



Acting Auditor-General for Australia



14 January 2019

Senator Dean Smith
Chair
Joint Committee of Public Accounts and Audit
Parliament House
CANBERRA ACT 2600

By email: jcpaa@aph.gov.au

Dear Senator Smith

Inquiry into the issuing of a certificate under section 37 of the Auditor-General Act 1997 - Inquiry based on Auditor-General Report No. 6 (2018-19) Army's Protected Mobility Vehicle - Light

In response to your letter of 12 December 2018, I am writing to provide the Joint Committee of Public Accounts and Audit (JCPAA) with correspondence listed in the chronology of key events attached to the Australian National Audit Office's (ANAO) supplementary submission of 5 November 2018 which has not previously been provided to the Committee. The Department of Defence and Thales Australia were consulted on the material requested by the Committee.

A revised chronology of key events and correspondence indicating which documents have now been provided to the JCPAA is also attached.

In the course of preparing the documents for the JCPAA, I had regard to the Auditor-General's obligations under subsection 37(3) of the *Auditor-General Act 1997* (the Act). With regard to those statutory obligations, and following the receipt of legal advice, the documents have been redacted to ensure compliance with the Act and the certificate issued by the Attorney-General dated 28 June 2018.

No attachments or annexures to the documents have been included on the basis that they are draft material which form part of the iterative process to develop a final audit report to present to the Parliament.

I trust that these documents are of assistance to the Committee.

Yours sincerely


Rona Mellor PSM

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

EVENT/CORRESPONDENCE	DATE	PROVIDED TO JCPAA
Audit commenced	10 March 2017	14 January 2019
ANAO Report Preparation Paper provided to Defence for comment	15 September 2017	14 January 2019
Written response from Defence Secretary and Chief of the Defence Force on ANAO Report Preparation Paper	9 October 2017	14 January 2019
Proposed audit report provided to Defence for comment under s 19(1)(a) <i>Auditor-General Act 1997</i>	3 November 2017	14 January 2019
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	14 January 2019
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	14 January 2019
Written response from Thales Australia on extract of proposed audit report	30 November 2017	AGD (SupSub 1.4)
Written response from Defence Secretary and Chief of the Defence Force on proposed audit report	1 December 2017	14 January 2019
Written response from Elbit Systems on extract of proposed audit report	4 December 2017	Response reproduced at pages 86-88 of the Public Audit Report
Revised proposed audit report (version 2) provided to Defence for comment	8 December 2017	14 January 2019
Extract of revised proposed audit report (version 2) provided to Thales Australia for comment	8 December 2017	14 January 2019
Written response from A/g Defence Secretary and Chief of the Defence Force on revised proposed audit report	12 December 2017	14 January 2019
Written responses from Thales Australia on extract of revised proposed audit report	12 December 2017 13 December 2017	AGD (SupSub 1.4)
Revised proposed audit report (version 3) provided to Defence for comment	18 December 2017	14 January 2019
Extract of revised proposed audit report (version 3) provided to Thales Australia for comment	19 December 2017	14 January 2019
Written response from Defence Secretary and A/g Chief of the Defence Force on revised proposed audit report	3 January 2018	14 January 2019
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	14 January 2019
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	AGD (SupSub 1.3)

EVENT/CORRESPONDENCE	Submission 2 - Supplementary Submission DATE	PROVIDED TO JCPAA
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	AGD (SupSub 1.2)
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	14 January 2019
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	AGD (SupSub 1.3)
Correspondence from Attorney-General to Auditor-General advising no specified timeframe for decision-making	26 January 2018 (received 31 Jan)	AGD (SupSub 1.2)
Further correspondence from Thales Australia regarding extract of revised proposed audit report received on 19 December 2017	28 January 2018	14 January 2019
Written advice received from Thales Australia that it had obtained interim interlocutory orders from Federal Court of Australia	29 January 2018	14 January 2019
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	14 January 2019
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	AGD (SupSub 1.2)
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	AGD (SupSub 1.3)
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)	14 January 2019

Submission 2 - Supplementary Submission

EVENT/CORRESPONDENCE	DATE	PROVIDED TO JCPAA
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	14 January 2019
Defence requests a further amendment on security grounds (footnote 18, later published as footnote 19)	18 April 2018	14 January 2019
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	(ANAO direct correspondence to JCPAA)
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	14 January 2019
Extract of interim redacted audit report (version 4) provided to Thales Australia for comment	2 May 2018	14 January 2019
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	AGD (SupSub 1.3)
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	AGD (SupSub 1.2)
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	AGD (SupSub 1.3)
ANAO advises Defence and Thales Australia of delay to presentation of interim redacted report to Parliament	9 May 2018	14 January 2019 (Defence advised by way of telephone)

EVENT/CORRESPONDENCE	DATE	PROVIDED TO JCPAA
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	AGD (SupSub 1.4)
Correspondence from Auditor-General to Attorney-General advising on Auditor-General's response to Thales Australia's 10 May 2018 correspondence	20 June 2018	AGD (SupSub 1.3)
Attorney-General issues certificate under s 37(1)(b) <i>Auditor-General Act 1997</i>	28 June 2018 (received 29 June)	AGD (SupSub 1.2)
Auditor-General's correspondence to JCPAA Chair advising on the Attorney-General's decision to issue a certificate	5 July 2018	(ANAO direct correspondence to JCPAA)
Federal Court orders that the action be dismissed, by consent of the parties	9 July 2018	14 January 2019
Auditor-General's correspondence to JCPAA Chair advising of dismissal of the Federal Court action	10 July 2018	(ANAO direct correspondence to JCPAA)
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	(ANAO direct correspondence to JCPAA)
Defence provided with draft of section 37(5) (confidential) audit report and public (redacted) audit report for final comment (version 5)	2 August 2018	14 January 2019
Thales Australia provided with extract of public (redacted) audit report for final comment (version 5)	3 August 2018	14 January 2019
Written Defence responses on public and confidential reports received	16 August 2018	14 January 2019 Responses dated 15 August 2018. Public response reproduced at pages 76-77 of the Public Audit Report. Summary response reproduced at pages 13-14 of the Public Audit Report
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	AGD (SupSub 1.4)
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	AGD (SupSub 1.3)
ANAO provides Thales Australia with extract of an amended paragraph to be included in final report	24 August 2018	14 January 2019

EVENT/CORRESPONDENCE	Submission 2 - Supplementary Submission DATE	PROVIDED TO JCPAA
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	AGD (SupSub 1.2)
ANAO written responses to Thales Australia on arrangements for publication of the public report	31 August 2018 6 September 2018	14 January 2019
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	14 January 2019 Letter to PM Letter to Minister for Finance (all letters to Ministers materially the same)
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	14 January 2019 Letter to PM (all letters materially the same)
Public report presented for tabling	11 September 2018	Public record

From: Office of the Auditor-General - Performance Audit
<OfficeoftheAuditorGeneralPerformanceAudit@anao.gov.au>

Sent: Friday, 10 March 2017 10:15 AM

To: [REDACTED]

Cc: [REDACTED]
[REDACTED]

Subject: ANAO Performance Audit of Hawkei–Army's Light Protected Vehicle [SEC=UNCLASSIFIED]

Importance: High

Mr Dennis Richardson AO
Secretary
Department of Defence

Air Chief Marshal Mark Binskin AC
Chief of the Defence Force (CDF)
Department of Defence

Dear Mr Richardson and Air Chief Marshal Binskin

Performance Audit of Hawkei–Army's Light Protected Vehicle

The Auditor-General has decided to conduct a performance audit of Hawkei–Army's Light Protected Vehicle, pursuant to section 17 of the *Auditor-General Act 1997* (the Act). The Australian National Audit Office (ANAO) included a performance audit of this topic in its planned Audit Work Program for 2016–17.

The objective of this audit is to assess the effectiveness and value for money of Defence's acquisition of Hawkei light protected vehicles. The ANAO proposes to examine the acquisition process, project governance and contracting arrangements. The scope of the audit is depicted in the attached diagram.

Information about this audit, including the objective and criteria, will be published on the ANAO website (www.anao.gov.au).

Audit process

At this stage, we plan to conduct fieldwork in March–May 2017, with the report expected to be presented for tabling in the Spring 2017 session of the Parliament. We envisage that the audit will involve fieldwork at a number of Department of Defence (Defence) premises.

I would like to take the opportunity to invite you to provide us with representations concerning the performance of the Hawkei project in the context of the objective of the audit. Any information provided, together with evidence gathered by the audit team, will be taken into account in developing a Report Preparation Paper.

We will provide the Report Preparation Paper to Defence to outline our preliminary audit findings and conclusions against the audit criteria, as well as making potential recommendations to discuss with you before we prepare the proposed audit report.

Access and information-gathering powers

The general duty of audited entities to cooperate with the ANAO is supported by legislation. Section 33 of the Act provides that the Auditor-General, or an authorised official, may at all reasonable times have access to Commonwealth premises and to any documents or other material in connection with an Auditor-General function. Such material can include Cabinet papers, ministerial decisions, commercially sensitive and classified documents or data, and emails.

These access and information-gathering powers are balanced by strict confidentiality provisions. Persons undertaking performance audits must comply with the confidentiality provisions of the Act. Subsection 36(1) of the Act provides that:

If a person has obtained information in the course of performing an Auditor-General function, the person must not disclose the information except in the course of performing an Auditor-General function or for the purpose of any Act that gives functions to the Auditor-General.

The minimum access requirements for the audit team will include:

- building access passes;
- usernames and passwords for your IT systems;
- remote access to your IT systems;
- high-level access to recordkeeping systems.

The audit team has most of this access already, thanks to the close liaison between Defence and the ANAO. Objective access to the project's records is being arranged for the team.

We would appreciate Defence's assistance in adhering to the proposed timetable for the audit. Specifically, we would appreciate Defence assistance in supplying all requested Defence records within a week of our requests (unless a reason is provided and agreed), and facilitating contact with relevant Defence staff as required. Consistent with the Government's Digital Transition Policy, it is our expectation that all required records will be made available to the ANAO electronically.

Freedom of Information

The Auditor-General is exempt from the *Freedom of Information Act 1982*. Any request for access to documents relating to this audit should be discussed with the ANAO.

Entry Interview

We are currently arranging an entry interview for relevant Defence staff through Ms Emma Horne. The purpose of the entry interview is to inform Defence of the audit objectives, background and criteria, as well as introducing the audit team.

