



Auditor-General for Australia



The Hon. Christian Porter MP
Attorney-General
By email:

Dear Attorney-General

Application by Thales Australia to Attorney-General under s.37 of the Auditor-General Act 1997: proposed final performance audit report on the Australian Army's Protected Mobility Vehicle–Light acquisition

I have been informed by Thales Australia Limited (Thales Australia) that it has made an application to you to consider issuing a certificate under subsection 37(1)(b) of the *Auditor-General Act 1997* (the Act). The application relates to information included in the Australian National Audit Office's (ANAO) proposed final performance audit report on the acquisition of the Australian Army's Protected Mobility Vehicle–Light. The audit objective is to assess the effectiveness and value for money of Defence's acquisition of Hawkei light protected vehicles. I note that the application by Thales Australia is unprecedented.

In the course of the audit, Thales Australia has made representations to me, relating to paragraphs 37(1)(a) and 37(2)(e) of the Act, to not include in a public audit report [REDACTED]

[REDACTED] The Department of Defence (Defence) has made similar representations.

Subsection 37(1) of the Act provides that: The Auditor-General must not include particular information in a public report if: (a) the Auditor-General is of the opinion that disclosure of the information would be contrary to the public interest for any of the reasons set out in subsection (2); or (b) the Attorney-General has issued a certificate to the Auditor-General stating that, in the opinion of the Attorney-General, disclosure of the information would be contrary to the public interest for any of the reasons set out in subsection (2).

Subsection 37(2) of the Act relevantly provides that: The reasons are: (e) it would unfairly prejudice the commercial interests of any body or person.

The ANAO advised Thales Australia (on 19 December 2017) and Defence (on 18 December 2017) that:

- the Auditor-General has considered the content of the proposed public report and the requirements of section 37 of the *Auditor-General Act 1997* relating to the inclusion of information in public reports; and

- the Auditor-General is of the opinion that the inclusion of [REDACTED] is not contrary to the public interest.

To facilitate your consideration of these matters, I have attached a copy of the ANAO's proposed final performance audit report to this e-mail. I have also attached a copy of the extract of the proposed report, as provided to Thales Australia on 19 December 2017. I consent under subsection 36(4) of the Act to you providing this information to members of your Office or to officials of the Attorney-General's Department to assist you in considering the application. All recipients of the proposed report and extracts should be advised of their confidentiality obligations under the Act.

Prior to becoming aware of Thales Australia's application I had intended to have the report tabled in Parliament on the week commencing 15 January 2018, consistent with the requirement under subsection 17(4)(a) of the Act. As you have received this application I intend to defer tabling until the week commencing 5 February 2018, subject to the nature of your response to it.

I and officials of the ANAO are available to provide assistance in considering the application from Thales Australia. If you wish to discuss this matter directly I can be contacted on (02) 6203 7504. Alternatively, the contact officer for the ANAO is Dr Tom Ioannou, Group Executive Director, Performance Audit Services Group ;
tel.).

Yours sincerely

Grant Hehir
Auditor-General

GPO Box 707 CANBERRA ACT 2601
19 National Circuit BARTON ACT
Phone Fax

SENSITIVE



Auditor-General for Australia



18 January 2018

The Hon Christian Porter MP
Attorney-General
Parliament House
CANBERRA ACT 2600
By email:

Dear Attorney-General

Performance audit—Army's Protected Mobility Vehicle-Light—application for certificate

Thank you for your correspondence of 12 January 2018 about Thales Australia Limited's (Thales) application to you to consider issuing a certificate under subsection 37(1)(b) of the *Auditor-General Act 1997* (the Act).

The application relates to information included in the Australian National Audit Office's (ANAO) proposed final performance audit report titled 'Army's Protected Mobility Vehicle—Light'. As noted in your letter, I had originally intended to present the completed report for tabling in the week commencing 15 January 2018 but deferred its presentation to Parliament until the week of 5 February 2018 following Thales' application to you.

I acknowledge the need for a reasonable amount of time to consider the application, while also being conscious of the need to have proper regard to the requirement of subsection 17(4) of the Act, which requires me to present ANAO performance audit reports for tabling in the Parliament as soon as practicable after their completion.

Your correspondence indicates that the three week deferral I had planned on may not be sufficient for you to consider the application. If this proves to be the case it would assist me in considering the setting of a revised date for presenting the report to Parliament, in accordance with this requirement of the Act, if you could advise me what you consider to be a reasonable time for addressing the application before you.

