



30 November 2021

Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity
PO Box 6100
Parliament House
Canberra ACT 2600

By email: aclei.committee@aph.gov.au

Dear Sir/Madam,

Inquiry into the expansion of the Australian Commission for Law Enforcement Integrity's (ACLEI) jurisdiction and the corruption vulnerabilities of law enforcement agencies' contracted services

Thank you for your letter of 20 October 2021 inviting Austal Limited (**Austal**) to make submissions in relation to the above inquiry.

Although the scope of the inquiry is necessarily focused on the corruption vulnerabilities of Australia's law enforcement agencies, and does not appear to seek to address matters from the perspective of industry, there may be some lessons learned from Austal's recent experience with an ACLEI investigation that the Committee could consider as part of the material put before it.

1. Background

Austal is a publicly traded company listed on the ASX. Between 21 October 2020 and 4 November 2020 Austal was a subject of a number of media articles focussed on allegations that an Austal employee and Australian Border Force (**ABF**) official acted inappropriately to influence the payment of a disputed \$40m progress payment for the *Cape Class Patrol Boat* program in late 2015. The allegations were being investigated by ACLEI.

The media articles included one titled:

"Integrity chief took personal interest in Austal anti-corruption probe" [emphasis added]



Austal was not aware that an investigation was underway, or that anything warranting independent investigation had occurred on the part of ABF, or in relation to the Cape Class program at all.

Immediately upon publication of the media articles, Austal was subjected to a significant number of enquiries and concerns from shareholders, financiers, other stakeholders and customers, all seeking further information. It was apparent from some of the questions that some had incorrectly formed the view that Austal or its personnel were being investigated in relation to conduct that may have been corrupt.

Austal was required to make 2 separate announcements to the Australian Securities Exchange clarifying the nature of the investigation (as Austal understood it, since no one from ACLEI had contacted Austal at this point), noting that it did not relate to Austal or its employees and correcting some of the allegations or implications made in the media articles.

It will be appreciated that in the absence of any awareness of the investigation, or contact from ACLEI personnel, Austal's explanation was necessarily extremely limited. As a result, the extent to which Austal was able to discharge its obligation to fully inform the share market, was similarly limited and the comfort that the Company could provide to its stakeholders was also so limited.

This had a significant impact on the company. Austal's share price dropped from \$3.24 on 20 October 2020 to \$2.81 on 27 October 2021, a fall of almost 15%, wiping tens of millions of dollars off the value of the company.

For many months after November 2020 Austal continued to receive enquiries and questions about '*its corrupt conduct*' from shareholders, potential investors and other stakeholders. Austal representatives in Canberra also reported receiving enquiries from representatives of the Department of Defence seeking further information about 'Austal's conduct'.

Noting that the Commonwealth Department of Defence is Austal's most important customer and partner in Australia, and an expectation that its employees may be better versed than members of the general public in understanding that ACLEI's jurisdiction is limited to Commonwealth law enforcement agencies, this was particularly troubling.

All of the above combined to unjustly undermine the perception of Austal as a reliable and transparent partner to the Department of Defence – something Austal is extremely proud and dedicated to being.

The views that have been expressed to and about Austal, as a result of the media articles were, and are, plainly incorrect. Austal has never been the subject of the ACLEI



investigation, nor has the ACLEI investigation found any evidence of inappropriate behaviour by Austal or its employees.

Austal understands that readers of media articles will form their own views, and that the authors of media articles have their own responsibilities to ensure accurate reporting. Austal does not hold ACLEI or the Commonwealth responsible for inaccuracy in media reporting or incorrect conclusions drawn from it.

However the fact remains that Austal suffered material reputational and commercial damage as a result of the relevant media articles and it is important to ensure this does not happen in future. Austal considers that in light of:

- a. The gravity and significance of the types of matters investigated by ACLEI – namely, potentially criminal corrupt conduct and bribery – and the likelihood that such concepts will attract interest from a wide variety of stakeholders; and
- b. The significance of the reputational, commercial and/or financial damage that can – and for Austal, did – easily follow from being associated with investigation in to such matters,

there are measures that can and should be implemented to mitigate the potential for such damage to be repeated.

