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Joint Committee of Public Accounts and Audit

Inquiry into the Defence Major Projects Report 2020-21 and 2021-22 and Procurement of Hunter Class Frigates

Supplementary submission by the Australian National Audit Office – February 2024

Introduction

1. The Committee has requested a supplementary submission on the implications for the Major Projects Report (MPR) and the ANAO's assurance engagement, of decisions by the Department of Defence (Defence) to not disclose certain information in the MPR.

Background

2. As reported in the 2021-22 and 2022-23 Major Projects Reports, Defence decided that certain schedule information for four projects in 2021-22 and 12 projects in 2022-23 was not for publication and had not been published in the relevant Defence Project Data Summary Sheets (PDSSs). The decision to not publish this information was on the grounds that its disclosure would or could reasonably be expected to cause damage to the security, defence or international relations of the Commonwealth.¹ The not for publication information included planned Final Operational Capability (FOC) milestone dates.

3. The not for publication information was provided to the ANAO for the purposes of the ANAO's assurance review of the Defence PDSSs for 2021-22 and 2022-23.

4. Due to the non-publication of this key information by Defence, the ANAO did not publish a complete analysis of schedule performance for the suite of MPR projects, as in the past. The 2021- 22 and 2022-23 MPRs therefore did not provide users of the report with the same level of information, reducing the level of transparency and accountability over the MPR projects as a whole. The main users of the MPR are Parliamentarians.

Purpose of the MPR

5. The Committee has stated that the objective of the MPR is to improve the accountability and transparency of major Defence acquisitions for the benefit of Parliament and other stakeholders. The Committee commissions the MPR in the public interest, for the benefit of users of the report inside and outside the Parliament. The MPR informs parliamentary scrutiny and the national conversation

¹ Auditor-General Report No.12 of 2022–23 *2021–22 Major Projects Report*, paragraphs 15-20, available at: <https://www.anao.gov.au/work/major-projects-report/2021-22-major-projects-report>
Auditor-General Report No.14 of 2023-24 *2022-23 Major Projects Report*, paragraphs 15-25, available at: <https://www.anao.gov.au/work/major-projects-report/2022-23-major-projects-report>

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on major Defence acquisitions, and has helped drive acquisition governance reform in Defence. The MPR is intended to assist users by adopting a consistent reporting format over time and through the inclusion of summary and longitudinal analysis prepared by the ANAO.²

6. The Committee's interim report on this inquiry was released in June 2023. The report foreword stated that the MPR is prepared annually by Defence and the ANAO 'to provide a greater level of assurance that taxpayer funds on major projects in Defence are used as efficiently and effectively as possible and increase the transparency of these projects to the Parliament and the Australian public.'³

7. The ANAO's limited assurance review for the 2021-22 and 2022-23 MPRs was conducted in accordance with the ANAO Auditing Standards at a cost to the ANAO of approximately \$1.8 million per year. The total approved budget was approximately \$59 billion for the 21 projects in the 2021-22 MPR, and approximately \$58.6 billion for the 20 projects in the 2022-23 MPR.

Public reporting

8. As stated in the ANAO's corporate plan, the purpose of the ANAO is to support accountability and transparency in the Australian Government sector through independent reporting to the Parliament, and thereby contribute to improved public sector performance⁴ – in this case the performance of the Department of Defence.

9. The ANAO's purpose statement is aligned with the Auditor-General's functions and reporting requirements as set out in the *Auditor-General Act 1997* (the Act). These are geared towards the presentation, for tabling, of independent public reports in the Parliament, for the benefit of all parliamentarians. Parliamentarians are considered to be the principal users of ANAO reports.

10. Specifically, sections 17 and 18 of the Act, relating to the performance audit function, state that the Auditor-General must cause a copy of the audit report to be tabled in each House of the Parliament as soon as practicable after completing an audit report under these sections.⁵ The same requirement applies to audits of: performance measures conducted under section 18A of the Act⁶; audits of Commonwealth partners conducted under section 18B of the Act⁷; and assurance reviews conducted under section 19A of the Act.

11. The MPR is a 'priority assurance review' under subsection 19A(5) of the Act.⁸ Subsection 19A(6) provides that: 'As soon as practicable after completing the report on a priority assurance review, the Auditor-General must cause a copy of the report to be tabled in each House of the Parliament.'

² See paragraph 6 of the 2021-22 MPR and paragraph 6 of the 2022-23 MPR.

³ Joint Committee of Public Accounts and Audit, *Report 496 Inquiry into the Defence Major Projects Report 2020-21 and 2021-22 and Procurement of Hunter Class Frigates: Interim Report on the 2020-21 and 2021-22 Defence Major Projects Report*, June 2023, Chair's Foreword, p.iii, available at: https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000158/toc_pdf/Report496Inquiryintoth eDefenceMajorProjectsReport2020-21and2021-22andProcurementofHunterClassFrigates.pdf

⁴ Australian National Audit Office, *ANAO Corporate Plan 2023–24*, 6 July 2023, available at: <https://www.anao.gov.au/work/corporate/anao-corporate-plan-2023-24>

⁵ See subsection 17(4) of the Act relating to (single entity) performance audits, and subsection 18(2) relating to (multi-entity) general performance audits.

⁶ See subsection 18A(4) of the Act.

⁷ See subsection 18B(6) of the Act.

⁸ Subsection 19A(5) of the Act provides that the JCPAA may identify an assurance review as a priority and that a review so identified is a priority assurance review. A priority assurance review allows the ANAO full access to the information gathering powers under the Act.

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12. The benefits of public reporting are two-fold. First, transparency supports entity accountability to the Parliament as a whole and through it to the community. Second, public reporting is a means of informing the public sector and others of ANAO findings and contributes to improved public sector performance.

