

9 December 2022

Mr Inderprit Singh  
[listingscompliancesydney@asx.com.au](mailto:listingscompliancesydney@asx.com.au)

Dear Mr Singh

**Downer EDI Limited (Downer): Response to Aware Query**

We refer to your letter dated 8 December 2022.

We respond to your request for information, adopting your numbering and defined terms, as follows:

1. Yes.
2. Given the answer to question 1, not applicable.
3. After the close of the market on Wednesday, 7 December 2022.
4. Downer made the Announcement on the morning of Thursday, 8 December 2022, having first become aware of the Information after the close of the market on Wednesday, 7 December 2022. On the evening of Monday, 5 December 2022, senior management were informed that Downer's Australian Utilities business was carrying an amount of work in progress (WIP) on a particular contract which had likely been overstated. At that time the Information was confidential, comprised supposition, and was insufficiently definite. A reasonable person would not expect the Information to be disclosed at that time (see Listing Rule 3.1A) and immediate disclosure was not required (see Listing Rule 3.1).

The amount of overstated WIP was difficult to assess in respect of those work orders that were not yet completed and were still being worked on in the field and an investigation was required to identify if this was correct, and if so, to understand the reason for, and extent of, any overstatement. On Tuesday and Wednesday, 6 and 7 December 2022, a detailed investigation was initiated and conducted. Further, on Wednesday, 7 December 2022, the Group's trading results for October and November and forecast for December was also analysed. As a result of this investigation and analysis, after the close of the market on Wednesday, 7 December 2022 and based on the information currently available, it was concluded that there were accounting irregularities in Downer's Australian Utilities business of the kind described in the Announcement and a need to give the trading update contained in the Announcement. The Announcement containing the Information was approved for release and released on the morning of Thursday, 8 December 2022.

5. We confirm that Downer has, and is complying with the Listing Rules and in particular Listing Rule 3.1.
6. We confirm that Downer's responses to the questions above have been authorised and approved by an officer of Downer with delegated authority from the board to respond to the ASX on disclosure matters.

Yours sincerely,

Yours sincerely,  
**Downer EDI Limited**

A handwritten signature in black ink, appearing to read 'R. Regan'.

Robert Regan  
Group General Counsel and Company Secretary



8 December 2022

Reference: ODIN65425

Mr Peter Lyons  
Company Secretary  
Downer EDI Limited  
Level 2, Trinita III  
Trinita Business Campus  
39 Delhi Road  
North Ryde NSW 2113

By email

Dear Mr Lyons

**Downer EDI Limited ('DOW'): Aware Query**

ASX refers to the following:

- A. DOW's announcement entitled "Accounting irregularities in Utilities and trading update" lodged on the ASX Market Announcements Platform and released at 9:04 AM on 8 December 2022 (the 'Announcement'), in which DOW disclosed that it:
- had identified certain accounting irregularities in its Australian Utilities business estimated to result in a historical overstatement of pre-tax earnings in the order of \$30 million – \$40 million;
  - was unlikely to meet the previously announced guidance of 10 – 20% growth in underlying FY23 NPATA; and
  - excluding any prior period impact of the accounting irregularities, now expects underlying FY23 NPATA to be between \$210 million – \$230 million assuming no further material COVID-19, weather, labour shortages or other disruptions,
- (collectively, the 'Information').
- B. The media article in the online version of The Australian Financial Review published at 12.11 PM on 8 December 2022, which suggested Downer chief executive Grant Fenn told an investor call he had been informed about the irregularities on Monday night.
- C. Listing Rule 3.1, which requires a listed entity to immediately give ASX any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities.
- D. The definition of "aware" in Chapter 19 of the Listing Rules, which states that:
- "an entity becomes aware of information if, and as soon as, an officer of the entity (or, in the case of a trust, an officer of the responsible entity) has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity" and section 4.4 in Guidance Note 8 Continuous Disclosure: Listing Rules 3.1 – 3.1B "When does an entity become aware of information."*
- E. Listing Rule 3.1A, which sets out exceptions from the requirement to make immediate disclosure, provided that each of the following are satisfied:
- "3.1A Listing rule 3.1 does not apply to particular information while each of the following is satisfied in relation to the information:*

3.1A.1 One or more of the following applies:

- It would be a breach of a law to disclose the information;
- The information concerns an incomplete proposal or negotiation;
- The information comprises matters of supposition or is insufficiently definite to warrant disclosure;
- The information is generated for the internal management purposes of the entity; or
- The information is a trade secret; and

3.1A.2 The information is confidential and ASX has not formed the view that the information has ceased to be confidential; and

3.1A.3 A reasonable person would not expect the information to be disclosed.”