Contacts

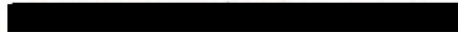
If you have any questions regarding the audit, please contact me using the details below, or alternatively your staff may wish to contact the Executive Director responsible for the audit, Ms Michelle Page [REDACTED], or the Audit Manager, Dr Patrick O'Neill [REDACTED].

Yours sincerely



www.anao.gov.au

Tom Ioannou
Group Executive Director
Performance Audit
Australian National Audit Office





ANAO Performance Audit: Hawkei—Army’s Light Protected Vehicle

Objective	To assess the effectiveness and value for money of Defence’s acquisition of Hawkei light protected vehicles.				
Criteria	Defence conducted an effective acquisition process.		Defence has established appropriate and effective project governance and contracting arrangements.		
Sub-criteria	1.1 Did Defence conduct an effective requirements definition and evaluation process, in accordance with Defence procedures? 1.2 Did Defence conduct an effective test and evaluation process, in accordance with Defence procedures? 1.3 Did Defence’s procurement process comply with Commonwealth procurement guidance?		2.1 Have appropriate and effective project governance frameworks been established and applied? 2.2 Do contracting arrangements allow Defence to effectively monitor and manage Thales’ performance? 2.3 Does the Hawkei represent a value-for-money acquisition?		
Audit details	Audit team Dr Patrick O’Neill Director (Audit Manager) 6203 7556 Patrick.oneill@anao.gov.au Dr Jordan Bastoni Performance Analyst 6203 7389 Jordan.bastoni@anao.gov.au Sophie Gan Performance Analyst 6203 7467 Sophie.gan@anao.gov.au Michelle Page Executive Director 6203 7561 Michelle.page@anao.gov.au		Contribute to the audit via email on the ANAO website: www.anao.gov.au		Audit timeframe Fieldwork 27 February – 29 May Report Preparation Papers to auditee(s) 7 September Proposed (s.19) report to auditee(s) 6 October Report tabled 30 November

From: [David Brunoro](#)
To: [REDACTED]
Cc: [REDACTED]
Subject: ANAO Report Preparation Papers - Army's Protected Mobility Vehicle-Light [DLM=Sensitive]
Date: Friday, 15 September 2017 5:09:35 PM
Attachments: [RPP - Army's Protected Mobility Vehicle-Light.pdf](#)
[image001.jpg](#)
[image002.jpg](#)
Importance: High

Dr Tom Clarke
Acting First Assistant Secretary Audit and Fraud Control
Department of Defence

Dear Tom,

Attached is the Report Preparation Paper for the Australian National Audit Office performance audit of Army's Protected Mobility Vehicle-Light. We would like to discuss this at an Exit Interview in the near future, and to receive any written response from the Department of Defence by 3 October 2017.

Objectives

The Report Preparation Paper is designed to inform Defence of emerging issues, as well as assist us to clarify our audit findings and conclusions. The paper discusses our preliminary audit findings and conclusions, and identifies potential recommendations. The paper is based on evidence from fieldwork conducted by the audit team, the preliminary results from our analysis, and our understanding at this stage of the audit.

Confidentiality

The Report Preparation Paper is covered by the confidentiality obligation in sub-section 36(3) of the *Auditor-General Act 1997* (the Act) and must be safeguarded at all times. As noted on the Report Preparation Paper cover sheet, copies may be distributed to relevant officers of Defence to assist in preparing comments on it. Please note that sub-section 36(3) of the Act includes a penalty for contravening the confidentiality obligation.

Exit Interview

We would welcome the opportunity to discuss the preliminary audit conclusions, findings and potential recommendations at an Exit Interview to be arranged through Defence's ANAO Liaison Officer. We do not necessarily require a written response from Defence in relation to the Report Preparation Paper. However, if you wish to provide a written response or additional evidence, please do so by the date noted above.

Next Steps

Following the Exit Interview, we will provide Defence with a proposed audit report as required by section 19 of the Act. The Act specifies that, if written comments on the proposed report are provided within 28 days, the Auditor-General must consider these comments before preparing the final report. I expect that we will be in a position to provide the proposed report by November.

Contacts

If you have any questions on the Report Preparation Paper or on the audit process, please contact me using the details below, or alternatively your staff may wish to contact the Audit Manager Patrick O'Neill on [REDACTED]

[REDACTED] We look forward to meeting with you at the Exit Interview to discuss the paper.

Yours sincerely

David Brunoro

Executive Director – Defence Performance Audit
Australian National Audit Office



www.anao.gov.au

SENSITIVE



Australian Government

Department of Defence

Mr Greg Moriarty
Secretary

Air Chief Marshal MD Binskin, AC
Chief of the Defence Force

SEC/OUT/20117/253
CDF/OUT/2017/806

Mr Grant Hehir
Auditor-General
PO Box 707
Canberra ACT 2601

Dear Grant,

**DEFENCE RESPONSE - ANAO REPORT PREPARATION PAPER – ARMY'S
PROTECTED MOBILITY VEHICLE – LIGHT**

Thank you for your correspondence of 15 September 2017, which contained the Report Preparation Paper - Army's Protected Mobility Vehicle – Light. We thank you for undertaking this performance audit, and appreciate the opportunity to review and provide commentary on the Paper.

Attached to this letter are Defence's Proposed Amendments, Editorials and Comments (**Annex A**), Responses to Requests for Information (**Annex B**) and Response to Recommendations (**Annex C**). These constitute Defence's formal response to the RPP.

Annex A provides comments and suggested amendments to inform the ANAO's view of how events and factors influenced decision-making.

[REDACTED] Further
commentary to this effect is contained in **Annex A**.

While the extension to the original response deadline is greatly appreciated, Defence notes that it will continue to review the contents of the RPP, and provide advice to the ANAO to inform the Section 19 Proposed Report where appropriate. Defence will continue to work with the ANAO in this regard.

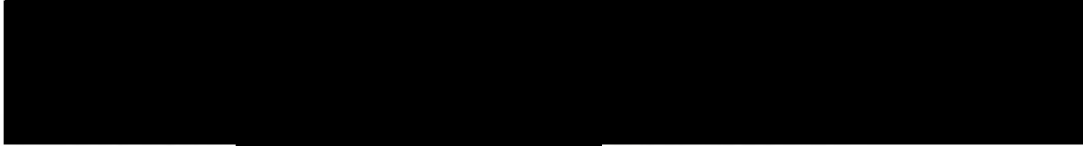
PO Box 7900, Canberra BC, ACT 2610
www.defence.gov.au

SENSITIVE

Defending Australia and its National Interests

Defence remains committed to assisting you with the successful completion of this audit. We look forward to receiving the upcoming Section 19 Proposed Report.

Yours sincerely,



Greg Moriarty
Secretary

MD Binskin, AC
Air Chief Marshal
Chief of the Defence Force

9 October 2017

4 October 2017

Annexes

- A. Defence's Proposed Amendments, Comments, and Editorials**
- B. Defence's Responses to Requests for Information**
- C. Defence's Response to Recommendations**

From: [Office of the Auditor-General - Performance Audit](#)
To: [REDACTED]
Cc: [REDACTED]
Subject: ANAO Proposed Audit Report on Army's Protected Mobility Vehicle [DLM=Sensitive]
Date: Friday, 3 November 2017 12:11:38 PM
Attachments: [ANAO Proposed Report - Protected Mobility Vehicle Light - 3 Nov 2017 - SENSITIVE.pdf](#)
[image001.jpg](#)
Importance: High

ANAO ref: 2017/111

Mr Greg Moriarty
Secretary
Department of Defence

Air Chief Marshal Mark Binskin AC
Chief of the Defence Force

via email: [REDACTED]

Dear Mr Moriarty and Air Chief Marshal Binskin

Attached is a proposed audit report on Army's Protected Mobility Vehicle—Light, prepared by the Australian National Audit Office (ANAO). The proposed report is provided to you pursuant to section 19 of the *Auditor-General Act 1997* (the Act).

The Act provides that if the recipient of the proposed report gives written comments to the Auditor-General within 28 days after receiving the proposed report, the Auditor-General must consider those comments before preparing the final report. The final date for providing written comments is 1 December 2017. We expect to present the final report for tabling in the Parliament during December 2017. We will advise the tabling date for the final report once known.

Confidentiality

The proposed audit report is covered by the confidentiality obligation in sub-section 36(3) of the Act and must be safeguarded at all times. As noted on the proposed audit report's cover sheet, copies may be distributed to relevant officers of the Department of Defence (Defence) to assist in preparing comments on the report. Please note that sub-section 36(3) of the Act includes a penalty for contravening the confidentiality obligation.

Forms of response

Our aim is to produce an informative and readable document, and we request that Defence comments on the proposed report be directly relevant to the audit findings and recommendations, and be reasonably succinct. Please provide the following responses:

1. Letter of reply (published in full as an appendix)

A letter that will constitute the formal Defence response to the proposed audit report and will be reproduced as an appendix to the final audit report.

2. Summary response (published in full at end of report summary)

A short summary of your formal response (one or two paragraphs) that will be included in the report summary.

3. Editorial matters (if any) you wish to bring to our attention

In preparing your reply, you may identify comments or matters of an editorial nature that

you wish the ANAO to consider incorporating, where appropriate, in the text of the final report. This material should be provided separately, and will not be published as part of the formal Defence response to the audit report.

Extract to other entities

I have also provided an extract of the proposed report to Mr Chris Sampson, Programme Manager Land 121-4, Thales Australia.

Next steps

Following consideration of any comments received, we may make amendments to the report. In this case, we will advise Defence of any substantive amendments made, and discuss with Defence whether it may be appropriate for you to update your original comments.

A copy of the final report, incorporating any changes and your formal comments, will be provided to you for your information prior to its tabling. We would be happy to brief you on the report if this would be of assistance.

Contacts

We are available for further discussions on the proposed report as required. Please contact me using the details below, or alternatively your staff may wish to contact the Executive Director responsible for the audit, David Brunoro on [REDACTED], or the Audit Manager, Dr Patrick O'Neill on [REDACTED]

Yours sincerely

Tom Ioannou (Dr)

Group Executive Director

Performance Audit Services Group

Australian National Audit Office
[REDACTED]

www.anao.gov.au



From: Office of the Auditor-General - Performance Audit
Sent: Monday, 6 November 2017 16:02
To: [REDACTED]
Cc: [REDACTED]
Subject: Extract from ANAO Proposed Audit Report on Army's Protected Mobility Vehicle-Light [DLM=Sensitive]
Importance: High
Sensitivity: Confidential

Chris Sampson
Programme Manager Land 121-4
Thales Australia

via email: [REDACTED]

Dear Mr Sampson

The Australian National Audit Office (ANAO) has prepared a proposed audit report on Army's Protected Mobility Vehicle—Light that includes commentary relating to Thales Australia. For this reason, attached is an extract of the proposed report, provided to you pursuant to section 19 of the *Auditor-General Act 1997* (the Act).

