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**From:** [REDACTED]  
**Sent:** Friday, 5 August 2022 12:39 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** CM: RE: Urgent - Significant Issue Settlement Request - CFMMEU v ABCC & Ors (VID172/2022) [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]  
**Attachments:** VID172-2022 - Settlement Request Form - AMENDED - 050822 - clean.pdf; Annexure 1 - OLSC Quarterly Report - VID172-2022.pdf; Annexure 2 - Snaden J order of 31 March 2022.pdf; Annexure 3 - Counsel advice on settlement 280722.pdf; VID56/2020 - Lendlease v ABCC [SEC=OFFICIAL] [AGSDMS-DMS.FID3947731]  
**Importance:** High  
**Categories:** Yellow Category

OFFICIAL: Sensitive//Legal Privilege

Hi [REDACTED],

I apologise for the delay in coming back to you and sincerely thank you for your patience.

Please find attached to this email the following documents:

1. Revised Settlement Request Form;
2. Annexures 1-4, attached to the form.

Additionally, I have also set out answers to your two questions below and confirm this information has been replicated in the attached Settlement Request form:

1. Upon review of our Settlement Request Form submitted on 29 July 2022, we note it states: *"The amount of \$150,000 is a discount of 50% on actual costs expended that would be the subject of taxation in default of agreement..."*. We confirm this phrasing is inaccurate and provide further clarification as follows:

The ABCC/AGS's assessment of its recoverable costs under Snaden J's costs order dated 31 March 2022 is \$410,570.27 (Recoverable Costs). The ABCC then made an offer to the CFMMEU that it would agree to costs at 75% of the Recoverable Costs amount, being a figure of \$307,927.70 (Costs Offer). The CFMMEU did not accept this offer and proposed to defer consideration of the costs quantum until after the conclusion of the appeal. The figure of \$150,000 in costs proposed by the ABCC represents approximately 50% of the ABCC's initial Costs Offer it proposed to the ABCC for agreement. It is a discount of more than 50% of the ABCC's Recoverable Costs.

2. Counsel provided advice to the ABCC (via AGS) confirming that it is open to the ABC Commissioner to seek to negotiate that the CFMMEU pay at least part of the ABCC's costs of the first instance decision. A copy of this advice is attached at Annexure 3. However, no formal, written legal advice was provided by Counsel or AGS which explicitly recommended that the ABCC seek the specific amount of \$150,000 in costs.

I trust that this answers your queries. However, should you require anything else, please feel free to contact me.

Kind regards,

[REDACTED]@abcc.gov.au

**Postal address:** GPO Box 9927, Melbourne VIC 3001  
**Hotline:** [1800 003 338](tel:1800003338) **Web:** [abcc.gov.au](http://abcc.gov.au)

We acknowledge the traditional custodians of this land and celebrate their ongoing culture and contribution to society.



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From: [REDACTED]@ag.gov.au>

Sent: Thursday, 4 August 2022 12:21 PM

To: [REDACTED]@abcc.gov.au>

Cc: [REDACTED]@abcc.gov.au>; [REDACTED]@ag.gov.au>

[REDACTED]@ag.gov.au>

Subject: RE: Urgent - Significant Issue Settlement Request - CFMMEU v ABCC & Ors (VID172/2022) [SEC=OFFICIAL, ACCESS=Legal-Privilege]

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Hi [REDACTED],

Thank you for your time on the phone yesterday.

In addition to providing us with an updated Settlement Request and material, could ABCC also advise on following:

- whether the figure proposed by the ABCC is 50% of the ABCC's actual costs, or 50% of what would be expected to be awarded to the ABCC at taxation; and
- whether formal counsel or legal advice was provided in support of the proposed figure as a counter-offer (and if so, whether that advice can be provided)

We await the updated Settlement Request.

Please do not hesitate to contact us to discuss.

Kind regards,

[REDACTED]

Significant Issues Team | Office of Legal Services Coordination  
Attorney-General's Department



[REDACTED]@ag.gov.au

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