Yours sincerely

Grant Hehir

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Auditor-General for Australia



23 February 2018

The Hon Christian Porter MP
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney-General

Application by Thales Australia Limited to Attorney-General under section 37 of the Auditor-General Act 1997—request for information

I refer to your correspondence of 15 February 2018 about Thales Australia Limited's (Thales Australia) application to you of 5 January 2018 to consider issuing a certificate under subsection 37(1)(b) of the *Auditor-General Act 1997* (Cth) (the Act).

Thank you for including a copy of Thales Australia's application with your most recent correspondence. In essence, the application requests that you consider issuing a certificate prohibiting the tabling in Parliament of particular information in a public ANAO performance audit report appearing in paragraphs [REDACTED] of the proposed final report which I provided to you on 8 January 2018.

I note that this was not an audit of Thales Australia and that the relevant paragraphs and footnote do not disclose sensitive commercial information [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

You have requested that the ANAO provide you with any additional correspondence or further material which may assist in your consideration of Thales Australia's application. I note that you have already received directly from Thales Australia all relevant correspondence provided by them to the ANAO.

It is a long-standing practice that ANAO working papers—which include correspondence with entities and iterations of proposed reports—are not disclosed to the Parliament, Ministers or other parties so as to preserve the confidentiality of the audit process. While I appreciate that an application for a certificate is uncommon, I am unwilling to set a precedent in respect to the disclosure of audit working papers.

However, consistent with the type of information I would provide to Parliament if asked about these matters, I note that I informed you in my correspondence of 8 January 2018 that Defence made representations to me in the course of the audit regarding the ANAO's analysis. Defence did so on two occasions during December 2017, in the context of providing written comments on the proposed audit report under section 19 of the Act. In that correspondence Defence made two key points regarding commercial matters:

[REDACTED]

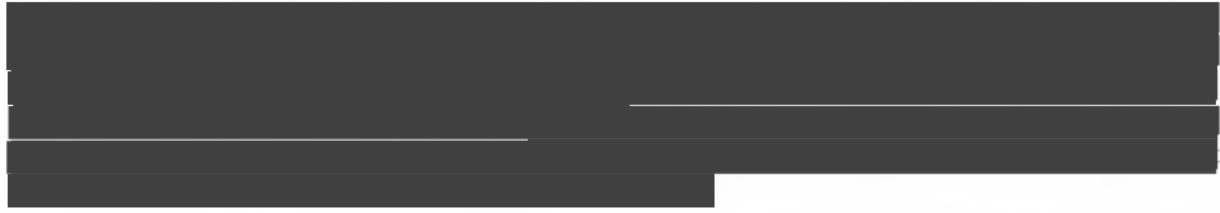
In further written comments of 3 January 2018, Defence again made the first point but not the second. My reading of this correspondence was that Defence had withdrawn its concerns relating to potential prejudice to commercial interests, following consideration of the revised proposed final audit report. I provided that report to you on 8 January 2018. It includes Defence's response of 3 January 2018 as required by the Act.

While appreciating that you are not undertaking a merits review of my own consideration of information to be included in a public report under subsection 37(1)(a) of the Act, I note that I considered that the public interest was clearly balanced in favour of disclosure of the ANAO analysis. I considered that the Parliament, the Executive and the public would reasonably expect to be informed as to whether Defence conducted an effective procurement process [REDACTED]

There are of course situations where, due to the sensitive nature of the information, on balance it is contrary to the public interest to disclose such information rather than presenting complete and transparent information to the Parliament [REDACTED]

[REDACTED]

[REDACTED]



I am available to discuss my thinking with you, having regard to the importance of the decision you have been asked to make.

I note that this audit report was originally scheduled for tabling in December 2017 but I delayed its presentation to the Parliament to enable further comments to be provided by Defence and Thales Australia. The audit was subsequently scheduled for presentation in the week commencing 15 January 2018 and I agreed to defer its presentation for tabling until the week commencing 5 February 2018 following Thales Australia's application to you. In addition to its application to you, Thales Australia filed proceedings in the Federal Court of Australia on 29 January 2018 (*Thales Australia Limited v Auditor-General for the Commonwealth*) seeking to restrain publication of the relevant paragraphs and footnote. The Australian Government Solicitor (AGS) is acting for us in this matter, which raises issues of Parliamentary privilege in court proceedings under section 16 of the *Parliamentary Privileges Act 1987* (Cth). I have instructed AGS to take whatever steps it can to expedite consideration of the Parliamentary privilege issue, which was yesterday listed for hearing on 16 April 2018. That issue is to be determined prior to the hearing of Thales Australia's substantive application.