The Act provides that if the recipient of the extract gives written comments to the Auditor-General within 28 days after receiving the extract, the Auditor-General must consider those comments before preparing the final report. The final date for providing written comments is 2 December 2017. We expect to present the final report for tabling in the Parliament during December 2017. We will advise the tabling date for the final report once known.

Confidentiality

The extract is covered by the confidentiality obligation in sub-section 36(3) of the Act and must be safeguarded at all times. As noted on the extract's cover sheet, copies may be distributed to relevant officers of Thales Australia to assist in preparing comments on the extract. Please note that sub-section 36(3) of the Act includes a penalty for contravening the confidentiality obligation.

Forms of response

Our aim is to produce an informative and readable document, and we request that Thales Australia comments on the extract be directly relevant to the audit findings and recommendations, and be reasonably succinct. Your response should include:

1. Letter of reply (published in full as an appendix)

A letter that will constitute the formal Thales Australia response to the proposed audit report and will be reproduced as an appendix to the final audit report.

2. Summary response (published in full at end of report summary)

A short summary of your formal response (one or two paragraphs) that will be included in the report summary.

3. Editorial matters (if any) you wish to bring to our attention

In preparing your reply, you may identify comments or matters of an editorial nature that you wish the ANAO to consider incorporating, where appropriate, in the text of the final report. This material should be provided separately, and will not be published as part of the formal Thales Australia response to the audit report.

Next steps

Following consideration of any comments received, we may make amendments to the report. In this case, we will advise you of any substantive amendments made, and discuss with you whether it may be appropriate for you to update your original comments.

Contacts

We are available for further discussions on the extract as required. Please contact me using the details below, or alternatively your staff may wish to contact the Executive Director responsible for the audit, David Brunoro on [REDACTED], or the Audit Manager, Dr Patrick O'Neill on [REDACTED].

Yours sincerely

Tom Ioannou (Dr)

Group Executive Director

Performance Audit Services Group

Australian National Audit Office

[REDACTED]

www.anao.gov.au

From: [Office of the Auditor-General - Performance Audit](#)
To: [REDACTED]
Cc: [REDACTED]
Subject: Extract from ANAO Proposed Audit Report on Army's Protected Mobility Vehicle-Light [DLM=Sensitive]
Date: Monday, 6 November 2017 5:06:04 PM
Attachments: [Extract for EL SA from ANAO Proposed Report - Protected Mobility Vehicle Light - 6 Nov 2017 - SENSITIVE.pdf](#)
[image001.jpg](#)
Importance: High
Sensitivity: Confidential

Dan Webster
Managing Director
Elbit Systems of Australia

via email: [REDACTED]

Dear Mr Webster

The Australian National Audit Office (ANAO) has prepared a proposed audit report on Army's Protected Mobility Vehicle—Light that includes commentary relating to Elbit Systems of Australia. For this reason, attached is an extract of the proposed report, provided to you pursuant to section 19 of the *Auditor-General Act 1997* (the Act).

The Act provides that if the recipient of the extract gives written comments to the Auditor-General within 28 days after receiving the extract, the Auditor-General must consider those comments before preparing the final report. The final date for providing written comments is 4 December 2017. We expect to present the final report for tabling in the Parliament during December 2017. We will advise the tabling date for the final report once known.

Confidentiality

The extract is covered by the confidentiality obligation in sub-section 36(3) of the Act and must be safeguarded at all times. As noted on the extract's cover sheet, copies may be distributed to relevant officers of Elbit Systems of Australia to assist in preparing comments on the extract. Please note that sub-section 36(3) of the Act includes a penalty for contravening the confidentiality obligation.

Forms of response

Our aim is to produce an informative and readable document, and we request that Thales Australia comments on the extract be directly relevant to the audit findings and recommendations, and be reasonably succinct. Your response should include:

1. Letter of reply (published in full as an appendix)

A letter that will constitute the formal Thales Australia response to the proposed audit report and will be reproduced as an appendix to the final audit report.

2. Summary response (published in full at end of report summary)

A short summary of your formal response (one or two paragraphs) that will be included in the report summary.

3. Editorial matters (if any) you wish to bring to our attention

In preparing your reply, you may identify comments or matters of an editorial nature that you wish the ANAO to consider incorporating, where appropriate, in the text of the final report. This material should be provided separately, and will not be published as part of the formal Thales Australia response to the audit report.

Next steps

Following consideration of any comments received, we may make amendments to the report. In this case, we will advise you of any substantive amendments made, and discuss with you whether it may be appropriate for you to update your original comments.

Contacts

We are available for further discussions on the extract as required. Please contact me using the details below, or alternatively your staff may wish to contact the Executive Director responsible for the audit, David Brunoro on [REDACTED] or the Audit Manager, Dr Patrick O'Neill on [REDACTED].

Yours sincerely

Tom Ioannou (Dr)
Group Executive Director
Performance Audit Services Group
Australian National Audit Office
[REDACTED]

www.anao.gov.au

From: Kandasamy, Saravanan MR [REDACTED] **On Behalf Of** Executive Support

Sent: Friday, 1 December 2017 12:46 PM

To: Office of the Auditor-General - Performance Audit

Cc: [REDACTED]

Subject: LETTER - 171124 - SEC/CDF - DEPARTMENT OF DEFENCE RESPONSE - ANAO REPORT SECTION 19 PROPOSED REPORT ? HAWKEI -ARMY'S PROTECTED MOBILITY VEHICLE- LIGHT - SENSITIVE [DLM=Sensitive]

Sensitive

Please find attached correspondence forwarded from the SEC / CDF

Regards

Saravanan Kandasamy
Executive Support Unit
Enterprise Governance Branch
Governance and Reform Division

[REDACTED] Russell Offices | Canberra BC | ACT 2610
P: [REDACTED] **E:** [Executive Support](#)

IMPORTANT: This email remains the property of the Department of Defence and is subject to the jurisdiction of section 70 of the Crimes Act 1914. If you have received this email in error, you are requested to contact the sender and delete the email.

SENSITIVE



Australian Government
Department of Defence

Mr Greg Moriarty
Secretary

Air Chief Marshal MD Binskin, AC
Chief of the Defence Force

SEC/OUT/2017/310
CDF/OUT/2017/1058

Mr Grant Hehir
Auditor-General
PO Box 707
Canberra ACT 2601

Dear Grant,

**DEPARTMENT OF DEFENCE RESPONSE -- ANAO REPORT SECTION 19 PROPOSED
REPORT -- HAWKEI - ARMY'S PROTECTED MOBILITY VEHICLE- LIGHT**

Thank you for your correspondence of 03 November 2017, which contained the Section 19 Proposed Report for the ANAO performance audit *Hawkei - Army's Protected Mobility Vehicle - Light*. We thank you for undertaking this performance audit, and appreciate the opportunity to review and provide commentary on the Section 19 Proposed Report.

Attached to this letter are Defence's Proposed Amendments, Editorials and Comments (**Annex A**), Responses to Requests for Information (**Annex B**) and the formal Agency Response for publication in the final report (**Annex C**).

[REDACTED]

[REDACTED] Consistent with the Commonwealth Procurement Rules, when conducting a procurement an official must consider the relevant financial and non-financial costs and benefits of each submission.

[REDACTED]

PO Box 7900, Canberra BC, ACT 2610
www.defence.gov.au

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[REDACTED]

In addition to this, Defence maintains its disagreement with the financial approval figures for the Protected Mobility Vehicle - Light depicted by the ANAO, at Table 1.1 in the Section 19 Proposed Report. These figures are inconsistent with Defence's official reporting, [REDACTED]. Defence has provided corrected figures for the ANAO's inclusion in the final report, included in **Annex A**.

[REDACTED]

Furthermore, Defence advises its concerns regarding the disclosure of information in the ANAO Proposed Report referencing [REDACTED] of the Hawkei capability. Defence does not consider this information to be appropriate for public release, nor critical to include in the final report to support the ANAO's conclusion. Further commentary, and advice, regarding these statements is contained in **Annex A**.

[REDACTED]

[REDACTED]

Taken together, we advise that publication of this performance audit in its current form would be contrary to the public interest, and ask that you prepare your final report for publication in light of this advice.

[REDACTED]

Greg Moriarty
Secretary

MD Binskin, AC
Air Chief Marshal
Chief of the Defence Force

Annexes:

- A. Defence's Proposed Amendments, Comments and Editorials
- B. Defence's Response to Requests for Information
- C. Defence's Agency Response



Elbit Systems of Australia

Head Office
Level 3, AMA House, 42 Macquarie Street, Barton ACT 2600
PO Box 6148, Kingston ACT 2604
Phone: (02) 6160 6700 Fax: (02) 6160 6799
www.elbitsystems-au.com
ACN: 143 526 229

GDW-171204-1845

4 Dec 2017

Dr Patrick O'Neill
Director
Defence Performance Audit Branch | Performance Audit
Australian National Audit Office
Tel: 02 6203 7556
www.anao.gov.au

Dear Dr O'Neill,

RE: Australian National Audit Office audit of Protected Mobility Vehicle Light (PMV-L)

References:

- A. Email ANAO Dr Patrick O'Neill / Elbit Systems Dan Webster of 6 Nov 2017
- B. Proposed Report under s.19 of the Auditor-General Act 1997 Army's Protected Mobility Vehicle Light (PMV-L) Extract for Elbit Systems of Australia, covering Paragraphs 5.51 to 5.53 of 06 Dec 2017
- C. ANAO / Elbit Systems meeting at ANAO Office, Barton Canberra on Wed 29 Nov 2017

Initiated at Reference A, Elbit Systems was invited to review and respond to Reference B; which is an extract of the proposed ANAO report on Army's Protected Mobility Vehicle Light (PMV-L). At Reference C, context and a potential Elbit Systems response was discussed. This letter covers an introduction, facts around activity to reach a contract, and editorial comment regarding Reference B (Para 5.51 to 5.53). Those paragraphs are referenced at Enclosure 1.