13. Defence's decision to not disclose certain information in the 2021-22 and 2022-23 MPRs has reduced the transparency of the MPR and the level of public reporting and analysis available to the Parliament. Going forward, the level and nature of non-disclosure by Defence may lead the Auditor-General to not accept the assurance engagement. Public reporting to the Parliament is a cornerstone of the ANAO's audit and assurance functions and the Auditor-General has agreed to invest resources in the MPR assurance review as a means of supporting transparency and accountability to the Parliament. There may be limited benefit in the ANAO providing assurance over information that the Parliament as a whole does not get to see, and undertaking work with limited benefit may not be the best use of ANAO resources.

14. The Act supports audit independence by giving the Auditor-General discretion in the performance or exercise of functions or powers under the Act.⁹ If the Auditor-General were not to invest ANAO resources in the MPR assurance review, the ANAO could direct current MPR resourcing to its Defence performance audit program.

15. The preparation of performance audit reports involves the Auditor-General applying, in the first instance, the public interest test in section 37 of the Act regarding the disclosure of certain sensitive information in public reports. The operation of section 37 is discussed below.

Confidential reporting

16. In an environment where Defence may decide to disclose less information in its PDSSs, a possible option would be to provide confidential reporting by the Auditor-General to the JCPAA or other Parliamentary committee as a means of providing assurance to Parliament.

17. The 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 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 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 Act provides that the Auditor-General cannot be required, and is not permitted, to disclose that

⁹ Subsection 8(4) of the Act states that: Subject to this Act and to other laws of the Commonwealth, the Auditor General has complete discretion in the performance or exercise of his or her functions or powers. In particular, the Auditor General is not subject to direction from anyone in relation to:

- (a) whether or not a particular audit is to be conducted; or
- (b) the way in which a particular audit is to be conducted; or
- (c) the priority to be given to any particular matter.

Section 10 of the Act states that: In performing or exercising his or her functions or powers, the Auditor-General must have regard to:

- (a) the audit priorities of the Parliament determined by the Joint Committee of Public Accounts and Audit under paragraph 8(1)(m) of the *Public Accounts and Audit Committee Act 1951*; and
- (b) any reports made by that Committee under paragraph 8(1)(h) or 8(1)(i) of that Act.

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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.¹⁰

18. As discussed, public reporting to Parliament is a cornerstone of the ANAO's audit and assurance functions and it would be of concern if a precedent were set for reduced transparency to the Parliament as a whole in ANAO reporting.

19. The provision of confidential ANAO submissions to committees of the Parliament is an alternative to confidential reporting.

Confidential submissions

20. Under section 11 of the Act, the Auditor-General's functions include auditing the annual financial statements of Commonwealth entities in accordance with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). Under section 43 of the PGPA Act, the Auditor-General prepares an audit report and gives the report to the entity's responsible Minister. A copy of the annual financial statements and the Auditor-General's report must be included in the entity's annual report that is tabled in Parliament.

21. The Auditor-General also reports annually to Parliament on the results of ANAO audits of financial statements of all Commonwealth entities. The Auditor-General presents this report to Parliament for tabling.¹¹ In preparing this report the Auditor-General considers the requirements of section 37 of the Act, relating to the inclusion of sensitive information in public reports, as necessary.

22. A number of PGPA Act requirements, including reporting on the annual financial statements of intelligence or security agencies or listed law enforcement agencies, may be modified by a written instrument made by designated Ministers pursuant to section 105D of the PGPA Act. Whilst the application of such instruments may affect the disclosure of certain information otherwise required in the financial statements, it does not affect the ANAO's access to underlying information to audit the transactions of these agencies.

23. In this context, the Parliamentary Joint Committee on Intelligence and Security (PJCS) has sought submissions, including confidential submissions, from six intelligence agencies and the ANAO

¹⁰ The JCPAA considered the operation of section 37 in *Report 478: Issuing of a Certificate under section 37 of the Auditor-General Act 1997*, April 2019. The Committee recommended that as part of the next periodic review of the Act, consideration be given to introducing: 'A provision for a confidential report to be provided to at least the Chair of the Joint Committee of Public Accounts and Audit along with relevant Ministers' (recommendation 3). The recommendation related to a circumstance where the Attorney-General had issued a certificate to the Auditor-General under subsection 37(1)(b) of the Act, to prevent the disclosure of certain sensitive information in a public report, and the Auditor-General had provided a full (confidential) report to Ministers under subsection 37(4).

The JCPAA reported on its periodic review of the Act in *Report 491: Review of the Auditor-General Act 1997*, March 2022. The Committee recommended that: 'as per Report 478, that the *Auditor-General Act 1997* be amended to include ... A provision for a confidential report to be provided to at least the Chair of the JCPAA along with relevant Ministers' (recommendation 7).

¹¹ The most recent report was Auditor-General Report No.9 2023–24 *Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2023*, available at: <https://www.anao.gov.au/work/financial-statement-audit/audits-the-financial-statements-australian-government-entities-the-period-ended-30-june-2023>

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as part of its annual review of administration and expenditure. The ANAO has made such submissions to the PJCIS, drawing on its audit work.¹²

¹² The committee's processes were discussed in: Parliamentary Joint Committee on Intelligence and Security, *Review of Administration and Expenditure: No.20 (2020-2021) – Australian Intelligence Agencies*, June 2023, paragraphs 2.180–2.181 and p.39, available at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/AandENo20

In that report the PJCIS made a recommendation on: receipt by the committee of confidential submissions by the Auditor-General; and provision, to the committee, of copies of classified ANAO reports provided to relevant Ministers relating to the agencies under the committee's oversight (recommendation 1).