As advised in my correspondence to you of 18 January 2018, I am conscious of my obligation under subsection 17(4) of the Act to table a report as soon as practicable after completing it. I acknowledge receipt of your response of 26 January 2018 informing me that your decision will be made without unreasonable delay.

This Defence procurement has continued in the intervening period and the ANAO's performance audit engagement has continued accordingly. This is an expectation under the relevant audit standard and may result in changes to the audit report. I will inform you if this process affects the relevant paragraphs and footnote.

Yours sincerely

Grant Hehir
Auditor-General



Auditor-General for Australia



2 May 2018

The Hon Christian Porter MP
Attorney-General
Parliament House
CANBERRA ACT 2600
By email:

Dear Attorney-General

Performance audit of *Army's Protected Mobility Vehicle–Light*—planned tabling of interim redacted report

I am writing to inform you that the ANAO has today provided to the Department of Defence (Defence), for comment, a third revised draft final report on the audit of *Army's Protected Mobility Vehicle–Light*. An extract has also been provided to Thales Australia Limited (Thales Australia) for comment.

I intend to present the Parliament with an interim redacted audit report for tabling as soon as practicable after I receive any further comments from Defence and Thales Australia. I have asked to receive their comments by 9 May 2018 and tabling is planned for the week beginning 14 May 2018.

As you know, the presentation of this report has been delayed as a result of an application to you by Thales Australia to consider issuing a certificate under subsection 37(1)(b) of the *Auditor-General Act 1997* (Cth) (the Act) prohibiting the inclusion in a public report of particular material, and a related action brought by Thales Australia in the Federal Court of Australia seeking to restrain the publication of that material.

I intend to table an interim redacted report to inform Parliament on this acquisition to the greatest extent possible without prejudicing Thales Australia's application to you or its legal case prior to its determination by the Federal Court. I am doing so having regard to: my role, as an independent Officer of the Parliament, in supporting the Parliament's scrutiny of the executive government; my statutory responsibility under subsection 17(4) of the Act to

present performance audit reports for tabling in each House of the Parliament as soon as practicable after their completion; and the significant investment made to date in this audit of a major Defence procurement.

I acknowledge the decision that you are able to make under the Act, and the ongoing Federal Court action. In deciding to prepare a redacted interim report, I have not made a decision to omit information from the report under subsection 37(1)(a) of the Act. It remains my opinion that public disclosure of the redacted information would not unfairly prejudice the commercial interests of any body or person. I intend to present, if possible, an unredacted report for tabling as soon as practicable after the conclusion of the Federal court action and your consideration of Thales Australia's application.

All recipients of the third revised draft final report have been asked to note that paragraphs [REDACTED] will be redacted as they are the subject of Federal Court action and your consideration of Thales Australia's application under the Act. The interim redacted report to Parliament will not include that material, or related material appearing in the audit conclusion and supporting findings.

Defence's procurement of Hawkei vehicles has continued since January 2018, and the ANAO's performance audit engagement has also continued in accordance with auditing standards. The report has been updated to reflect material events in the procurement since January 2018. [REDACTED]

Consistent with normal practice, an embargoed copy of the interim redacted report will be provided two days before tabling to the Prime Minister, Minister for Defence, Minister for Defence Industry, Secretary of Defence, Chief of the Defence Force and Secretary of the Department of the Prime Minister and Cabinet. I will also provide you and your departmental Secretary with an embargoed copy, given your special interest in the content of the report.

Yours sincerely

Grant Hehir
Auditor-General

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On 15 February 2018 you provided me with a copy of Thales Australia's application to you of 5 January 2018 and sought information on any additional correspondence between Thales Australia and the ANAO and/or the Department of Defence and the ANAO that was produced during the course of the audit, to assist in your consideration of Thales Australia's application. You also sought any further material that the ANAO considered appropriate that you should consider by way of specific response to Thales Australia's application. My response to you of 23 February 2018 was framed in the context of the material you provided to me from Thales Australia and therefore addressed the specific material which Thales Australia seeks to have omitted under subsection 37(2)(e) of the Act.

In your correspondence of 7 May 2018 you raised for the first time with me the prospect that your consideration of Thales Australia's application may go to wider grounds under subsection 37(2) of the Act, including 37(2)(a), 37(2)(b) and 37(2)(f). In preparing an audit report it is usual for me to consider, under subsection 37(1)(a) of the Act, the publication of material which may be, in my opinion, contrary to the public interest. I regularly consider the possible omission of material, and in some cases have prepared a non-public report which has included the material omitted from the public version of the report, in accordance with subsection 37(5) of the Act.