During the period in question, Elbit Systems was contracted to Electronic Systems Division of the Defence Materiel Office (DMO) under Land 75/125 to deliver Army's Battle Management System (BMS). The architecture for the BMS was defined by the Land 75/125 program (for which Elbit Systems is the Design Authority) and informed the installation designs for all other platforms. The program produces a homogenous command and control architecture presented as a common system in headquarters, vehicles, aircraft, landing craft and dismounted soldier systems. The BMS is now hosted on nearly all of the Army's existing platforms and in deployable headquarters. Elbit Systems is currently under contract to the Joint Systems Division of the Capability Acquisition and Sustainment Group (CASG) to continue the roll out of the BMS to additional platforms and organisations under Tranche 2 of Land 200.

The PMV-L Integral Computing System (ICS), developed by Thales Australia, adopted a "Virtualised" on-board architecture which is different to the "Integrated" on-board architecture delivered on other platforms through Land 75/125. Prior to the delivery of the ICS System Specification in Dec 2015, Elbit Systems, as the design authority for the overall BMS architecture for the Australian Army, had not been engaged in the development of the PMV-L ICS, nor involved in any assessment of its impact upon the rest of the BMS network or the flow on Integrated Logistic Support arrangements. It was not apparent

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to Elbit Systems at the time, if the DMO Project Offices in Electronic Systems Division and Land Systems Division had de-conflicted the requirements or approaches. Despite this, Elbit Systems understands the importance of this vehicle project. All Elbit activity necessary to arrive at a mutually acceptable and executable Statement of Work (SOW) and contract has been self-funded. This included: internal preparation, technical validation and testing; attendance at numerous external engagements and design reviews held at Thales Australia, Elbit Systems and Customer facilities for local and, on occasion, international Elbit Systems staff.

On review of Reference B, Elbit Systems would like to clarify the timeline for the development of its subcontract with Thales Australia to host the BMS on the PMV-L ICS in order to bring the PMV-L into the Australian Army BMS network. Key maturity points are as follows:

- 23-Nov-2015. A meeting was held at Russell Offices between: HMSP-A, HLS, Thales Australia, and Elbit Systems to discuss alignment (Electronic Systems Division was not present at this meeting).
- 17-Dec-2015. Thales Australia provided on 17 Dec 2015 to Elbit Systems a version 1.1 of the C4I Integral Computing System (ICS) Specification for the PMV-L. Please note at this point of time there was no SOW provided to Elbit Systems to cover the proposed body of work.
- Feb-Mar 2015. Initial proposal work was conducted in Feb-Mar 2016. The maturity of the SOW was insufficient to facilitate progress to contract. Subsequently, several iterations of a draft SOW were circulated between the companies in order to develop a technically executable SOW.
- Apr-2016. As part of the iterative development of the SOW, in Apr 2016, Thales Australia informed Elbit Systems of a budget limit of AUD \$4 million to constrain the BMS scope within the subcontract. Elbit Systems was also then requested to provide a resubmission that could be implemented within a 12 month schedule.
- 5-Aug-2016. Thales Australia issued a mature SOW on 5 Aug 2016. This SOW provided the appropriate basis for an estimate to be conducted in order for Elbit Systems to provide a commercial proposal. Once developed this was passed through Elbit Systems' formal approval processes.
- 8-Sep-2016. Contract signature was achieved on 8 Sep 2016; between Thales Australia and Elbit Systems (subcontractor).

To improve accuracy in the ANAO's proposed report, Elbit Systems would like to provide the additional editorial feedback regarding Reference B paragraphs 5.51 to 5.53:

- [Reference B Para 5.51, 5.52] The first opportunity for Elbit Systems to provide an acceptable proposal to Thales Australia occurred on 5 Aug 2016 when Elbit Systems received a mature SOW upon which to base the proposal. All efforts and proposal work prior to this milestone were based on assumptions made by Elbit Systems (in good faith) on incomplete information.
- [Ref B, Para 5.51] Elbit Systems had no involvement or insight into the Land 121 Phase 4 Contract Change Proposal (CCP) of Feb 2016. Please note - Elbit Systems was not formally contracted or commercially engaged in the development of this CCP, nor aware of Project Office constraints imposed upon in the structure of the CCP.

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- [Reference B Para 5.53] Elbit Systems is not aware of any improvements to the BMS flowing from the Land 121 Phase 4 activity. The presentation of the Australian Army BMS in all of its other instances remains as it was defined in the Land 75/125 base line and is being continuously updated in Tranche 2 of Land 200. Pursuant to the contract between Thales Australia and Elbit Systems, referred to above, a platform specific implementation was developed to enable the BMS to be presented on the "Virtualised" PMV-L ICS architecture.

Elbit Systems wish to thank ANAO for the meeting of 29 Nov 2016 and the opportunity to provide this response to Reference B. Please contact me if you require any further assistance or clarification.

Regards,

[Redacted]

Gary Wylde

Vice President Strategy

Elbit Systems of Australia Pty Ltd

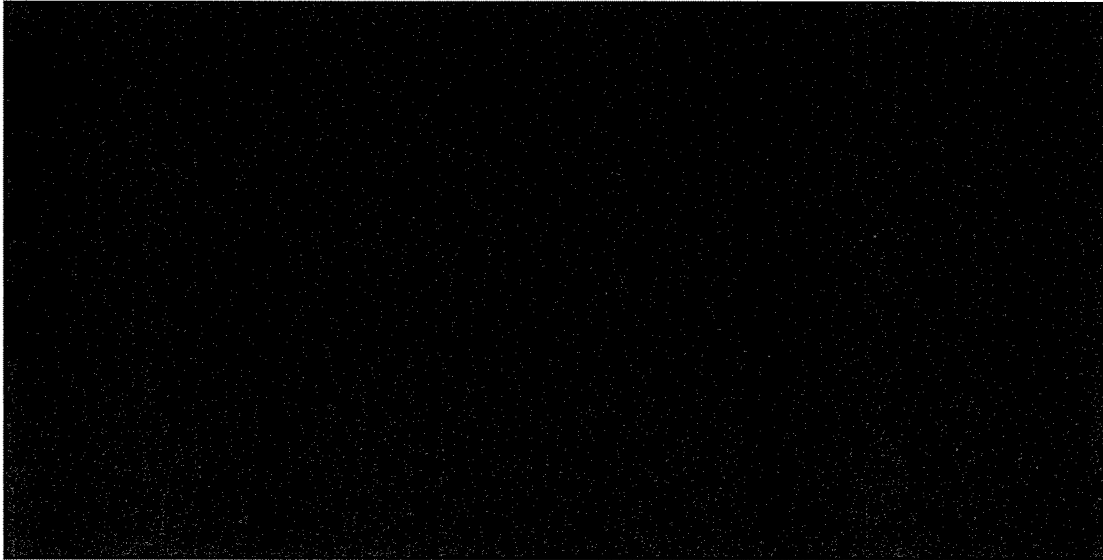
[Redacted]

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Enclosure 1 to
Elbit Systems letter GDW-171204-1845
Dated 04 Dec 2017

DRAFT ANAO Report Extract

Source: download from ANAO anao-securemail; accessed 07 Nov 2016



Commercial-in-Confidence

From: [Tom Ioannou](#)
To: [REDACTED]
Cc: [REDACTED]
Subject: ANAO Draft Final Report on Army's Protected Mobility Vehicle-Light [DLM=Sensitive]
Date: Friday, 8 December 2017 3:20:56 PM
Attachments: [ANAO Revised Proposed Report - Protected Mobility Vehicle Light - 8 Dec 2017 - SENSITIVE.pdf](#)
[ANAO Revised Proposed Report - Protected Mobility Vehicle Light - 8 Dec 2017 - SENSITIVE - compared with previous version.pdf](#)
[image001.jpg](#)
[image002.jpg](#)
Importance: High

ANAO ref: 2017/111

Mr Greg Moriarty
Secretary
Department of Defence

Air Chief Marshal Mark Binskin AC
Chief of the Defence Force

via email: [REDACTED]

Dear Mr Moriarty and Air Chief Marshal Binskin

Attached is a Draft Final Report on *Army's Protected Mobility Vehicle-Light*, prepared by the Australian National Audit Office (ANAO), together with a comparison of this draft against the Proposed Report provided to Defence on 3 November 2017.

The Draft Final Report has taken account of Defence's response to the Proposed Report, as received on 1 December 2017, particularly in relation to concerns about

[REDACTED] In particular:

[REDACTED]

[REDACTED]

In making these revisions to the report, the Auditor-General has considered the content of the report and the requirements of section 37 of the *Auditor-General Act 1997* relating to the inclusion of sensitive information in public reports.

The Auditor-General intends this report to be published by 20 December 2017. Accordingly, while acknowledging the short timeframe, and as a courtesy to Defence,

we seek any comments you may have by **1700 on Tuesday 12 December 2017**. Our preference is that Defence provide us with a revised letter of reply and a summary response for inclusion in the audit report.

The ANAO is also providing an extract from the Draft Final Report to Thales.

Confidentiality

As noted on the Draft Final Report's cover sheet, copies may be distributed to relevant officers of Defence to assist in preparing comments on the report.

Forms of response

Please consider providing the following responses:

1. Letter of reply (published in full as an appendix)

A letter that will constitute the formal Defence response to the proposed audit report and will be reproduced as an appendix to the final audit report.

2. Summary response (published in full at end of report summary)

A short summary of your formal response (one or two paragraphs) that will be included in the report summary.

A copy of the final report, incorporating any changes and your formal comments, will be provided to you for your information prior to its tabling. We would be happy to brief you on the report if this would be of assistance.

Contacts

We are available for further discussions on the proposed report as required. I can be contacted using the details below, or alternatively your staff may wish to contact the Executive Director responsible for the audit, David Brunoro on [REDACTED], or the Audit Manager, Dr Patrick O'Neill on [REDACTED].

Yours sincerely

(Dr) Tom Ioannou

Group Executive Director

Performance Audit Services Group

Australian National Audit Office

[REDACTED]
www.anao.gov.au

From: [Tom Ioannou](#)
To: [REDACTED]
Cc: [REDACTED]
Subject: Extract from ANAO Proposed Audit Report on Army's Protected Mobility Vehicle-Light [SEC=UNCLASSIFIED]
Date: Friday, 8 December 2017 4:46:33 PM
Attachments: [image002.jpg](#)
[image001.jpg](#)
Importance: High
Sensitivity: Confidential

Mr Gary Dawson
Vice President Strategy
Thales Australia

via email: [REDACTED]

Dear Mr Dawson

An Extract from a Draft Final Report on *Army's Protected Mobility Vehicle-Light*, prepared by the Australian National Audit Office (ANAO), is being made available to Thales through our Sig-Box secure system—you will receive a separate email shortly with the link. A comparison of this Extract against the Extract provided to Thales Australia on 6 November 2017 will also be provided shortly.

