

IN THE FAIR WORK COMMISSION

Title: s 156 of the *Fair Work Act* 2009 - 4 yearly review of modern awards
Award: Pharmacy Industry Award 2010 and Hospitality Industry (General) Award 2010
Matter No.: AM2014/305
Subject: Penalty rates

OUTLINE OF SUBMISSIONS FOR THE PHARMACY GUILD OF AUSTRALIA IN RELATION TO ORDER FOR PRODUCTION OF DOCUMENTS ISSUED TO LYNNE PEZZULLO OF DELOITTES ACCESS ECONOMICS

A. Introduction

1. On 8 September 2015, the Full Bench directed the parties to lodge draft submissions addressing the objections to the order for production made by Cataziriti VP directed to Ms Lynne Pezzullo of Deloittes Access Economics on 31 August 2015.
2. The Pharmacy Guild of Australia (the **Guild**) and the Australian Hotels Association (**AHA**) have already provided the following documents to the SDA:
 - (a) the letter of engagement from Meridian Lawyers to Deloittes Access Economics;
 - (b) all responses to the i-link survey; and
 - (c) draft versions of the report dated approximately 23 January 2015, 22 April 2015 and 27 May 2015.
3. The documents have been provided on the basis of the express reservation of a claim for client-legal privilege.
4. It is common ground amongst the parties present before the Commission that the relevant principles to be applied in determining whether there has been a waiver of

client-legal privilege in relation to expert reports are set out in *Australian Securities and Investments Commission v Southcorp Ltd* (2003) 46 SCSR 438 at [21] and *New Cap Reinsurance Corporation Ltd (in Liq) v Renaissance Reinsurance Ltd* [2007] NSWSC 358.

5. The Guild and AHA submit that the draft reports of Ms Pezzullo provided for comment to Meridian Lawyers, the correspondence inviting review of the draft reports and the comments on the draft reports provided to her are subject to client-legal privilege and have not been waived.
6. Consistently with the Full Bench's observations made on 8 September 2015, the Guild and AHA are prepared to disclose the following documents to the relevant member of the Commission delegated to determine the question of waiver of privilege:
 - (a) the draft reports of Ms Pezzullo provided to Meridian Lawyers;
 - (b) the correspondence between Ms Pezzullo/Deloittes Access Economics and Meridian Lawyers about the contents of the draft reports;
 - (c) any comments made by Meridian Lawyers to Ms Pezzullo/Deloittes Access Economics in relation to the draft reports; and
 - (d) a table prepared by Deloittes Access Economics summarising the changes made in relation to the draft reports.
7. The Guild and AHA submit that the documents will demonstrate that nothing contained therein gives rise to an inference that Meridian Lawyers have influenced the content of the report in a way that is inconsistent with maintaining a claim for client-legal privilege such that it would be unfair for them to rely on the report without disclosure of the materials.

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9 September 2015