



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD95/2021

CHIEF EXECUTIVE MEDICARE ON BEHALF OF THE COMMONWEALTH OF AUSTRALIA and another/others named in the schedule
Applicant

SPECIALIST DIAGNOSTIC SERVICES PTY LTD (ACN 007 190 043)
Respondent

ORDER

JUDGE: JUSTICE STEWART

DATE OF ORDER: 30 June 2021

WHERE MADE: Sydney

THE COURT ORDERS THAT:

1. The following defined terms apply for the purposes of these Orders:
 - a. **Category A Confidential Information** means:
 - i. the documents identified at Schedule A to these orders (being lease agreements to which the Respondent is not a party and documents associated with those lease agreements)
 - ii. the information highlighted in yellow in the expert reports of Mr John Conrick dated 10 June 2021 emailed to King & Wood Malleons by AGS by email on 23 June 2021 at 10:58am and 11:00am.
 - b. **Category B Confidential Information** means:
 - i. the documents identified at Schedule B to these orders (being lease agreements to which the Respondent is a party and documents associated with those lease agreements)
 - ii. the information highlighted in green in the expert reports of Mr John Conrick dated 10 June 2021 emailed to King & Wood Malleons by AGS by email on 23 June 2021 at 10:58am and 11:00am.
 - c. **Confidentiality Claim Date** means 23 July 2021 being the date by which any confidentiality claims by third parties must be filed.



- d. **Court** means the Federal Court of Australia.
- e. **Proceeding** means NSD 95 of 2021 brought by the Applicant against the Respondent in the Court (and any appeals from a decision of the Court in NSD 95 of 2021).

Identifying Confidential Information

- 2. Where a party wishes to provide information or documents containing Category A Confidential Information, the party providing the information or document will mark the Category A Confidential Information in yellow highlight or provide the documents on yellow paper as appropriate and clearly label the information or documents as confidential.
- 3. Where a party wishes to provide information or documents containing Category B Confidential Information, the party providing the information or document will mark the Category B Confidential Information in green highlight or provide the documents on green paper as appropriate and clearly label the information or documents as confidential.

Category A Confidential Information

Access to Category A Confidential Information up to and including the Confidentiality Claim Date

- 4. Up to and including the Confidentiality Claim Date, the following persons have unrestricted access to Category A Confidential Information, provided such persons keep that material confidential in accordance with these Orders:
 - a. Court staff and any other person assisting the Court;
 - b. the Chief Executive of Medicare;
 - c. the Commonwealth Department of Health and Services Australia staff;
 - d. external expert advisors, contractors or proposed expert witnesses retained by the Commonwealth Department of Health and Services Australia or the Respondent;
 - e. legal representatives for the parties retained for the purpose of the Proceeding (including, for the avoidance of doubt, in-house lawyers of the Respondent); and
 - f. support staff of the persons listed in sub-paragraphs 4a. to 4e. above.
- 5. Up to and including the Confidentiality Claim Date, unless the Court otherwise orders, the legal representatives of the Respondent be permitted to communicate the nature and



gravamen of the Category A Confidential Information for the express purpose of providing advice or obtaining instructions in relation to the Proceeding but will do so without revealing:

- a. the name of the third party to whom the Confidential Information relates;
- b. the precise address of the approved pathology collection centre leases that are the subject of the Confidential Information (but the legal representatives will be permitted to refer to post codes);
- c. the rental amount for the approved pathology collection centre leases that are the subject of the Confidential Information; and
- d. any other information which could reasonably risk revealing the Confidential Information.

Access to Category A Confidential Information after the Confidentiality Claim Date

6. If no confidentiality claim is filed by a third party over Category A Confidential Information by the Confidentiality Claim Date, the Respondent be granted unrestricted access to the Category A Confidential Information provided it keeps the information confidential.
7. If any confidentiality claim is filed by a third party over Category A Confidential Information by the Confidentiality Claim Date, orders 2, 4 and 5 above will continue to apply until such time as the Court makes an order disposing of the confidentiality claim.

Category B Confidential Information

Access to Category B Confidential Information up to and including the Confidentiality Claim Date

8. Up to and including the Confidentiality Claim Date, the following persons have unrestricted access to Category B Confidential Information provided such persons keep that material confidential in accordance with these Orders:
 - a. Court staff and any other person assisting the Court;
 - b. the Chief Executive of Medicare;
 - c. the Commonwealth Department of Health and Services Australia staff;
 - d. the Respondent;
 - e. external expert advisors, contractors or proposed expert witnesses retained by the Commonwealth Department of Health and Services Australia or the Respondent;



- f. legal representatives for the parties retained for the purpose of the Proceeding; and
- g. support staff of the persons listed in sub-paragraphs 8a. to 8f. above.

Access to Category B Confidential Information after the Confidentiality Claim Date

- 9. If any confidentiality claim is filed by a third party over Category B Confidential Information by the Confidentiality Claim Date, orders 4 and 8 above will continue to apply until such time as the Court makes an order disposing of the confidentiality claim.
- 10. Up to and including the Confidentiality Claim Date, unless the Court otherwise orders, a person who is not permitted to have access to Category A Confidential Information or Category B Confidential Information in accordance with these Orders shall not be entitled to inspect any document or documents containing Category A Confidential Information or Category B Confidential Information.

Procedural timeline

- 11. Within 7 days from the Confidentiality Claim Date, the parties are to confer with respect to:
 - a. if no confidential claim is filed by a third party by the Confidentiality Claim Date, proposed consent orders for the timetabling of further steps in the Proceeding; or
 - b. if any confidentiality claim is filed by a third party by the Confidentiality Claim Date, proposed consent orders for the hearing of the confidentiality claim(s).