The Draft Final Report has taken account of Thales' draft comments on the Extract, as received on 30 November 2017, particularly in relation to concerns about [REDACTED]. In particular:

- | [REDACTED]
- | [REDACTED]

In making these revisions to the report, the Auditor-General has considered the content of the report and the requirements of section 37 of the *Auditor-General Act 1997* relating to the inclusion of sensitive information in public reports.

The Auditor-General intends this report to be published by 20 December 2017. Accordingly, while acknowledging the short timeframe, and as a courtesy to Thales, we seek any comments you may have by **1700 on Tuesday 12 December 2017**. Our preference is that Thales provide us with a revised letter of reply and a summary response for inclusion in the audit report.

The ANAO is also providing a copy of the Draft Final Report to Defence.

Confidentiality

As noted on the Draft Final Report's cover sheet, copies may be distributed to relevant

officers of Thales to assist in preparing comments on the report.

Forms of response

Please consider providing the following responses:

1. Letter of reply (published in full as an appendix)

A letter that will constitute the formal Defence response to the proposed audit report and will be reproduced as an appendix to the final audit report.

2. Summary response (published in full at end of report summary)

A short summary of your formal response (one or two paragraphs) that will be included in the report summary.

Contacts

We are available for further discussions on the proposed report as required. I can be contacted using the details below, or alternatively your staff may wish to contact the Executive Director responsible for the audit, David Brunoro on [REDACTED], or the Audit Manager, Dr Patrick O'Neill on [REDACTED]

Yours sincerely

(Dr) Tom Ioannou

Group Executive Director

Performance Audit Services Group

Australian National Audit Office

[REDACTED]
www.anao.gov.au

SENSITIVE



Australian Government
Department of Defence

Mr Greg Moriarty
Secretary

Air Chief Marshal MD Binskin,
AC Chief of the Defence Force

SEC/OUT/2017/336
CDF/OUT/2017/1091

Mr Grant Hehir
Auditor-General
PO Box 707
Canberra ACT 2601

Dear Grant,

**DEPARTMENT OF DEFENCE RESPONSE - ANAO FINAL DRAFT REPORT – HAWKEI -
ARMY'S PROTECTED MOBILITY VEHICLE- LIGHT**

Thank you for your correspondence of 08 December 2017, which contained the Final Draft Report for the ANAO performance audit *Hawkei - Army's Protected Mobility Vehicle - Light*. We appreciate the opportunity to review and provide commentary on the Final Draft Report.

Defence acknowledges the revisions made to the previous proposed report, and thanks the ANAO for its responsiveness to our feedback. Attached to this letter are Defence's Proposed Amendments, Editorials and Comments (**Annex A**), and the formal Agency Response for publication in the final report (**Annex B**).

While we acknowledge the revisions made, Defence does not agree with

Defence's view is consistent with the Commonwealth Procurement Rules and this is reflected in our formal agency response.

PO Box 7900, Canberra BC, ACT 2610
www.defence.gov.au

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Rebecca Skinner
Acting Secretary

MD Binskin, AC
Air Chief Marshal
Chief of the Defence Force

12 December 2017

12 December 2017

Annexes:

- A. Defence's Proposed Amendments, Comments and Editorials
- B. Defence's Agency Response

From: [Tom Ioannou](#)
To: [REDACTED]
Cc: [REDACTED]
Subject: ANAO (Revised) Proposed Final Report on Army's Protected Mobility Vehicle-Light [DLM=Sensitive]
Date: Monday, 18 December 2017 5:54:11 PM
Attachments: [image001.jpg](#)
[ANAO Revised Proposed Report - Protected Mobility Vehicle Light - 18 Dec 2017 - SENSITIVE.pdf](#)
[image002.jpg](#)
Importance: High

ANAO ref: 2017/111

Mr Greg Moriarty
Secretary
Department of Defence

Air Chief Marshal Mark Binskin AC
Chief of the Defence Force

via email: [REDACTED]

Dear Mr Moriarty and Air Chief Marshal Binskin

Attached is a (revised) Proposed Final Report on *Army's Protected Mobility Vehicle-Light*, prepared by the Australian National Audit Office (ANAO).

The revised Proposed Final Report has taken account of Defence's response to the earlier version, as received on 12 December 2017.

In making these revisions to the report, 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. The Auditor-General is of the opinion that the inclusion of [REDACTED] and related information is not contrary to the public interest.

Please note that the presentation of this material and the audit findings have been revised. [REDACTED]

The Auditor-General intends this report to be published in the week of 15 January 2018. As a courtesy to Defence, we seek any comments you may have by **0900 on Monday 8 January 2018**. Our preference is that Defence provide us with a revised letter of reply and a summary response for inclusion in the audit report.

The ANAO is also providing an extract from the revised Proposed Final Report to Thales.

Confidentiality

As noted on the Proposed Final Report's cover sheet, copies may be distributed to relevant officers of Defence to assist in preparing comments on the report.

Forms of response

Please consider providing the following responses:

1. *Letter of reply (published in full as an appendix)*

A letter that will constitute the formal Defence response to the proposed audit report and will be reproduced as an appendix to the final audit report.

2. Summary response (published in full at end of report summary)

A short summary of your formal response (one or two paragraphs) that will be included in the report summary.

A copy of the final report, incorporating any changes and your formal comments, will be provided to you for your information prior to its tabling. We would be happy to brief you on the report if this would be of assistance.

Contacts

We are available for further discussions on the proposed report as required. I can be contacted using the details below, or alternatively your staff may wish to contact the Executive Director responsible for the audit, David Brunoro on [REDACTED] or the Audit Manager, Dr Patrick O'Neill on [REDACTED]

Yours sincerely

(Dr) Tom Ioannou

Group Executive Director

Performance Audit Services Group

Australian National Audit Office

[REDACTED]

www.anao.gov.au

From: [Tom Ioannou](#)
To: [DAWSON Gary](#)
Cc: [David Brunoro](#); [Patrick O'Neil](#)
Subject: Further revised extract from ANAO Proposed Audit Report on Army's Protected Mobility Vehicle-Light [SEC=UNCLASSIFIED]
Date: Tuesday, 19 December 2017 8:54:55 AM
Attachments: [image001.jpg](#)
[image002.jpg](#)
Importance: High
Sensitivity: Confidential

Mr Gary Dawson
Vice President Strategy
Thales Australia

via email: [REDACTED]

Dear Mr Dawson

An Extract from a (revised) Proposed Final Report on *Army's Protected Mobility Vehicle-Light*, prepared by the Australian National Audit Office (ANAO), is being made available to Thales through our Sig-Box secure system—you will receive a separate email shortly with the link.

We acknowledge receipt of your most recent correspondence dated 12 and 13 December 2017. The revised Proposed Final Report has taken account of Thales' responses and other comments.

In making these revisions to the report, 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. The Auditor-General is of the opinion that the inclusion of [REDACTED] and related information is not contrary to the public interest.

Please note that the presentation of this material and the audit findings have been revised. [REDACTED]

The Auditor-General intends this report to be published in the week of 15 January 2018. As a courtesy to Thales, we seek any comments you may have by **0900 on Monday 8 January 2018**. Our preference is that Thales provide us with a revised letter of reply and a summary response for inclusion in the audit report. However, if a further response is not received we will use Thales' response dated 12 December 2017.

Confidentiality

As noted on the Proposed Final Report's cover sheet, copies may be distributed to relevant officers of Thales to assist in preparing comments on the report. The Auditor-General's approval must be sought for distribution to any other person(s).

Forms of response

Please consider providing the following responses:

1. Letter of reply (published in full as an appendix)

A letter that will constitute the formal Thales response to the proposed audit report and will be reproduced as an appendix to the final audit report.

2. Summary response (published in full at end of report summary)

A short summary of your formal response (one or two paragraphs) that will be included in the report summary.

Contacts

We are available for further discussions on the proposed report as required. I can be contacted using the details below, or alternatively your staff may wish to contact the Executive Director responsible for the audit, David Brunoro on [REDACTED] or the Audit Manager, Dr Patrick O'Neill on [REDACTED]

Yours sincerely

(Dr) Tom Ioannou

Group Executive Director

Performance Audit Services Group

Australian National Audit Office

[REDACTED]
www.anao.gov.au



Australian Government
Department of Defence

Mr Greg Moriarty
Secretary

Vice Admiral Ray Griggs, AO, CSC, RAN
Acting Chief of the Defence Force

SEC/OUT/2017/348
CDF/OUT/2017/1120

Mr Grant Hehir
Auditor-General
PO Box 707
Canberra ACT 2601

**DEPARTMENT OF DEFENCE RESPONSE – ANAO REVISED DRAFT FINAL REPORT –
HAWKEI – ARMY’S PROTECTED MOBILITY VEHICLE – LIGHT**

Dear Mr Hehir,

Thank you for your correspondence on 18 December 2017, which contained the Revised Draft Final Report for the ANAO performance audit *Hawkei – Army’s Protected Mobility Vehicle-Light*. We appreciate the opportunity to review and provide further commentary on the Revised Draft Final Report.

Defence acknowledges the changes made to the previous Draft Final Report, and thanks the ANAO for its responsiveness to our feedback.

Defence notes the findings of the audit report on *Army’s Protected Mobility Vehicle- Light*, and will continue to apply appropriately the key learnings identified.

While we acknowledge the revisions made, Defence does not agree with

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED] the project continues to operate within the capability, budget and schedule parameters approved by Government.

The Hawkei provides Defence with an Australian developed Protected Mobility Vehicle – Light and Defence will have a sovereign capability that can be modified to meet emerging threats to protect Australian Defence Force personnel.

[REDACTED]

Defence remains committed to assisting you with the successful completion of this audit. We look forward to the upcoming Final Report

Yours sincerely,

[REDACTED]

Greg Moriarty
Secretary

[REDACTED]

R. J. Griggs, AO, CSC
Vice Admiral, RAN
Acting Chief of the Defence Force

3 January 2018

22 December 2017

From: COUCHE James [REDACTED]
Date: Friday, 05 Jan 2018, 9:40 am
To: Tom Ioannou [REDACTED]
Cc: [REDACTED]

Subject: RE: Australian National Audit Office Audit concerning the Protected Mobility Vehicle - Light
[SEC=UNCLASSIFIED]

Tom

Thanks for your email.

