



Auditor-General for Australia



5 November 2018

Senator Dean Smith
Chair
Joint Committee of Public Accounts and Audit

By email: jcpaa@aph.gov.au

Dear Senator Smith

JCPAA hearings of 19 October 2018—Issuing of a Certificate under section 37 of the *Auditor-General Act 1997*: Inquiry based on Auditor-General's Report No. 6 (2018-19)

I am writing to provide the Joint Committee of Public Accounts and Audit (JCPAA) with the Australian National Audit Office's (ANAO) responses to questions on notice 1-3 arising from the Committee's hearings of 19 October 2018 into the issuing of a certificate under section 37 of the *Auditor-General Act 1997* (the Act). The responses to questions 1-3 are attached. A response to question on notice 4 will be provided by the due date of 9 November 2018.

I also take this opportunity to provide the Committee with some additional information following my review of the proof Committee Hansard.

In the course of the hearings the Deputy Chair, Mr Hill, asked me about the basis of Thales Australia Limited's (Thales Australia) 'objection' to the disclosure of particular material in the proposed audit report in late August 2018, in the context of Thales Australia's second application to the Attorney-General for a certificate under subsection 37(1)(b) of the Act (proof Committee Hansard, pp.5-6 and p.21).

I responded that "With respect to the correspondence, the only specific claim was under section F, is my advice—unfair commercial."

Following my review of the proof Committee Hansard, along with Thales Australia's correspondence to me of 20 August 2018, I have come to the view that I answered Mr Hill's question too narrowly, by only referencing which subsection of the Act was specifically mentioned in Thales Australia's correspondence—that is, subsection 37(2)(f). A better interpretation of the question would have led me to include subsection 37(2)(a) of the Act. This is the case as Thales Australia's correspondence to

me included representations regarding the non-publication of certain material for security and operational reasons and potential prejudice to the security, defence or international relations of the Commonwealth. I would like to also point out that the Department of Defence had not requested removal of this particular material in its 15 August 2018 response to the proposed audit report.

I trust this information is of assistance to the Committee.

Yours sincerely

Grant Hehir
Auditor-General

Response to Questions on Notice

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Army's Protected Mobility Vehicle—Light—Auditor-General Report No. 6 (2018-19)

Australian National Audit Office

GENERAL COMMENTS

Nil

SPECIFIC QUESTIONS ON NOTICE

Question #1

Please provide the committee with a time-line for key events and milestones at which points drafts were provided to Thales, to the Department of Defence, to the defence forces and so on?

Background to question in proof Hansard:

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Mr HILL: With regard to the timeline—the second supplementary submission from the Attorney-General's Department provides a time line for 5 January. Could the committee be provided with a similar time line for key events and milestones before then, at which points drafts were provided? It might be one for the Audit Office.

Dr Clarke: We had no role before 5 January.

Mr HILL: Certainly, perhaps, for the Department of Defence and the Auditor-General then: when were drafts provided to Thales, to the Department of Defence, to the defence forces and so on.

Mr Hehir: Yes.

Response

See Q1 entries in 'Chronology of key events and milestones, and correspondence between the Attorney-General and Auditor-General' at Attachment A.

Question # 2:

Please provide a full list of correspondence between the Attorney-General and Auditor-General up to and including Friday 19 October 2018.

Background to question in proof Hansard:

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CHAIR: I'm happy to be corrected, but I didn't see correspondence of 2 May 2018 from the Auditor-General to the Attorney-General in regard to the interim redacted report; correspondence of 7 May 2018, the letter from the Attorney-General to the Auditor-General requesting an interim report not be tabled; nor correspondence of 9 May 2018, the letter from Auditor-General to the Attorney-General, in response to the Attorney's letters of 7 May. I'm happy to be corrected, but can we just make sure that that table of correspondence is up to date.

Mr Hehir: I'm happy to provide you with a full list of the correspondence. When we put this together, what I was careful to do—again, because of the legislation that applies to me—was not to do anything that I thought could lead to me putting in place to the parliament things that I couldn't. I was quite comfortable with the view that the Attorney-General's Department took to do that. I'm happy to put together a full correspondence list.

CHAIR: Yes, please. I think the table was called 'key events'. If you could do that, and if you could make sure the table is up-to-date as of today, I would be most appreciative. Thanks very much.

Response

See Q2 entries in 'Chronology of key events and milestones, and correspondence between the Attorney-General and Auditor-General' at Attachment A.

Question # 3

Have you provided your consent to disclose any matters in relation to audit report No. 6 or any drafts of the report to the court?

Background to question in proof Hansard:

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Mr HILL: Have you provided your consent to disclose any matters in relation to audit report No. 6 or any drafts of the report?

Mr Hehir: Yes, I've provided consent to Thales to provide information to their solicitors; I've provided consent to the Attorney-General to provide it to the department and his staff; and I've provided consent to Defence to provide it to the defence ministers. I suspect that I may have done something similar with respect to Elbit, with respect to their solicitors, but that's just—

Mr HILL: Elbit?