In this particular case, it is important to emphasise that to my knowledge every request made in the course of this audit concerning the omission of national security material by the auditee, the Department of Defence, has been addressed. The latest such matter to be dealt with related to footnote 18 (now footnote 19), as advised in my letter to you of 2 May 2018.

I also commonly turn my mind to the inclusion or not of material involving the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet, in accordance with subsection 37(2)(b) of the Act. I am guided in this regard by a written protocol developed between my Office and the Department of the Prime Minister and Cabinet.

With regard to subsection 37(2)(f) of the Act, I have not been asked to consider the omission of any such material by any party.

As noted above, you have not informed me of any other matters before you in considering whether to issue a certificate under the Act. If such matters do exist, I believe that a reasonable approach would be for you to raise them with me so that I could first consider them under subsection 37(1)(a) of the Act, as is normal practice in my audits. I invite you to provide me with information about any other matters that are before you, so that I may consider them. It would be an undesirable precedent for the Attorney-General to issue a certificate under the Act on a matter which has not been raised with the Auditor-General.

As noted in your letter of 7 May 2018, Thales Australia requested that you consider issuing a certificate under the Act on 5 January 2018, some four months ago. In subsequent correspondence between us, you indicated that you required a reasonable amount of time to give this matter proper consideration to inform your decision.

In your letter of 7 May 2018, you also indicated that on 19 February 2018 (over six weeks after the request to you by Thales Australia) you sought, through the Ministers for Defence and Defence Industry, information from the Department of Defence regarding the ANAO audit that may be relevant to your decision making process. I note your advice that you received information from the Ministers for Defence and Defence Industry on 17 April 2018 (some eight weeks after you wrote to them) and that on 20 April 2018 your Office requested a submission from your own Department. You indicate that you expect to receive this advice on 11 May 2018 (three weeks after your request).

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I acknowledge that a request for a certificate under the Act is a matter of significant gravity with no timeframe specified in the Act. I also acknowledge that you intend to make a decision without unreasonable delay, as indicated in your letter to me of 26 January 2018. Unreasonable delay is also a consideration for me. In our correspondence I have raised my concerns about my ability to discharge my obligations under subsection 17(4) of the Act, to table a report as soon as practicable after completing it.

As far as I am aware, Thales Australia's request for a certificate is the first such request made under the Act. The prospect that consideration of such a request could take many months to finalise creates a risk that delays in decision making could be perceived to be used to frustrate the timely tabling of audit reports. I am, therefore, concerned that the absence of a specific timeframe for your consideration may set an undesirable precedent that could in the future be used by the Executive, through the statutory role of the Attorney-General, to interfere (or be perceived to interfere) with my statutory responsibility to the Parliament by delaying the tabling of an audit report.

I believe that it is in neither of our interests for the continuation of an open ended process for you to consider the issuing of a certificate. For me it has the potential to undermine the integrity of my Office and me, in my role as an independent officer of the Parliament, in the eyes of the Parliament. I suggest that we reach a shared view on a specific timeframe for concluding this issue. In the absence of reaching such a shared view, I cannot agree to your request to not table the interim redacted audit report for however long it takes for you to make a decision.

Given the above considerations, along with the indication in your 7 May 2018 correspondence that you expect to receive advice from your Department by the end of this week, I suggest that we meet in the week commencing 14 May 2018 to discuss a shared view on the timing going forward and any issues you may have with the report outside those raised by Thales Australia. My direct number is

Yours sincerely

Grant Hehir
Auditor-General



Auditor-General for Australia

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20 June 2018

The Hon Christian Porter MP
Attorney-General
Parliament House
CANBERRA ACT 2600

By email:

Dear Attorney-General

Performance audit of Army's Protected Mobility Vehicle – Light – Thales Australia response to planned tabling of interim redacted report

I am writing to provide you with an update following my provision of correspondence to Thales Australia Limited (Thales Australia) on 2 May 2018, to provide notice of my proposal to table before Parliament an Interim Redacted Report on the *Army's Protected Mobility Vehicle – Light* as soon as practicable. My correspondence included an extract of the current draft report which was referred to as the Third Revised Draft Final Report (the Report).

