



Auditor-General for Australia



9 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)—additional question on notice

I am writing to provide the Joint Committee of Public Accounts and Audit (JCPAA) with the Australian National Audit Office's (ANAO) response to question on notice number four 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). This question on notice relates to two recent instances where Commonwealth entities have flagged with the ANAO a potential application to the Attorney-General for a certificate under the Act.

At the supplementary budget estimates hearings of the Finance and Public Administration Legislation Committee held on 23 October 2018, I advised the Parliament that the ANAO had received correspondence from two Commonwealth entities since 28 June 2018, flagging the possibility of seeking a certificate from the Attorney-General. At those hearings, I took on notice a request from some members of the Committee to consider releasing the names of the relevant entities. I expressed a reluctance to do so at the hearings, on the grounds that I was not suggesting that any agency had done anything wrong and that naming them may impact the ANAO's ability to maintain a positive working relationship with entities. I emphasised that such relationships were important to facilitate external audit and therefore serve the interests of the Parliament. I raised my concerns in non-specific terms to inform the Parliament of developments since the Attorney-General's certificate was issued, rather than to criticise individual entities.

Following the supplementary budget estimates hearings, the JCPAA has also asked that I release the names of the relevant entities and the related correspondence.

In light of these formal requests from the Parliament, made with the knowledge of my concerns, I have provided the attached answer to question on notice number four which includes the names of the relevant Commonwealth

entities and the related correspondence, appropriately redacted by the ANAO to maintain the confidentiality of information received as part of the audit process.

I trust this information is of assistance to the Committee.

Yours sincerely

Mr 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 #4

Please provide more information on the “people [who] are starting to flag this as a course of action early in the process”, including:

- a. The specific agencies who have flagged a potential request to the Attorney General for a section 37 certificate
- b. Any correspondence, or notes of conversations, to support the statement made at the public hearing

Background to question in proof Hansard:

Mr Hehir: “ ...While some of the conversation has been about how this has only happened once, one of my concerns around some of the issues and processes here is that, for the first time for us, people are starting to flag this as a course of action early in processes. So that's one issue that has concerned me this time.”

Hansard: JCPAA Public Hearing 19 October 2018, page 26.

Response

- a. The Australian Criminal Intelligence Commission (ACIC) and Department of Home Affairs.
- b. See attached correspondence received from the:
 - Australian Criminal Intelligence Commission, dated 13 July 2018; and
 - Department of Home Affairs, dated 4 October 2018.

This correspondence has been redacted by the Australian National Audit Office to maintain the confidentiality of information received as part of the audit process.

From: Williams, Paul E

Submission 2> Supplementary Submission

Sent: Friday, 13 July 2018 9:38 AM

To: 'Julian Mallett'

>; Harrison, Mark

;

Mayo, Nicole

Ervin, Charli

Subject: [DLM=For-Official-Use-Only]

Hi Julian, this email confirms our telecom earlier this morning. As I mentioned, the ACIC remains resolved to comply with ANAO's requirements, however Nicole (our General Counsel) has raised some issues that do bear consideration in terms of ANAO access to our information. The intent is to ensure that we maintain downstream visibility of our information (according to ACC Act requirements) as well as to protect against the possibilities of inadvertent disclosure of other matters, and inadvertent third party disclosures in some other context.

Considerations that I have been asked to consider are as follows:

- a. [REDACTED]
- b. [REDACTED]
- c. [REDACTED]
- d. [REDACTED]
- e. looking to the end of audit draft report process (s19 of AG Act) where comments can be made and if sensitive material is included inappropriately, consider applying to the A-G for a s37 certificate.

I reiterate, this is not a matter of obstructionism – it is just us exercising our responsibilities so far as the protection of our data is concerned.

Cheers

Paul



**AUSTRALIAN
CRIMINAL
INTELLIGENCE
COMMISSION**

Paul Williams
Chief Operating Officer

P: |

E: |

Follow us:  

The ACIC acknowledges the traditional custodians and we pay our respects to Elders past, present and future. We recognise and celebrate their culture, connection to land, water and community.



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ACIC Web Site: www.acic.gov.au



Australian Government
Department of Home Affairs



**Australian
BORDER FORCE**

Sensitive: Legal

Paul Bryant
Executive Director
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Dear Mr Bryant,

Thank you for the opportunity to comment on the Report Preparation Paper (RPP) for the Australian National Audit Office performance audit of *Cape Class patrol boats – In Service Support Arrangements* (the report). We would also like to thank you for the collaborative approach taken by you and your officers in meeting with representatives from our Legal, Finance and Enterprise Strategy, Risk and Performance Divisions prior to the Exit Interview.

As discussed both at the Exit Interview on 3 October 2018 and the pre-meetings with the Department of Home Affairs (the Department) on 2 October 2018, the Department would like to highlight some areas in the RPP for your further consideration in drafting the section 19 report.

The Department of Home Affairs and the Australian Border Force

[Redacted]

[Redacted]

[Redacted]

Steps Taken to Rectify or Improve Identified Issues

[Redacted]

Sensitive: Legal

[illegible]

Legal Concerns

- [REDACTED]
- [REDACTED]

These matters were discussed at the meeting on 2 October 2018 and are listed in detail in highlighted parts of the attached schedule. We seek your consideration of these matters in terms of the application of legal professional privilege and potential prejudice to the Commonwealth's commercial interests should that material be published.

Pending further engagement with your office regarding publication of the report, we note the terms of section 37 of the *Auditor-General Act 1997*—in particular subsections 37(1), 37(2)(e) and potentially 37(2)(f)—and flag a potential application from the Department in accordance with this provision should it be required.

National Security Concerns

Also as discussed at our meeting on 2 October 2018, we are concerned about potential prejudice to national security should identified parts of the material contained in the report be published. [REDACTED]

Sensitive: Legal

Paragraphs of particular concern are listed in the highlighted parts of the attached schedule. We seek your consideration of these matters in terms of potential prejudice to national security should that material be published. Pending further engagement with your office regarding publication of the report, we note the terms of section 37 of the *Auditor-General Act 1997*—in particular subsections 37(1) and 37(2)(a)—and flag a potential application from the Department in accordance with this provision should it be required.

Specific Comments for Consideration

We consulted widely within the Department and ABF in relation to the RPP and collated specific comments received into a table at **Attachment A** to this letter. We provide these comments for your consideration in drafting the section 19 report.

Finally, at the end of Attachment A, we note a number of minor typographical errors within the RPP for your information, noting that none of them materially affect the RPP.

We are very appreciative of the collegiate approach taken to conducting this audit and compiling the RPP. Should you require any further information or clarification, please contact Penny McKay, Assistant Secretary Audit and Assurance, on [redacted] or at [redacted].

Yours sincerely

Mark Brown
First Assistant Secretary
Integrity, Security and Assurance
4 October 2018