Mr Hehir: It's one of the other commercial parties in the report. That is normal practice.

Mr HILL: That's fine.

Senator PATRICK: To the court?

Mr Hehir: We didn't do it to them.

Mr HILL: It was to provide it to the solicitors.

Senator PATRICK: No, to the court. Did you give permission to provide it to the court?

Mr Hehir: No. I think we may have for another iteration other than the first one. I'll take that on notice.

Response

I have not provided my consent to anyone, other than the Australian Government Solicitor (AGS) acting on my behalf, to disclose any information contained in the proposed audit report or an extract of the proposed audit report, to the Federal Court of Australia.

I did not provide my consent for Thales Australia Limited to disclose an extract of the proposed audit report to the Federal Court in its ex parte application of 29 January 2018.

ATTACHMENT A

Auditor-General Report No.6 (2018-19) *Army's Protected Mobility Vehicle—Light*

Chronology of key events and milestones, and correspondence between the Attorney-General and Auditor-General

QON	EVENT/CORRESPONDENCE	DATE
	Audit commenced	10 March 2017
Q1	ANAO Report Preparation Paper provided to Defence for comment	15 September 2017
	Written response from Defence Secretary and Chief of the Defence Force on ANAO Report Preparation Paper	9 October 2017
Q1	Proposed audit report provided to Defence for comment under s 19(1)(a) <i>Auditor-General Act 1997</i>	3 November 2017
Q1	Extract of proposed audit report provided to Thales Australia Limited for comment under s 19(6) <i>Auditor-General Act 1997</i>	6 November 2017
Q1	Extract of proposed audit report provided to Elbit Systems of Australia for comment under s 19(6) <i>Auditor-General Act 1997</i>	6 November 2017
	Written response from Thales Australia on extract of proposed audit report	30 November 2017
	Written response from Defence Secretary and Chief of the Defence Force on proposed audit report	1 December 2017
	Written response from Elbit Systems on extract of proposed audit report	4 December 2017
Q1	Revised proposed audit report (version 2) provided to Defence for comment	8 December 2017
Q1	Extract of revised proposed audit report (version 2) provided to Thales Australia for comment	8 December 2017
	Written response from A/g Defence Secretary and Chief of the Defence Force on revised proposed audit report	12 December 2017
	Written responses from Thales Australia on extract of revised proposed audit report	12 December 2017 13 December 2017
Q1	Revised proposed audit report (version 3) provided to Defence for comment	18 December 2017
Q1	Extract of revised proposed audit report (version 3) provided to Thales Australia for comment	19 December 2017
	Written response from Defence Secretary and A/g Chief of the Defence Force on revised proposed audit report	3 January 2018
	Written advice received from Thales Australia of its application for a certificate submitted to Attorney-General under s 37(1)(b) <i>Auditor-General Act 1997</i>	5 January 2018

Q1 Q2	Auditor-General's correspondence to Attorney-General providing copies of the proposed final audit report and the report extract as provided to Thales Australia on 19 December 2017. Authority given to disclose audit report to Attorney-General's ministerial staff and departmental officials	8 January 2018
Q2	Correspondence from Attorney-General to Auditor-General advising a reasonable amount of time is required to consider Thales Australia's application under s 37(1)(b) of <i>Auditor-General Act 1997</i>	12 January 2018
	Notice received from Thales Australia seeking statement of reasons for Auditor-General's decisions under section 37 of the Act—pursuant to s 13(1) <i>Administrative Decisions (Judicial Review) Act 1977</i>	12 January 2018
Q2	Auditor-General's correspondence to Attorney-General requesting what may be a reasonable time to address Thales Australia's application so a revised date for presenting the report to Parliament can be considered	18 January 2018
Q2	Correspondence from Attorney-General to Auditor-General advising no specified timeframe for decision-making	26 January 2018 (received 31 Jan)
	Further correspondence from Thales Australia regarding extract of revised proposed audit report received on 19 December 2017	28 January 2018
	Written advice received from Thales Australia that it had obtained interim interlocutory orders from Federal Court of Australia	29 January 2018
	ANAO response to Thales Australia that it is not entitled to a statement of reasons for the Auditor-General's decisions under section 37 of the Act under the <i>Administrative Decisions (Judicial Review) Act 1977</i>	9 February 2018
Q2	Correspondence from Attorney-General providing Auditor-General with Thales Australia's application for a certificate and seeking relevant documents and further material	15 February 2018
Q2	Auditor-General's written response to Attorney-General's correspondence of 15 February 2018, including commentary on the Auditor-General's perspectives on the disclosure of particular material in the audit report and indicating availability for discussions with the Attorney-General	23 February 2018
	Defence Secretary's written request that Auditor-General permit Defence to provide Minister for Defence and Minister for Defence Industry with a copy of the proposed audit report, so as to respond to a request from the Attorney-General for input to inform his deliberations under section 37	1 March 2018 (received 2 March)