F. ASX’s policy position on the concept of “confidentiality”, which is detailed in section 5.8 of Guidance Note 8 *Continuous Disclosure*: Listing Rules 3.1 – 3.1B. In particular, the Guidance Note states that:

*“Whether information has the quality of being confidential is a question of fact, not one of the intention or desire of the listed entity. Accordingly, even though an entity may consider information to be confidential and its disclosure to be a breach of confidence, if it is in fact disclosed by those who know it, then it ceases to be confidential information for the purposes of this rule.”*

#### **Request for information**

Having regard to the above, ASX asks DOW to respond separately to each of the following questions and requests for information:

1. Does DOW consider the Information to be information that a reasonable person would expect to have a material effect on the price or value of its securities?
2. If the answer to question 1 is “no”, please advise the basis for that view.
3. When did DOW first become aware of the Information?
4. If the answer to question 1 is “yes” and DOW first became aware of the Information before the relevant date, did DOW make any announcement prior to the relevant date which disclosed the information? If so, please provide details. If not, please explain why this information was not released to the market at an earlier time, commenting specifically on when you believe DOW was obliged to release the information under Listing Rules 3.1 and 3.1A and what steps DOW took to ensure that the information was released promptly and without delay.
5. Please confirm that DOW is complying with the Listing Rules and, in particular, Listing Rule 3.1.
6. Please confirm that DOW’s responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of DOW with delegated authority from the board to respond to ASX on disclosure matters.

#### **When and where to send your response**

This request is made under Listing Rule 18.7. Your response is required as soon as reasonably possible and, in any event, by no later than **9:00 AM AEDT on Monday, 12 December 2022**. You should note that if the information requested by this letter is information required to be given to ASX under Listing Rule 3.1 and it does not fall within the exceptions mentioned in Listing Rule 3.1A, DOW’s obligation is to disclose the

---

information ‘immediately’. This may require the information to be disclosed before the deadline set out in the previous paragraph and may require DOW to request a trading halt immediately.

Your response should be sent to me by e-mail at **ListingsComplianceSydney@asx.com.au**. It should not be sent directly to the ASX Market Announcements Office. This is to allow me to review your response to confirm that it is in a form appropriate for release to the market, before it is published on the ASX Market Announcements Platform.

### **Trading halt**

If you are unable to respond to this letter by the time specified above, you should discuss with us whether it is appropriate to request a trading halt in DOW’s securities under Listing Rule 17.1. If you wish a trading halt, you must tell us:

- the reasons for the trading halt;
- how long you want the trading halt to last;
- the event you expect to happen that will end the trading halt;
- that you are not aware of any reason why the trading halt should not be granted; and
- any other information necessary to inform the market about the trading halt, or that we ask for.

We require the request for a trading halt to be in writing. The trading halt cannot extend past the commencement of normal trading on the second day after the day on which it is granted. You can find further information about trading halts in Guidance Note 16 *Trading Halts & Voluntary Suspensions*.

### **Suspension**

If you are unable to respond to this letter by the time specified above, ASX will likely suspend trading in DOW’s securities under Listing Rule 17.3.

### **Listing Rules 3.1 and 3.1A**

In responding to this letter, you should have regard to DOW’s obligations under Listing Rules 3.1 and 3.1A and also to Guidance Note 8 *Continuous Disclosure*: Listing Rules 3.1 – 3.1B. It should be noted that DOW’s obligation to disclose information under Listing Rule 3.1 is not confined to, nor is it necessarily satisfied by, answering the questions set out in this letter.

### **Release of correspondence between ASX and entity**

We reserve the right to release a copy of this letter, your reply and any other related correspondence between us to the market under listing rule 18.7A.

### **Questions**

If you have any questions in relation to the above, please do not hesitate to contact me.

Regards

---

**Inderprit Singh**  
Compliance Officer, Listings Compliance (Sydney)