

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 18/10/2021 10:32:28 AM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
File Number: VID519/2021
File Title: SENATOR REX PATRICK v AUSTRALIAN INFORMATION
COMMISSIONER
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 18/10/2021 10:32:36 AM AEDT

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 59
Rule 29.02(1)

Affidavit

No. VD519 of 2021

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law & Human Rights

Senator Rex Patrick

Applicant

Australian Information Commissioner

Respondent

Affidavit of: **Benjamin George Wentworth Bucknell**

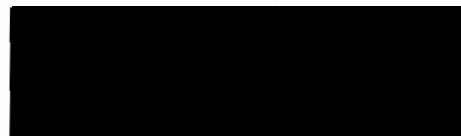
Address: 607/87-97 Yarranabbe Road, Darling Point, NSW, 2027

Occupation: Finance Executive

Date: 11 October 2021

On 11 October 2021 I, Ben Bucknell of 607/87-97 Yarranabbe Road, Darling Point, NSW, say on oath:

1. I am the Chief Executive Officer employed by OnMarket BookBuilds Pty Ltd. I have been in this role since 2009. OnMarket BookBuilds is a fintech company that operates a business of enabling small to medium enterprises (SMEs) to raise equity from any member of the public who wishes to invest. At the time of writing, more than 60,000 Australians have joined the OnMarket platform to receive offers to invest in SMEs.
2. I make this affidavit from my own knowledge and belief save where otherwise stated. Where I depose to matters based on information and belief, I believe those matters to be true.
3. I have read the Form 15 Originating Application and the Form NCF1 Concise Statement which bear the seal of the Court and were filed on behalf of the Applicant in this proceeding.
4. I use the Freedom of Information ("FOI") system to obtain information that assists me to identify the facts to establish whether the Australian government or Australian government statutory bodies have breached their obligations under various pieces of legislation relating to competition policy.



JP 183880

5. In the course of exercising my rights under the FOI Act, I lodged the following applications with the corresponding departments:

FOI Reference	Department	Date Submitted	Date substantive response received (or expected)	Days taken to respond
#2933*	Treasury	12-May-21	9-Jul-21	58
Request internal review	Treasury	20-Jul-21	19-Aug-21	30
Days Sub-total				88
#2986*	Treasury	9-Aug-21	29-Oct-21	81
#001*	Productivity Commission	7-Jul-21	6-Sep-21	61
Request internal review	Productivity Commission	13-Sep-21	12-Oct-21	29
Days Sub-total				90
#FOI-22-10	APRA	12-Aug-21	10-Sep-21	29
Request internal review	APRA	15-Sep-21	15-Oct-21	30
Days Sub-total				59
#FOI-22-11	APRA	12-Aug-21	10-Sep-21	29
Request internal review	APRA	15-Sep-21	15-Oct-21	30
Days Sub-total				59
#2655	Treasury	4-Mar-20	3-Apr-20	30
#RBAFOI-212205	RBA	9-Aug-21	8-Sep-21	30

* department requested an extension of time to respond

Note: shading indicates response yet to be received

6. On occasions I have been unhappy/aggrieved by the decision of an agency and/or the outcome of internal review and sought a review of the decision with the Australian Information Commissioner ("IC").
7. On 15 July 2021, I submitted a request to the IC for merit review in respect of FOI Ref 2933.
8. On 19 July 2021, I received email correspondence from the IC advising me that "*The assessment by a senior member of the FOI team can take 8-12 weeks and sometimes longer depending on the complexity of the issues raised in the IC review. Due to the number of IC review applications on hand allocation to a review officer may take up to 12 months.*"
9. As a result of the delay, I sought internal review from the relevant departments in the meantime. On 19 August 2021, I received an unsatisfactory response from Treasury in respect of their internal review of FOI ref 2933.
10. On 16 September 2021, as delays of 12 months or greater for an IC review application will have a material adverse effect on our business, and the subsequent decision from internal review, sought in the intervening period, from Treasury was unsatisfactory, I asked the IC to expedite the IC review, or alternatively a referral to the AAT under s54W(b), in respect of FOI application #2933, FOI 22-10, and FOI 22-11.

- 11. On 22 September 2021, I emailed the IC to ask for an update on status and on 24 September 2021, I was advised by email: *"At this stage your request is under active consideration by a senior member of the FOI team, and we will be in contact with an update in the next couple of weeks to advise you of next steps."*
- 12. The uncertainty arising from a delay of 12 months to obtain the information under this request is likely to have a material adverse effect on our business and our ability to make investment plans while we wait for a response. This uncertainty and the delay in obtaining documents under the FOI Act, and a decision as to whether the FOI Act was correctly applied, affects our investment plans, our shareholders, the small-to-medium enterprises for whom we raise capital, our current employees and delays our hiring plans of prospective employees and the +60,000 members of the public who invest via the OnMarket platform.

Sworn / Affirmed by the deponent
 At Roslyn
 in New South Wales
 on 8 October 2021
 Before me:

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[Redacted Signature]

Signature of deponent

[Redacted Signature]

Signature of witness

Name: MARGARET ANN WHEELWRIGHT

Qualification: J.P. 183880