.0528

CB 1483
ZNA.001.001.0527

CB 1485
ZNA.001.001.0529

CB 1488
ZNA.001.001.0532

CB 1489
ZNA.001.001.0533

Storage of messages sent and received via Bloomberg Chat

17. Prior to ANZ implementing its own systems to record messages sent and received using Bloomberg Chat, and based on my experience working in technology roles at ANZ and my working knowledge of the Bloomberg application, I am aware that:
- (a) messages sent and received on Bloomberg Chat by ANZ employees were stored externally by Bloomberg on a platform called Bloomberg Vault, which was hosted and controlled by Bloomberg;
 - (b) messages sent and received by ANZ employees using Bloomberg Chat were recorded and time stamped by Bloomberg;
 - (c) ANZ did not keep a record of messages sent and received by ANZ employees on Bloomberg Chat;
 - (d) in order for ANZ to access messages sent and received on Bloomberg Chat that were stored on Bloomberg Vault, it was necessary to submit a request to Bloomberg to retrieve the messages from Bloomberg Vault;
 - (e) ANZ employees were only able to access their own historical Bloomberg Chat messages for the preceding three months; and
 - (f) an employee could only access a specific Bloomberg Chat message if the employee:
 - i. was a participant in the Bloomberg Chat conversation in which the message was sent or received;
 - ii. physically looked at the message using Bloomberg on the desktop or laptop computer or mobile phone of an employee who had access to the message; or
 - iii. made a request to Bloomberg to retrieve the message.



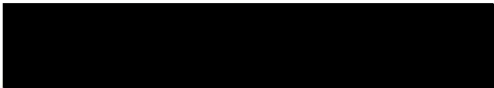
18. Since around 2017, ANZ has been able to retrieve Bloomberg Chat messages directly from the Markets Surveillance Team.

Affirmed by the deponent
at Sydney
in New South Wales
on 14 November 2023
Before me:

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Signature of deponent



Signature of witness

Name of witness: Mary-Anne Rossi Nolan

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