



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: 29 July 2021

WHERE MADE: Sydney

THE COURT ORDERS THAT:

Confidentiality Regime

1. The orders of 30 June 2021 and 23 July 2021 be vacated and the confidentiality regime set out at orders 2 to 11 of these orders have effect, nunc pro tunc.

Definitions

2. The following defined terms apply for the purposes of these Orders:
 - a) **Application** means an application for suppression or non-publication orders pursuant to s 37AF of the *Federal Court of Australia Act 1976*.
 - b) **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 Mallesons by AGS by email on 23 June 2021 at 10:58am and 11:00am.
 - c) **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 Mallesons by AGS by email on 23 June 2021 at 10:58am and 11:00am.
- d) **Application Date** means 30 July 2021 being the date by which any Application must be filed with the Court by third parties.
- e) **Court means** the Federal Court of Australia.
- f) **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

3. Where a party to the Proceeding wishes to provide information or documents containing Category A Confidential Information to the other party in the Proceeding, 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.
4. Where a party to the Proceeding wishes to provide information or documents containing Category B Confidential Information to the other party in the Proceeding, 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 Application Date

5. Up to and including the Application 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 5.a) to 5.e) above.
6. Up to and including the Application 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 Category A Confidential Information relates;
 - b) the precise address of the approved pathology collection centre leases that are the subject of the Category A 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 Category A Confidential Information; and
 - d) any other information which could reasonably risk revealing the Category A Confidential Information.

Access to Category A Confidential Information after the Application Date

7. If no Application is filed with the Court by a third party in respect of Category A Confidential Information by the Application Date, the respondent be granted unrestricted access to the Category A Confidential Information provided it keeps the information confidential.
8. If any Application is filed with the Court by a third party in respect of Category A Confidential Information by the Application Date, orders 3, 5 and 6 above will continue to apply until such time as the Court makes an order disposing of the relevant Application.

Category B Confidential Information

Access to Category B Confidential Information up to and including the Application Date

9. Up to and including the Application 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 9.a) to 9.f) above.

Access to Category B Confidential Information after the Application Date

10. If any Application is filed by a third party in respect of Category B Confidential Information by the Application Date, orders 4 and 9 above will continue to apply until such time as the Court makes an order disposing of the relevant Application.
11. Up to and including the Application 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

12. Third parties who have filed an Application file and serve any evidence and submissions in support of their Application (with a total limit of 10 pages for both) by 6 August 2021.
13. The applicant and respondent file and serve any evidence and submissions in reply (with a total limit of 10 pages for both) by 13 August 2021.
14. Third parties who have filed an Application file and serve any evidence and submissions in reply (with a total limit of 5 pages for both) and indicate to the Court if an oral hearing is requested and if so, a basis for that request by 20 August 2021.
15. The Applications to be determined on the papers unless ordered otherwise.
16. The case management hearing listed for 5 August 2021 is vacated.
17. The matter is listed for case management on 2 September 2021.
18. The applicant notify all third parties who have filed an Application of these orders drawing particular attention to the procedural timetable by 2 August 2021.



19. The applicant file an affidavit detailing what was done to give notice to all third parties with an interest in the Category A and Category B Confidential Information of the orders of 30 June 2021 and, further, in compliance with Order 18 above by 6 August 2021.

Date that entry is stamped: **29 July 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
24.	HEA.0001.0001.0428



Category A Confidential Information	
No.	Document ID
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
49.	HEA.0001.0001.0804



Category A Confidential Information	
No.	Document ID
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
74.	HEA.0002.0001.0246



Category A Confidential Information	
No.	Document ID
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

Applicant FIRSTRAX PTY LIMITED