Please feel free to communicate directly with myself particularly as Gary does not return from annual leave until 15 January 2018.

We acknowledge the opportunity to engage with the ANAO audit team and to respond to the audit extracts.

Our request to extend the response deadline (being 9am on 8 January 2018) simply reflected that our company office does not re-open from the Christmas shut down period until 8 January 2018, therefore allowing no meaningful opportunity to consider and respond to the further revised audit extracts received on 19 December 2017. We also note that consent from the Auditor-General to disclose the further revised extracts to our external legal advisers and to make an application to the Attorney General was granted on 22 December 2017, again impacting on our ability to meaningfully respond by the 8 January 2018 deadline.

I take it from your email below that despite the above, no extension to the deadline of 9am on 8 January 2018 will be granted nor will those aspects of the report [REDACTED] be removed from the final report. Can you please confirm by return email.

On the basis that the report is proposed to be published without further alteration, Thales Australia confirms that it has applied for a certificate from the Attorney-General under s.37 of the Auditor-General Act. That application was submitted to the Attorney-General today, Friday 5 January 2018. Thales Australia considers that it would be inappropriate for the ANAO to publish the report, pending the Attorney-General's consideration of the matter. Please confirm that the ANAO will not proceed with publication on 15th January if the Attorney-General is still considering the matter.

As required by you in your email of 22 December 2017 Thales Australia has not provided the Attorney-General with a copy of the proposed Final ANAO Report and we understand you will provide this directly to the Attorney-General.

Regards

James

James Couche
Vice President
Legal and Contracts

THALES



Thales Australia

www.thalesgroup.com.au |



This email was classified by **COUCHE James** on Friday, 5 January 2018 9:40:23 AM

This message contains **COMMERCIALY SENSITIVE** information that is intended to be non-public information that must only be disclosed to others on a need-to-know basis.

From: COUCHE James [REDACTED]

Sent: Friday, 12 January 2018 6:27 PM

To: David Brunoro [REDACTED]

Cc: [REDACTED]

Subject: RE: Australian National Audit Office Audit report on Protected Mobility Vehicle - Light
[SEC=UNCLASSIFIED]

David,

Thank you for your email below.

We also raise for your attention a separate matter, as set out below.

Formal notice under the AD(JR) Act

On 19 and 23 December 2017, Thales Australia was informed by the ANAO that the Auditor-General had "formed an opinion on the public interest under section 37 of the Act" (**Decision**). For your convenience, copies of these communications are **enclosed**.

The Auditor-General's Decision is a decision covered by the *Administrative Decisions (Judicial Review) Act 1977 (Cth) (AD(JR) Act)*, and is a Decision to which s 13(1) of the AD(JR) Act applies. Thales Australia is entitled to make an application to the Federal Court under s 5 of the AD(JR) Act in relation to the Decision.

To avoid such an application, Thales hereby formally requests that the Auditor-General supply it with a statement in writing setting out the findings that he has made on material questions of fact, referring to the evidence or other material on which those findings are based, and giving reasons for the Decision.

Please take this email as notice under s 13(1) of the AD(JR) Act. As provided by that section, Thales Australia looks forward to receiving a statement of reasons within 28 days of this request.

Please let me know if you require further information.

Kind regards

James

James Couche
Vice President
Legal and Contracts

[REDACTED]
Thales Australia

THALES

.....
www.thalesgroup.com.au |

[REDACTED]

This email was classified by COUCHE James on Friday, 12 January 2018 6:27:08 PM

This message contains **COMMERCIALY SENSITIVE** information that is intended to be non-public information that must only be disclosed to others on a need-to-know basis.

THALES

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www.thalesgroup.com.au

28 January 2018

Mr Grant Hehir
Auditor-General
Australian National Audit Office
19 National Circuit
Barton ACT 2603

Email: [REDACTED]

Dear Mr Hehir

We refer to the Australian National Audit Office (ANAO) Second Revised Final Report relating to the Army's Protected Mobility Vehicle – Light, which we understand the ANAO will table in Parliament on 5 February 2018 (Report), and which the ANAO has provided to Thales Australia Limited (Thales Australia).

We wish to draw your attention to the following paragraphs of the Report, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

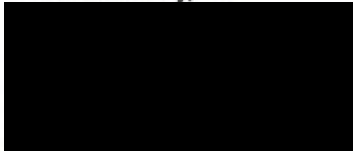
[REDACTED]

THALES



Please confirm on or before 9.30am on 31 January 2018 that the ANAO will not publish the footnotes and paragraphs identified above.

Yours sincerely,



James Couche
General Counsel
Thales Australia

From: Richard, Peter [REDACTED]
Sent: Monday, 29 January 2018 4:53 PM
To: [REDACTED]
Cc: [REDACTED]

Subject: Thales Australia Limited v Auditor-General for the Commonwealth |Federal Court of Australia Proceedings NSD77/2018(4001004)[NRF-APAC.FID2076789]

Dear Auditor-General,

We enclose by way of service in the above proceedings:

- Sealed orders of Justice Bromwich made today, 29 January 2018;
- Sealed originating application for judicial review; and
- Affidavit of Gary Mark Hines (a redacted version of this affidavit has been filed with the Court Registry, pursuant to order 1 of the attached orders).

Due to size constraints, **Exhibit GMH-1** to the affidavit of Gary Mark Hines will follow by separate email. The documents which appear behind Tabs 2-11 and Tab 15 are confidential and will be the subject of suppression orders to be sought when this application is returnable.

We note these proceedings have been listed at **10.15am on Thursday, 1 February 2018**.

Yours sincerely,

Peter Richard | Senior Associate
Norton Rose Fulbright Australia
Level 18, Grosvenor Place, 225 George Street, Sydney, Australia
[REDACTED]

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From: David Brunoro [REDACTED]
Sent: Friday, 9 February 2018 2:47 PM
To: COUCHE James [REDACTED]
Cc: [REDACTED]
Subject: RE: Australian National Audit Office Audit report on Protected Mobility Vehicle - Light [SEC=UNCLASSIFIED]

Dear Mr Couche,

Thank you for your email below.

The Auditor-General is of the opinion that you are not entitled to request a statement of reasons for this decision. The Auditor-General considers that it is not a decision to which s 13 of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (ADJR Act) applies, either because it is not a decision of an administrative character or because you are not entitled to bring an application under s 5 of the ADJR Act in respect of it. This is a notice under s 13(3) of the ADJR Act.

Regards



David Brunoro
Executive Director – Defence Performance Audit
Australian National Audit Office
[REDACTED]
www.anao.gov.au

From: COUCHE James [REDACTED]
Sent: Friday, 12 January 2018 6:27 PM
To: David Brunoro
Cc: Patrick O'Neill; Tom Ioannou; DAWSON Gary
Subject: RE: Australian National Audit Office Audit report on Protected Mobility Vehicle - Light [SEC=UNCLASSIFIED]

David,

Thank you for your email below.

We also raise for your attention a separate matter, as set out below.

Formal notice under the AD(JR) Act

On 19 and 23 December 2017, Thales Australia was informed by the ANAO that the Auditor-General had "*formed an opinion on the public interest under section 37 of the Act*" (**Decision**). For your convenience, copies of these communications are **enclosed**.

The Auditor-General's Decision is a decision covered by the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (**AD(JR) Act**), and is a Decision to which s 13(1) of the AD(JR) Act applies. Thales Australia is entitled to make an application to the Federal Court under s 5 of the AD(JR) Act in relation to the Decision.

To avoid such an application, Thales hereby formally requests that the Auditor-General supply it with a statement in writing setting out the findings that he has made on material questions of fact, referring to the evidence or other material on which those findings are based, and giving reasons for the Decision.

Please take this email as notice under s 13(1) of the AD(JR) Act. As provided by that section, Thales Australia looks forward to receiving a statement of reasons within 28 days of this request.

Please let me know if you require further information.

Kind regards

James

James Couche
Vice President
Legal and Contracts

THALES

Thales Australia

.....
www.thalesgroup.com.au |

This email was classified by COUCHE James on Friday, 12 January 2018 6:27:08 PM

This message contains **COMMERCIALY SENSITIVE** information that is intended to be non-public information that must only be disclosed to others on a need-to-know basis.

PROTECTED: Sensitive Legal



Australian Government
Department of Defence

Mr Greg Moriarty
Secretary

SEC/OUT/2018/47

Mr Grant Hehir
Auditor-General
PO Box 707
Canberra ACT 2601

**REQUEST TO RELEASE A COPY OF THE PERFORMANCE AUDIT REPORT TITLED
ARMY'S PROTECTED MOBILITY VEHICLE – LIGHT TO THE MINISTER FOR
DEFENCE AND MINISTER FOR DEFENCE INDUSTRY**

~~Dear Mr Hehir~~

Dear Grant

I am writing in relation to the ANAO's report, entitled *Army's Protected Mobility Vehicle – Light Acquisition* (the Report).

The Attorney-General has written to the Minister for Defence and the Minister for Defence Industry regarding a request by Thales for the Attorney-General to issue a certificate under section 37(1)(b) of the *Auditor-General Act 1997* (the Act) to remove certain information from the Report.

The Attorney-General has asked both Ministers for additional information to inform the Attorney's consideration of whether the disclosure of information contained in the Report would be contrary to the public interest. This may include reasons under section 37(2) of the Act including, but not limited to, sections 37(2)(a) and (b) of the Act (concerning security, defence and internal relations and deliberations of the Cabinet or its Committees).

The Attorney-General has requested a response from both Ministers by 12 March 2018, to inform the Attorney's consideration when forming an opinion for the purposes of section 37(1)(b) of the Act.

To assist the Ministers in responding to the Attorney-General's request, I am writing to you to request that you release a copy of the proposed report of the performance audit titled *Army's Protected Mobility Vehicle – Light* for the Ministers' information.

PROTECTED: Sensitive Legal

Defending Australia and its National Interests

Your immediate consideration and response would be appreciated.