2. Submissions and comments in relation to the Terms of Reference

Austal does not wish to comment in relation to each term of reference, however we do offer the following submissions for consideration. We suggest these may be most relevant to Term (c): *“what systems or processes are in place within law enforcement agencies to identify, report and investigate potential corruption within external service providers”* and Term (e) *“Any other matter.”*

- a. Austal considers it would be appropriate for the systems or processes in place to include advising appropriately senior company representative(s) when an investigation concerning that company has reached a certain stage. The point at which this requirement is triggered may be debated, however Austal submits that if the ACLEI Commissioner is conducting interviews of personnel, the matter is sufficiently material to warrant sharing with the company.



Austal notes this does not prejudice the outcome of the investigation since ACLEI's objective is the identification and investigation of potential corruption within Commonwealth law enforcement agencies and not within industry.

Sharing of information would be on a strictly confidential basis but would allow industry (working in concert with ACLEI) to prepare a response to, for example, unexpected media or other stakeholder enquiries. Sharing relevant information at this point would also facilitate consistent responses to enquiries or concerns between industry and ACLEI.

Further, companies could be asked to nominate more than one representative to receive this information, to cater for the possibility that the most senior nominee is him or herself implicated in any investigation.

- b. Austal understands the need to undertake some investigations on a confidential basis. If the above proposal is not acceptable, Austal submits that if confidentiality is breached or lost, there should at least be a positive obligation on ACLEI to:
 - i. Initiate contact with the company or persons who may be impacted by the loss of confidentiality and advise them of the matters being investigated, to allow them to prepare the necessary response (should it be required); and
 - ii. publicly correct information that is published and which is incorrect. This can only be done by ACLEI since ACLEI is the investigating entity – a denial or correction by a person or entity named in the investigation necessarily carries much less weight than a correction by the investigating body.

Austal submits this obligation is akin to its own obligation to ensure a fully informed share market. Where Austal becomes aware of market-sensitive information about itself that is incorrect, it has a positive duty to publicly correct that information. It is submitted that ACLEI should carry a similar responsibility in relation to the conduct of its investigations.

If this seems like a heavy administrative burden for ACLEI to bear, it should be noted that in light of the nature of matters ACLEI investigates – namely, corruption and potential bribery – the gravity of the consequences of being wrongly associated with these offences justifies this additional burden.



- c. Austal notes that the investigation with which it was associated was intended to be a confidential investigation. However, that confidentiality was clearly breached by someone inside ACLEI or a Commonwealth agency, in order for the matter to be the subject of several media articles.

In addition to the above, and again having regard to the procedural significance of conducting investigations on a confidential basis, Austal submits that:

- i. a breach of confidence concerning a confidential investigation should be grounds for dismissal from employment for personnel found to have breached this confidence; and
- ii. this condition of employment should be made clear to all personnel working within Commonwealth agencies, to ensure it is widely known, understood and adhered to.

Austal notes that much of the above is focused on sharing of information which ACLEI may generally prefer to keep confidential. However in this regard it is noted that:

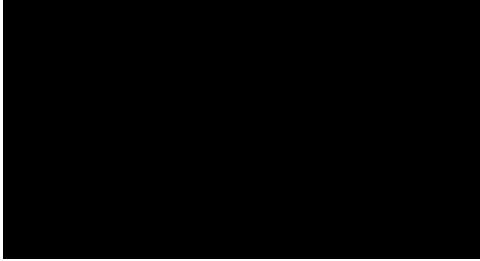
- Austal does not propose sharing **all** information about relevant matters – only that which is required to facilitate preparing a response, should it be required.
- Austal also does not propose sharing information until it has reached a certain point of either sensitivity, magnitude or materiality. The objective is not to provide industry with insight into what ACLEI is doing – rather, it is to allow companies to prepare to respond to queries from stakeholders, if that is required.
- Industry participants – particularly those in the Defence sector – are accustomed to dealing with confidential information. The processes in place are relied upon by other Commonwealth agencies and industry participants, often to protect extremely commercially sensitive material, and ACLEI should be similarly comfortable sharing limited information with industry on this basis.

Austal appreciates the opportunity to provide the above submissions. We would be happy to discuss



them further at your convenience.

Yours sincerely.



Patrick Gregg

Chief Executive Officer

Austal Ltd.