In response to this proposal, Thales Australia wrote to me on 10 May 2018 to object to publication of the Report on the basis that publication is likely to 'compromise the integrity' of the non-publication order made by the Federal Court in the ongoing Court proceedings, in respect of enumerated paragraphs of the affidavit of Gary Mark Hines sworn 29 January 2018 (Hines affidavit). Thales Australia adopts the position that the Report replicates the substance of those paragraphs in numerous instances throughout the Report.

Following consideration of the concerns raised by Thales Australia by myself and advice from the Australian Government Solicitor, I have formed the view that tabling of the Report before Parliament would not 'compromise the integrity' of the non-publication order. I have adopted the position that the non-publication order prohibits the publication or other disclosure of the specific paragraphs of the Hines affidavit, but does not prohibit the publication or other disclosure of the information contained in these paragraphs. In particular, I am of the view that the non-publication order does not prevent me from publishing or disclosing information that is publicly available in its entirety, or information which I have obtained from sources independent of Thales Australia. I asked the Australian Government Solicitor to respond to Thales Australia's legal representatives in those terms.

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From my perspective, the issue with Thales Australia in relation to my intention to table a Report is a separate issue to your consideration of Thales Australia's request to you on 5 January 2018, seeking a certificate pursuant to paragraph 37(2)(e) of the *Auditor-General Act 1997*. Even in the event that you issue a certificate with respect to particular information in the Report, I am still in a position whereby I must deal with Thales Australia with respect to the rest of my report, including the prospect that Thales Australia may object to other information in the Report.

I have enclosed Thales Australia's letter to me dated 10 May 2018 as well as a copy of the correspondence that the Australian Government Solicitor provided to Thales Australia's legal representatives on my instructions.

Yours sincerely

Grant Hehir
Auditor-General

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Auditor-General for Australia



23 August 2018

The Hon Christian Porter MP
Attorney-General
Parliament House
CANBERRA ACT 2600

By email:

Dear Attorney-General

Performance audit report of Army's Protected Mobility Vehicle—Light (Hawkei)

I am writing about correspondence I received from Thales Australia Limited (Thales Australia) on 20 August 2018, advising me that it had made a further application to you for a certificate under subsection 37(1)(b) of the *Auditor-General Act 1997* (the Act). Thales Australia also advised me that it has provided you with a copy of its correspondence to me.

Thales Australia's further application relates to an extract (the extract) of the Fourth Revised Draft Final Report of my performance audit of Army's Protected Mobility Vehicle—Light (Hawkei). The Australian National Audit Office (ANAO) provided Thales Australia with the extract for comment on 3 August 2018, as part of the consultation process for completion of the report. A full copy of the Fourth Revised Draft Final Report was also provided to the Department of Defence (Defence) for comment. I received Defence's final comments on the proposed report in correspondence dated 15 August 2018.

In accordance with the ANAO auditing standards, the audit report was updated to reflect significant events in Defence's procurement of Hawkei vehicles until July 2018. The proposed audit report and extract omitted the specific material required by the certificate issued by you on 28 June 2018 under subsection 37(1)(b) of the Act. I also had regard to the certificate when updating the report. All redactions, amendments and updates were clearly highlighted in the extract provided to Thales Australia and the draft report provided to Defence.

In its 20 August 2018 correspondence, Thales Australia submits that it would not be in the public interest to include the following information in a public report:



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I do not agree that there are public interest grounds, under section 37 of the Act, to omit this particular information from a public report.

[REDACTED]

[REDACTED]

[REDACTED]

I have made these amendments because I believe it best serves the interests of the Parliament for the audit to be tabled as soon as possible and I do not wish to risk holding up the tabling of the report through a further extended consideration of an application to you under subsection 37(1)(b) of the Act. I am comfortable with excluding this information from my public report as it does not have a material impact on the audit findings.

The amendments I have made to the report are set out in the two appendices to this letter. Following these amendments, I am not aware of any reason for you to consider issuing a further certificate.

My Office will advise Thales Australia of the amendments to the public report.

Subsection 17(4) of the Act requires that I present an audit report for tabling as soon as practicable after its completion. My Office has previously advised Thales Australia and Defence that I plan to present the report for tabling in the sitting weeks commencing 10 September 2018. As previously advised to your department, I will provide you with a copy of the final report for your information prior to it being tabled.

Yours sincerely

Grant Hehir
Auditor-General

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Appendix 1



¹ Material highlighted in grey was material amended or updated since the release of the Third Revised Draft Final Report of 2 May 2018.

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Appendix 2



² Material highlighted in grey was material amended or updated since the release of the Third Revised Draft Final Report of 2 May 2018.

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Appendix 2

REPORT AS AMENDED FOR TABLING