Yours sincerely,



Greg Moriarty
Secretary
/ March 2018



Auditor-General for Australia

PROTECTED
Sensitive: Legal



6 March 2018

Mr Greg Moriarty
Secretary
Department of Defence
CANBERRA ACT 2600

Dear Mr Moriarty

Proposed performance audit report on procurement of the Army's Protected Mobility Vehicle—Light. Request for release to Defence Ministers.

I am writing in response to your request of 1 March 2018 to provide the Minister for Defence and Minister for Defence Industry (the Ministers) with a copy of the ANAO's proposed performance audit report on Defence's procurement of the Army's Protected Mobility Vehicle—Light. Your correspondence follows a request to the Ministers from the Attorney-General, who has asked them to assist in his consideration of whether the inclusion of particular information in the proposed report would be contrary to the public interest.

This matter is before the Attorney-General following Thales Australia Limited's (Thales Australia) application to him of 5 January 2018 to consider issuing a certificate under subsection 37(1)(b) of the *Auditor-General Act 1997* (Cth) (the Act).

I have attached a copy of the proposed audit report to assist the Ministers, which I agree to you providing to the Ministers. It is a long-standing practice that ANAO working papers—which include correspondence with entities and iterations of proposed reports—are not generally disclosed to the Parliament, Ministers or other parties so as to preserve the confidentiality of the audit process. The confidentiality of that process is underpinned by section 36(3) of the Act. I have agreed to you providing the Ministers with a copy of the proposed report, under subsection 36(4) of the Act, for the purpose of responding to the Attorney-General. The confidentiality of the proposed report should be preserved at all times.

Should either of the Ministers seek a briefing on the proposed report, I would be happy to arrange one.

You will recall that Defence made written representations to me in the course of the audit regarding the ANAO's analysis. Defence did so on 1 December 2017 (Secretary and CDF) and 12 December 2017 (A/g Secretary and CDF), in the context of providing written comments on the proposed audit report under section 19 of the Act.

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In that correspondence Defence made two key points regarding commercial matters:

■ [REDACTED]

■ [REDACTED]

In further correspondence of 3 January 2018 (Secretary and A/g CDF), Defence again made the first point but not the second. My reading of that correspondence was that Defence had withdrawn its concerns relating to [REDACTED] following consideration of the revised proposed audit report. The (attached) proposed audit report includes Defence's response of 3 January 2018 as required by the Act.

You may also recall that Defence further advised me on 1 December 2017 that it did not consider certain information—[REDACTED] of the Hawkei capability—to be appropriate for public release, nor critical to include in a final audit report to support the ANAO's conclusion. The relevant details were identified in consultation with Defence and removed by the ANAO in the course of preparing the proposed audit report. The removal of information considered to raise security issues was acknowledged by Defence in its correspondence to me of 12 December 2017.

As you know, the treatment of national security information arises regularly in the context of Defence auditing and in the preparation of the annual Defence Major Projects Report. The ANAO welcomes and reviews very carefully all Defence advice on such matters. As evidenced in this case, Defence and the ANAO worked together through an iterative process to identify and manage any potential risks to national security.

The Defence procurement of Hawkei continues 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 proposed report.

Yours sincerely

[REDACTED]

Grant Hehir
Auditor-General

PROTECTED
Sensitive: Legal

From: [Clarke, Tom DR 2](#)
To: [Patrick O'Neill](#)
Cc: [Aiello, Benjamin MR](#)
Subject: Hawkei Final Draft Report: further proposed amendments [SEC=PROTECTED, DLM=Sensitive]
Date: Wednesday, 18 April 2018 12:49:17 PM
Attachments: [Proposed Amendments, Editorials and Comments - Hawkei Final Draft Report.doc](#)

PROTECTED Sensitive

Good afternoon Patrick. While we await the outcome of the other processes at work in relation to the Hawkei report, we have continued to review the document. Working from the version provided by ANAO 6 March 2018 (for provision to the Ministers to assist them in responding to the Attorney-General), we have identified two paragraphs of the report that warrant consideration for revision.

The first relates to a section discussing a non-Hawkei (but related) Defence platform that highlights limitations in its operational capabilities which, if disclosed, could prejudice the national security interests of the Commonwealth. We request that this sensitive information be removed. The second relates to an inaccurate paraphrasing of a Hawkei Cabinet Submission. An amendment has been proposed to correct this inaccuracy.

Attached to this email you will find Defence's proposed amendments, editorials and comments for your consideration.

Kind regards

Dr Tom Clarke
Acting First Assistant Secretary
Audit & Fraud Control Division

Department of Defence
We Promote Integrity, Accountability and Efficiency in Defence
☐ ***CP3-2-005 | Campbell Park | Northcott Drive | ACT 2610***

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IMPORTANT: This email remains the property of the Department of Defence and is subject to the jurisdiction of section 70 of the Crimes Act 1914. If you have received this email in error, you are requested to contact the sender and delete the email.

From: [Tom Ioannou](#)
To: [REDACTED]
Cc: [REDACTED]
Subject: Performance audit of Army's Protected Mobility Vehicle—Light—planned tabling of interim redacted report [DLM=Sensitive:Legal]
Date: Wednesday, 2 May 2018 3:52:51 PM
Attachments: [ANAO Third Revised Draft Final Report - Protected Mobility Vehicle Light - 2 May 2018 - SENSITIVE LEGAL.pdf](#)
[image001.jpg](#)
Importance: High

Mr Greg Moriarty
Secretary
Department of Defence

Air Chief Marshal Mark Binskin AC
Chief of the Defence Force

via email: [REDACTED]

Dear Mr Moriarty and Air Chief Marshal Binskin

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

I am writing to provide you with a third revised draft final report on the ANAO's audit of *Army's Protected Mobility Vehicle—Light* for comment. The revised draft is provided to Defence as a courtesy, and is attached. An extract has also been provided to Thales Australia Limited (Thales Australia) for comment.

The Auditor-General intends to present the Parliament with an interim redacted audit report for tabling as soon as practicable after receiving any further comments from Defence on the attached draft and from Thales Australia on the extract. We seek any comments you may have by **1700 on Wednesday 9 May 2018**. 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 the Attorney-General 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 paragraphs 4.48–4.53 and footnote 87, and a related action brought by Thales Australia in the Federal Court of Australia seeking to restrain the publication of that material.

The Auditor-General intends to table an interim redacted report to inform Parliament on this 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. The Auditor-General intends to do so having regard to: his role, as an independent Officer of the Parliament, in supporting the Parliament's scrutiny of the executive government; his 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.

In deciding to prepare a redacted interim report, the Auditor-General has not made a decision to omit information from the report under subsection 37(1)(a) of the Act. It remains the Auditor-General's opinion that public disclosure of the redacted information would not unfairly prejudice the commercial interests of any body or person. The Auditor-General intends to present, if possible, an unredacted report for tabling as soon as practicable after the conclusion of the current legal processes.

As noted on the cover sheet of the attached draft report, the interim redacted report to be presented for tabling will not include paragraphs 4.48–4.53 and footnote 87, or related material appearing in the audit conclusion and supporting findings. All recipients of the draft report are asked to note that the redacted material is subject to active legal processes.

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. In addition, material relating to the operational capabilities of the [REDACTED] [REDACTED] has been removed (specifically, material in footnote 19) following the receipt of Defence advice on 18 April 2018 relating to the national security interests of the Commonwealth.

Confidentiality

The draft report is covered by the confidentiality obligation in the Act and must be safeguarded at all times. As noted on the draft report's cover sheet, copies may be distributed to relevant Defence officials to assist in preparing comments on the report, and to the Defence audit committee. Please note that the Act includes a penalty for contravening the confidentiality obligation.

All recipients of the third revised draft final report should be advised of their confidentiality obligations.

Forms of response

Our preference is that Defence provide us with a revised letter of reply and a summary response for inclusion in the interim redacted report. Please consider providing the following responses:

1. Letter of reply (published in full as an appendix)

A letter that will constitute the formal Defence response to the third revised draft final report and will be reproduced as an appendix to the interim redacted report.

2. Summary response (published in full at end of report summary)

A short summary of your formal response (one or two paragraphs) that will be included in the interim redacted report summary.

3. Editorial matters (if any) you wish to bring to our attention

In preparing your reply, you may identify comments or matters of an editorial nature that you wish the ANAO to consider incorporating, where appropriate, in the text of the interim redacted report. This material should be provided separately, and will not be published as part of the formal Defence response to the interim redacted report.

A copy of the interim redacted report, incorporating any changes and your formal comments, will be provided to you for your information prior to its tabling.

Contacts

We are available for further discussions on the third revised draft final report as required. I can be contacted using the details below, or alternatively your staff may wish to contact the Audit Manager, Dr Patrick O'Neill on [REDACTED]

Yours sincerely

(Dr) Tom Ioannou

Group Executive Director

| Performance Audit

Australian National Audit Office

[REDACTED]
www.anao.gov.au

From: [Tom Ioannou](#)
To: [REDACTED]
Subject: Performance audit of Army's Protected Mobility Vehicle—Light—provision of report extract for comment and planned tabling of interim redacted report [DLM=Sensitive:Legal]
Date: Wednesday, 2 May 2018 4:06:14 PM
Attachments: [ANAO Extract for Thales - Third Revised Draft Final Report - Protected Mobility Vehicle Light - 2 May 2018 - SENSITIVE LEGAL.pdf](#)
[image001.jpg](#)
Importance: High

Mr James Couche
Vice President Legal and Contracts
Thales Australia Limited

via email: [REDACTED]

Dear Mr Couche

Performance audit of Army's Protected Mobility Vehicle—Light—provision of report extract for comment and planned tabling of interim redacted report

I am writing to provide you with an extract of a third revised draft final report on the ANAO's audit of *Army's Protected Mobility Vehicle—Light* for comment. The extract is provided to Thales Australia Limited (Thales Australia) as a courtesy, and is attached.

The Auditor-General intends to present the Parliament with an interim redacted audit report for tabling as soon as practicable after receiving any further comments from Thales Australia on the attached extract. We seek any comments you may have by **1700 on Wednesday 9 May 2018**. 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 the Attorney-General 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 paragraphs 4.48–4.53 and footnote 87, and a related action brought by Thales Australia in the Federal Court of Australia seeking to restrain the publication of that material.

The Auditor-General intends to table an interim redacted report to inform Parliament on this 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. The Auditor-General intends to do so having regard to: his role, as an independent Officer of the Parliament, in supporting the Parliament's scrutiny of the executive government; his 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.

