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Auditor-General for Australia



20 December 2024

The Hon Linda Burney MP
Chair
Joint Committee of Public Accounts and Audit
Parliament House
CANBERRA ACT 2600

By email: jcpaa@aph.gov.au

Dear Ms Burney

Joint Committee of Public Accounts and Audit Report 503: *Inquiry into the Defence Major Projects Report 2020–21 and 2021–22 and Procurement of Hunter Class Frigates*

I am writing in relation to the recommendation directed to the Australian National Audit Office (ANAO) contained in the JCPAA Report 503: *Inquiry into the Defence Major Projects Report 2020–21 and 2021–22 and Procurement of Hunter Class Frigates*.

Recommendation 1

The Committee recommends that for future inquiries into Defence Major Project Reports the Australian National Audit Office provide a confidential submission regarding information required to be withheld from publication in Project Data Summary Sheets due to national security with appropriate handling procedures, and the Department of Defence organise confidential or classified briefings as required.

ANAO Response:

The ANAO agrees that the Parliament, including the Joint Committee of Public Accounts and Audit (JCPAA), should have access to the information being requested. For the reasons outlined below the ANAO is of the view that the Department of Defence (Defence) is best placed to provide the confidential submission that the Committee is seeking in this recommendation.

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The role of the Auditor-General and the ANAO as custodians of documents belonging to others is reinforced by the legislative and policy framework within which we operate.

- The *Auditor-General Act 1997* (the Auditor-General Act) provides that the Auditor-General is an Independent Officer of the Parliament that has complete discretion in the performance of his or her functions or powers. The independence of the Auditor-General places the Auditor-General, and by extension the ANAO, in a unique position to provide the Parliament with an independent and objective assessment of the operations of public sector entities. The role of the Auditor-General is an important element of the accountability framework established by the Parliament, which involves the public reporting of his or her assessment of the performance of public sector entities. The outcome of all audit and related functions are tabled in Parliament for the benefit of the Executive Government and citizens alike.
- The Auditor-General Act imposes strict obligations on the Auditor-General and the ANAO to protect the confidentiality of all information obtained in the course of performing an Auditor-General function.
- The general principle of confidentiality of information obtained during the course of an audit or assurance review is reinforced by the APES 110 *Code of Ethics for Professional Accountants* which the Auditor-General and the ANAO are required to apply by the ANAO Auditing Standards.
- The Auditor-General and the ANAO are exempt from the application of the *Freedom of Information Act 1982*, which reflects the position that the ANAO should not be used as a mechanism to obtain documents that could be more appropriately requested from the Department of Defence.
- The Auditor-General Act requires that specific information that would be contrary to the public interest is not included in a public audit report and allows the Attorney-General to issue a certificate stating that in the opinion of the Attorney-General, it would be contrary to the public interest to include particular information in a public audit report. Provision of specific audit evidence to the Parliament outside of an audit report may reduce the ability for this provision to operate as intended.
- As stated in paragraph 17 in our second submission to the inquiry, the Auditor-General Act does not provide for confidential reporting to Parliament, or for the presentation of reports other than to Parliament as a whole. Subsection 37(5) of the Auditor-General Act provides for the Auditor-General to prepare a confidential report for Ministers, where the Auditor-General decides to not prepare a public report or omits particular information from a public report. Under subsection 37(2) of the Auditor-General Act the reasons for doing so include prejudice to the security, defence or international relations of the Commonwealth. Where the Auditor-General is of the opinion that inclusion of certain information in a public report would be contrary to the public interest, subsection 37(3) of the Auditor-General Act provides that the Auditor-General cannot be required, and is not permitted, to disclose that information to a House of the Parliament, or a member of a House of the Parliament, or a committee of a House of the Parliament, or a joint committee of both Houses of the Parliament.

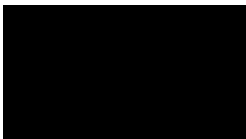
Under this framework, audited entities and others can trust that the Auditor-General and the ANAO will treat them fairly and will protect the confidentiality of specific items of audit evidence. I consider that it would be contrary to the public interest if the ANAO is frustrated in its ability to obtain information and report to Parliament, due to audited entities perceiving a risk that they could lose control of specific items of audit evidence provided to the ANAO, if the Auditor-General may release that information outside of an audit report.

For these reasons, I consider that the public interest benefit in me providing a confidential submission to the Committee on information that was not included in the MPR and is available from Defence, is outweighed by the potential for public interest harm to the operation of the legislative framework for dealing with sensitive information in the Auditor-General Act and to my ability to efficiently and effectively conduct future audits.

While I am not proposing to provide the requested confidential submission, I consider it an important part of the ANAO's role to appear before the Parliament and explain the evidence basis behind conclusions and findings, along with their context. For this reason the ANAO has provided and will continue to provide factual information and submissions to the various public and private hearings relating to the MPR.

Should the Committee require further information in relation to this correspondence, my office would be pleased to provide you with a briefing at a time convenient to you or appear as a witness at a further hearing. To arrange a briefing, please contact our External Relations area at external.relations@anao.gov.au.

Yours sincerely



Dr Caralee McLiesh PSM
Auditor-General