Q1	Auditor-General's correspondence to Defence Secretary providing a copy of the draft audit report (as amended by ANAO to 8 January 2018) for Defence Ministers and offering to brief Defence Ministers on the proposed report. Correspondence also noted that: Defence had acknowledged the removal of information considered to raise security issues in its correspondence to the Auditor-General of 12 December 2017; and that Defence and the ANAO had worked together through an iterative process to identify and manage any potential risks to national security	6 March 2018
	Defence requests a further amendment on security grounds (footnote 18, later published as footnote 19)	18 April 2018
	Auditor-General's correspondence to JCPAA Chair, Presiding Officers, Secretary PM&C and Secretary AGD advising that issues of Parliamentary privilege had arisen in the Federal Court action	20 April 2018
Q1	Interim redacted audit report (version 4) provided to Defence for comment, to inform Parliament on the acquisition to the greatest extent possible without prejudicing Thales Australia's application to the Attorney-General or its legal case prior to its determination by the Federal Court	2 May 2018
Q1	Extract of interim redacted audit report (version 4) provided to Thales Australia for comment	2 May 2018
Q2	Correspondence from Auditor-General to Attorney-General advising that interim redacted report provided to Defence and an extract provided to Thales Australia. Correspondence included advice that information in footnote 18 (later published as footnote 19) has been deleted on security grounds at Defence's request	2 May 2018
Q2	Attorney-General's response to Auditor-General, requesting that the interim redacted report not be presented to Parliament in any form until the Attorney-General's deliberations are concluded. Attorney-General indicates that his deliberations may extend beyond the issues raised in Thales Australia's application relating to subsection 37(2)(e) of the Act	7 May 2018
Q2	Auditor-General's response to Attorney-General's correspondence of 7 May 2018, seeking information on any further applications or matters raised with the Attorney-General under section 37, and inviting the Attorney-General to refer them to the Auditor-General for consideration in the first instance under subsection 37(1)(a) of the Act. A meeting is proposed	9 May 2018
	ANAO advises Defence and Thales Australia of delay to presentation of interim redacted report to Parliament	9 May 2018
	Correspondence from Thales Australia objecting to presentation of interim redacted report to Parliament, pending decisions by the Attorney-General and Federal Court	10 May 2018
Q2	Correspondence from Auditor-General to Attorney-General advising on Auditor-General's response to Thales Australia's 10 May 2018 correspondence	20 June 2018
Q2	Attorney-General issues certificate under s 37(1)(b) <i>Auditor-General Act 1997</i>	28 June 2018 (received 29 June)

	Auditor-General's correspondence to JCPAA Chair advising on the Attorney-General's decision to issue a certificate	5 July 2018
	Federal Court orders that the action be dismissed, by consent of the parties	9 July 2018
	Auditor-General's correspondence to JCPAA Chair advising of dismissal of the Federal Court action	10 July 2018
	Auditor-General's correspondence to Presiding Officers (cc. Parliamentary Clerks, JCPAA Chair, Secretary PM&C and Secretary AGD) advising that Attorney-General had issued a certificate and that Federal Court action had been dismissed by consent of the parties	2 August 2018
Q1	Defence provided with draft of section 37(5) (confidential) audit report and public (redacted) audit report for final comment (version 5)	2 August 2018
Q1	Thales Australia provided with extract of public (redacted) audit report for final comment (version 5)	3 August 2018
	Written Defence responses on public and confidential reports received	16 August 2018
	Thales Australia correspondence to Auditor-General advising it has applied to Attorney-General for a second certificate under s 37(1)(b) <i>Auditor-General Act 1997</i>	20 August 2018
Q1 Q2	Auditor-General letter to Attorney-General responding to Thales Australia's application for a second certificate under s 37(1)(b) <i>Auditor-General Act 1997</i> and advising the matters in question have been removed from the report. Affected paragraphs attached to correspondence	23 August 2018
Q1	ANAO provides Thales Australia with extract of an amended paragraph to be included in final report	24 August 2018
Q2	Attorney-General's correspondence to Auditor-General confirming receipt of second application for a certificate from Thales Australia and advising of intention to write to Thales Australia seeking confirmation that application has been withdrawn (following Auditor-General's decision to not include certain information in proposed public report)	31 August 2018
	ANAO written responses to Thales Australia on arrangements for publication of the public report	31 August 2018 6 September 2018
Q1	Confidential section 37(5) audit report provided to Prime Minister. Confidential report also provided to Minister for Finance, Minister for Defence and Minister for Defence Industry in accordance with Act	6 September 2018
Q1 Q2	Embargoed copy of public report provided to Prime Minister, Minister for Defence, Minister for Defence Industry, Attorney-General (due to special interest in the report), Secretary PM&C, Defence Secretary and Chief of the Defence Force	6 September 2018
	Public report presented for tabling	11 September 2018