Date that entry is stamped: **30 June 2021**

Sia Lagos
Registrar



Schedule A: Category A Confidential Information

Category A Confidential Information	
No.	Document ID
1.	HEA.0001.0001.0093
2.	HEA.0001.0001.0140
3.	HEA.0001.0001.0186
4.	HEA.0001.0001.0225
5.	HEA.0001.0001.0266
6.	HEA.0001.0001.0271
7.	HEA.0001.0001.0272
8.	HEA.0001.0001.0276
9.	HEA.0001.0001.0277
10.	HEA.0001.0001.0278
11.	HEA.0001.0001.0281
12.	HEA.0001.0001.0307
13.	HEA.0001.0001.0308
14.	HEA.0001.0001.0334
15.	HEA.0001.0001.0340
16.	HEA.0001.0001.0346
17.	HEA.0001.0001.0370
18.	HEA.0001.0001.0371
19.	HEA.0001.0001.0376
20.	HEA.0001.0001.0377
21.	HEA.0001.0001.0378
22.	HEA.0001.0001.0381
23.	HEA.0001.0001.0427



Category A Confidential Information	
No.	Document ID
24.	HEA.0001.0001.0428
25.	HEA.0001.0001.0431
26.	HEA.0001.0001.0521
27.	HEA.0001.0001.0540
28.	HEA.0001.0001.0559
29.	HEA.0001.0001.0567
30.	HEA.0001.0001.0569
31.	HEA.0001.0001.0570
32.	HEA.0001.0001.0589
33.	HEA.0001.0001.0592
34.	HEA.0001.0001.0593
35.	HEA.0001.0001.0613
36.	HEA.0001.0001.0614
37.	HEA.0001.0001.0637
38.	HEA.0001.0001.0641
39.	HEA.0001.0001.0669
40.	HEA.0001.0001.0670
41.	HEA.0001.0001.0671
42.	HEA.0001.0001.0705
43.	HEA.0001.0001.0774
44.	HEA.0001.0001.0775
45.	HEA.0001.0001.0776
46.	HEA.0001.0001.0789
47.	HEA.0001.0001.0792
48.	HEA.0001.0001.0803



Category A Confidential Information	
No.	Document ID
49.	HEA.0001.0001.0804
50.	HEA.0001.0001.0828
51.	HEA.0001.0001.0829
52.	HEA.0001.0001.0843
53.	HEA.0001.0001.0856
54.	HEA.0001.0001.0857
55.	HEA.0001.0001.0872
56.	HEA.0001.0001.0885
57.	HEA.0001.0001.0897
58.	HEA.0002.0001.0044
59.	HEA.0002.0001.0070
60.	HEA.0002.0001.0075
61.	HEA.0002.0001.0101
62.	HEA.0002.0001.0137
63.	HEA.0002.0001.0144
64.	HEA.0002.0001.0150
65.	HEA.0002.0001.0151
66.	HEA.0002.0001.0154
67.	HEA.0002.0001.0176
68.	HEA.0002.0001.0197
69.	HEA.0002.0001.0225
70.	HEA.0002.0001.0226
71.	HEA.0002.0001.0235
72.	HEA.0002.0001.0236
73.	HEA.0002.0001.0244



Category A Confidential Information	
No.	Document ID
74.	HEA.0002.0001.0246
75.	HEA.0002.0001.0247
76.	HEA.0002.0001.0255
77.	HEA.0002.0001.0256
78.	HEA.0002.0001.0257
79.	HEA.0002.0001.0319
80.	HEA.0002.0001.0327
81.	HEA.0002.0001.0331
82.	HEA.0002.0001.0340
83.	HEA.0002.0001.0363
84.	HEA.0002.0001.0368
85.	HEA.0002.0001.0409
86.	HEA.0002.0001.0414
87.	HEA.0002.0001.0424
88.	HEA.0002.0001.0457
89.	HEA.0002.0001.0468
90.	HEA.0002.0001.0470
91.	HEA.0001.0001.0803
92.	HEA.0001.0001.0804



Schedule B: Category B Confidential Information

Category B Confidential Information	
No.	Document ID
1.	HEA.0001.0002.0001
2.	HEA.0001.0002.0006
3.	HEA.0002.0002.0001
4.	HEA.0002.0002.0006
5.	HEA.0002.0002.0011
6.	HEA.0001.0001.0001
7.	HEA.0001.0001.0029
8.	HEA.0001.0001.0030
9.	HEA.0001.0001.0039
10.	HEA.0001.0001.0043
11.	HEA.0001.0001.0044
12.	HEA.0001.0001.0048
13.	HEA.0001.0001.0049
14.	HEA.0001.0001.0054
15.	HEA.0001.0001.0055
16.	HEA.0001.0001.0060
17.	HEA.0001.0001.0072
18.	HEA.0001.0001.0081
19.	HEA.0001.0001.0091
20.	HEA.0001.0001.0092
21.	HEA.0002.0001.0001
22.	HEA.0002.0001.0005
23.	HEA.0002.0001.0006
24.	HEA.0002.0001.0010



Category B Confidential Information	
No.	Document ID
25.	HEA.0002.0001.0011
26.	HEA.0002.0001.0012
27.	HEA.0002.0001.0018
28.	HEA.0002.0001.0019
29.	HEA.0002.0001.0027
30.	HEA.0002.0001.0029
31.	HEA.0002.0001.0034
32.	HEA.0002.0001.0035
33.	HEA.0002.0001.0036
34.	HEA.0002.0001.0041
35.	HEA.0002.0001.0042
36.	HEA.0002.0001.0043



Schedule C

No: NSD95/2021

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Applicant **CHIEF EXECUTIVE MEDICARE**