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Australian Government
**Australian Commission for
Law Enforcement Integrity**

Ref: CM 21/42

10 January 2022

Senator Andrew McLachlan CSC
Chair
Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Senator McLachlan,

Response to Austal's submission to the Inquiry into the expansion of ACLEI's jurisdiction and the corruption vulnerabilities of law enforcement agencies' contracted services

Thank you for the opportunity to provide information in response to the submission by Austal Pty Ltd (Austal) to the Committee's Inquiry into the expansion of ACLEI's jurisdiction and the corruption vulnerabilities of law enforcement agencies' contracted services. I provide the following information to assist the Committee in their consideration of these issues.

I note from the outset that the ACLEI investigation referred to in Austal's submission is yet to be finalised and, therefore, my comments are general in nature rather than specific to this investigation.

Media reporting on ACLEI's investigation known as Operation Tardis

The submission by Austal Pty Ltd refers to media reporting on 22 October 2020 on an ACLEI investigation known as Operation Tardis. Given the information contained in the article published on 22 October 2020, I formed the view that an offence against section 207 of the *Law Enforcement Integrity Commissioner Act 2006* (Cth) (LEIC Act) may have been committed by a former or current ACLEI staff member¹. Section 207 provides:

¹ *Staff members of ACLEI* is defined in section 11 of the LEIC Act and includes the Integrity Commissioner, staff appointed under the *Public Service Act 1999*, secondees and counsel assisting the Integrity Commissioner.

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207 Confidentiality requirements for ACLEI staff

- (1) A person who is, or has been, a staff member of ACLEI commits an offence if:
- (a) the person (either directly or indirectly and either while he or she is, or after he or she ceases to be, a staff member of ACLEI):
 - (i) makes a record of any information; or
 - (ii) divulges or communicates any information; and
 - (b) the person acquired the information:
 - (i) because of his or her being a staff member of ACLEI; or
 - (ii) in the course of the carrying out his or her duties as a staff member of ACLEI; and
 - (c) the information was disclosed or obtained under the provisions of, or for the purposes of, this Act.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

I referred this matter to the AFP Commissioner on 22 October 2020 for consideration of whether a criminal investigation should be undertaken. The AFP have decided to investigate this matter and their investigation is ongoing.

If it becomes apparent that information was provided by a person who was, at the time of provision, an ACLEI staff member, I will refer the matter to the Attorney-General as an ACLEI corruption issue as required by section 153 of the LEIC Act².

Confidentiality requirements for ACLEI staff

In its submission, Austal has noted that a breach of confidence occurs if information about an investigation is leaked, stating "*a breach of confidence concerning a confidential investigation should be grounds for dismissal from employment for personnel found to have breached this confidence.*"

I agree that the leaking of information about an ACLEI investigation is a serious matter and note that section 207 of the LEIC Act, which is set out above, makes it a criminal offence for a current or former ACLEI staff member to directly or indirectly make a record of or divulge or communicate any information they acquire because of their position or in the course of their duties except in limited circumstances.

More broadly, it is a criminal offence for a current or former Commonwealth officer to disclose official information without authorisation under s 122.4 of the *Criminal Code* (Cth). This offence is also punishable by imprisonment for 2 years.

As noted above, I have referred this matter to the AFP for investigation and the AFP is currently investigating.

The LEIC Act also establishes a regime for dealing with ACLEI corruption issues. Part 12 of the LEIC Act creates a mandatory notification requirement for the Integrity Commissioner and ACLEI staff members of ACLEI corruption issues to the Attorney-General. The Attorney-General then decides how to deal with that issue (see section 156 of the LEIC Act). Part 12 of the LEIC Act ensure that ACLEI staff are covered by a regime to investigate corruption issues, just as the agencies that we oversee are.

It is important that ACLEI staff members are aware of the confidentiality requirements that apply to them under the LEIC Act. ACLEI staff participate in regular training on these confidentiality requirements in addition to being made aware of them on commencement with

² An *ACLEI corruption issue* only applies to conduct engaged in by an ACLEI staff member while they are a staff member of ACLEI (see s6(3) of the LEIC Act). Accordingly, an offence could be committed under section 207 of the LEIC Act by a person who is no longer a staff member of ACLEI, which would not amount to an ACLEI corruption issue.

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ACLEI and reminded of their ongoing application on cessation. Regular training is also provided on the operation of the LEIC Act and the provisions in Part 12 concerning ACLEI corruption issues.

Information sharing

In its submission, Austal recommends that systems or processes to identify, report and investigate potential corruption with external service providers should *"include advising appropriately senior company representative(s) when an investigation concerning that company has reached a certain stage."*

The point at which a private company is alerted to an investigation is considered on a case by case basis. In some investigations, a private company may be alerted to an ACLEI investigation while the investigation is still in its covert stage, such as through the issuing of notices to produce information or documents. In other investigations, a private company may not be alerted to the investigation until it moves into an overt stage.

For example, in Operation Voss, the private company was not alerted to ACLEI's investigation until the joint investigation team executed search warrants on the company. In Operation Voss, the owner of the company and his son were both charged offences as a result of the investigation. The owner pleaded guilty to a charge of giving a corrupting benefit to a Commonwealth public official contrary to s 142.1 of the Criminal Code. He was convicted and sentenced by the County Court of Victoria to 18 months' imprisonment and ordered to pay a fine of \$20,000, to be released on a recognizance of \$2,000 to be of good behaviour for 2 years. His son pleaded guilty to a charge of aiding and abetting the giving of corrupting benefits to a Commonwealth public official contrary to ss 11.2(1) and 142.1(1) of the Criminal Code. He was convicted and sentenced by the County Court of Victoria to 7 months' imprisonment to be released on a recognizance of \$1,000 to be of good behaviour for 1 year.

My ability to share information in relation to ACLEI's investigations is governed by the LEIC Act. Once an ACLEI investigation is completed, I must prepare a report to the Attorney-General under s 54 of the LEIC Act. Pursuant to subs 51(4), I am required to give persons who are subject to adverse opinions or findings in a s 54 report an opportunity to make submissions in relation to the opinion or finding. Should an external service provider be subject to adverse opinions or findings in one of my investigation reports, they would be afforded such an opportunity. I also provide the opportunity to be heard prior to any public release of such a report, in accordance with s 210.

I would be pleased to discuss these issues further with the Committee at an appropriate time.

Yours sincerely,



Jaala Hinchcliffe
Integrity Commissioner