In deciding to prepare an interim redacted report, the Auditor-General has not made a decision to omit information from the report under subsection 37(1)(a) of the Act. It remains the Auditor-General's opinion that public disclosure of the redacted information would not unfairly prejudice the commercial interests of any body or person. The Auditor-General intends to present, if possible, an unredacted report for tabling as soon as practicable after the conclusion of the current legal processes.

As noted on the cover sheet of the attached extract, the interim redacted report to be presented for tabling will not include paragraphs 4.48–4.53 and footnote 87. All recipients of the extract are asked to note that the redacted material is subject to active legal processes.

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 extract reflects events in the procurement since January 2018.

Confidentiality

The extract is covered by the confidentiality obligation in the Act and must be safeguarded at all times. As noted on the extract cover sheet, the Auditor-General has consented to the confidential disclosure of copies of this extract by the Vice President Legal and Contracts of

Thales Australia within Thales Australia as well as to Thales Australia's legal advisors to whom the Auditor-General has previously provided written consent to receive information.

All recipients of the extract should be advised of their confidentiality obligations.

Forms of response

Our preference is that Thales Australia provide us with a revised letter of reply and a summary response to the extract for inclusion in the interim redacted report. Please consider providing the following responses:

1. Letter of reply (published in full as an appendix)

A letter that will constitute the formal Thales Australia response to the third revised draft final report and will be reproduced as an appendix to the interim redacted report.

2. Summary response (published in full at end of report summary)

A short summary of your formal response (one or two paragraphs) that will be included in the interim redacted report summary.

3. Editorial matters (if any) you wish to bring to our attention

In preparing your reply, you may identify comments or matters of an editorial nature that you wish the ANAO to consider incorporating, where appropriate, in the text of the interim redacted report. This material should be provided separately, and will not be published as part of the formal Thales Australia response to the interim redacted report.

Formal notice

The ANAO has previously advised that it will provide Thales Australia with five business days' notice of any intended date of publication of this performance audit report. Please treat this e-mail as notice of the Auditor-General's intention to table an interim redacted audit report in the week beginning 14 May 2018.

Contacts

We are available for further discussions on the extract as required. I can be contacted using the details below, or alternatively your staff may wish to contact the Audit Manager, Dr Patrick O'Neill on [REDACTED]

I would be grateful if you could confirm receipt of this package.

Yours sincerely

(Dr) Tom Ioannou

Group Executive Director

| Performance Audit

Australian National Audit Office

[REDACTED]

www.anao.gov.au

From: [Tom Ioannou](#)
To: [REDACTED]
Cc: [REDACTED]
Subject: ANAO audit - Army's Protected Mobility Vehicle-Light. [SEC=UNCLASSIFIED]
Date: Wednesday, 9 May 2018 11:30:50 AM
Attachments: [image001.jpg](#)

Dear Mr Couche

I refer to my e-mail of 2 May 2018 about the ANAO audit of *Army's Protected Mobility Vehicle-Light*.

As you may know, Thales Australia has been copied into correspondence from the Attorney-General to the Auditor-General dated 7 May 2018, which relates to the tabling of an interim redacted audit report by the Auditor-General.

We are currently considering the next steps relating to the tabling of this report, but will not be presenting the report to Parliament for tabling in the week beginning 14 May 2018.

As indicated in my e-mail of 2 May, we sought any further comments Thales Australia may have by 1700 on Wednesday 9 May 2018. Given the delay in tabling, Thales Australia should not feel any obligation to provide further comments by that time. That said, we would be happy to receive any further comments you may have on the extract provided to you.

We will provide further advice on tabling and related processes in due course.

Yours sincerely

(Dr) Tom Ioannou
Group Executive Director
| Performance Audit
Australian National Audit Office
[REDACTED]
www.anao.gov.au

Tom Ioannou
Group Executive Director
Performance Audit Services Group
Australian National Audit Office
[REDACTED]



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD77/2018

THALES AUSTRALIA LIMITED ACN 008 642 751

Applicant

AUDITOR-GENERAL FOR THE COMMONWEALTH

Respondent

ORDER

JUDGE: JUSTICE GRIFFITHS

DATE OF ORDER: 09 July 2018

WHERE MADE: Sydney

BY CONSENT, THE COURT ORDERS THAT:

1. The proceeding be dismissed.
2. No order as to costs (including of reserved costs) with the intention that each party bear its own costs.
3. Liberty to uplift the affidavit of Gary Mark Hines and exhibit GMH-1 sworn 29 January 2018

Date that entry is stamped: 9 July 2018



Registrar

From: [Tom Ioannou](#)
To: [REDACTED]
Subject: Auditor-General's proposed performance audit reports of Army's Protected Mobility Vehicle–Light (Hawkei)
[SEC=PROTECTED, DLM=Sensitive:Legal]
Date: Thursday, 2 August 2018 6:11:17 PM
Attachments: [image001.jpg](#)
[ANAO Draft Private Report - Hawkei - 2 August 2018 - PROTECTED SENSITIVE.pdf](#)
[ANAO Draft Public Report - Hawkei - 2 August 2018 - SENSITIVE.pdf](#)
[Hawkei - financial etc update - ANAO requests to Defence - August 2018.DOCX](#)
Importance: High

Mr Greg Moriarty
Secretary
Department of Defence

General Angus J. Campbell AO DSC
Chief of the Defence Force

via email: executive.support@defence.gov.au

Dear Mr Moriarty and General Campbell

Proposed performance audit reports of Army's Protected Mobility Vehicle–Light (Hawkei)

I am writing to provide you, for comment, with two proposed performance audit reports of Army's Protected Mobility Vehicle–Light:

- a. a public report to be presented for tabling in the Parliament, which:
 - omits particular information as required by a certificate issued on 28 June 2018 by the Attorney-General under subsection 37(1)(b) of the *Auditor-General Act 1997* (the Act); and
 - has been updated to reflect material events in the procurement until July 2018. Amendments are highlighted in the proposed report; and
- b. a complete but confidential (non-public) report to be provided to the Prime Minister, the Minister for Finance and responsible Ministers (the Minister for Defence and Minister for Defence Industry) under subsection 37(5) of the Act.

The proposed reports are provided to the Department of Defence (Defence) as a courtesy and we seek any comments you may have by **1700 on 16 August 2018**.

An extract of the proposed public report has been provided to Thales Australia Limited for comment.

Form of response

If you wish to comment on the proposed reports, please provide your response(s) in the following form.

- a. For the public report:
 - a letter that will constitute the formal Defence response to the proposed public report and will be reproduced as an appendix to the final report;
 - a short summary of your formal response (one or two paragraphs) that will be included in the report summary; and
 - editorial matters (if any) you may wish to bring to our attention. Attached is a table of five financial/contractual matters that need to be updated in the report. We would appreciate early liaison between Defence and the ANAO so as to update this information.

In preparing any response to the public report, please bear in mind the requirements of

the Attorney-General's certificate, which requires the non-disclosure of particular information in a public report of the Auditor-General. For example, the Attorney-General's certificate requires the non-disclosure of paragraphs two and three of Defence's summary response to the Auditor-General of 3 January 2018.

- b. For the confidential report:
- a letter that will constitute the formal Defence response to the proposed confidential report and will be reproduced as an appendix to the final report; and
 - editorial matters (if any) you may wish to bring to our attention.

Confidentiality

The proposed reports are covered by the confidentiality obligations in the Act and must be safeguarded at all times. In this respect, I draw your attention to the handling notes included in the report cover sheets, which differ for the two reports.

- a. In respect to the public report:
- The Auditor-General has consented, under subsection 36(2C) of the Act, to the confidential disclosure of copies of this report by the Secretary of Defence and the Chief of the Defence Force to relevant officials of the Department of Defence, as well as to members of the Department of Defence's audit committee, to assist in preparing comments on the report or monitoring of entity risks. All recipients of the report should be advised by the Department of Defence of their confidentiality obligations.
 - The report is not to be disclosed to other organisations or persons without the Auditor-General's consent.
- b. In respect to the confidential report:
- Given the confidential nature of this report, the Auditor-General has only consented, under subsection 36(2C) of the Act, to the confidential disclosure of copies of this report by the Secretary of Defence and the Chief of the Defence Force to relevant officials of the Department of Defence, to assist in preparing comments on the report. All recipients of the report should be formally advised by the Department of Defence of their confidentiality obligations.
 - The report is not to be disclosed to other organisations or persons.
 - All recipients of the report should also be formally advised that the Attorney-General has issued a certificate under subsection 37(1)(b) of the *Auditor-General Act 1997* that in his opinion the disclosure of certain information would be contrary to the public interest for one or both of the reasons set out in subsections 37(2)(a) and 37(2)(e) of the Act. The report highlights in orange the particular information that is subject to the Attorney-General's certificate.

Tabling

Tabling of the public report is planned to occur during the parliamentary sittings that begin on 10 September.

Contacts

We are available for further discussions on the proposed report as required. I can be contacted using the details below, or alternatively your staff may wish to contact the Audit Manager, Dr Patrick O'Neill on 02 6203 7556 or patrick.oneill@anao.gov.au.

Yours sincerely

(Dr) Tom Ioannou
Group Executive Director
| Performance Audit
Australian National Audit Office



www.anao.gov.au

From: [Tom Ioannou](#)
To: [REDACTED]
Cc: [Patrick O'Neill](#)
Subject: Extract of Auditor-General's proposed performance audit report of Army's Protected Mobility Vehicle-Light (Hawkei) [DLM=Sensitive]
Date: Friday, 3 August 2018 10:57:42 AM
Attachments: [image001.jpg](#)
[ANAO Extract for Thales - Hawkei - 3 August 2018 - SENSITIVE.pdf](#)
Importance: High

Mr James Couche
Vice President Legal and Contracts
Thales Australia Limited

via email: [REDACTED]

Dear Mr Couche

Extract of proposed performance audit report of Army's Protected Mobility Vehicle-Light (Hawkei)

I am writing to provide you, for comment, with an extract of the proposed performance audit report of Army's Protected Mobility Vehicle-Light.

The extract is from a public report to be presented for tabling in the Parliament, which:

- omits particular information as required by a certificate issued on 28 June 2018 by the Commonwealth Attorney-General under subsection 37(1)(b) of the *Auditor-General Act 1997* (the Act); and
- has been updated to reflect material events in the procurement until July 2018. Amendments are highlighted in the extract.

The proposed report extract is provided to Thales Australia Limited (Thales Australia) as a courtesy and we seek any comments you may have by **1700 on 17 August 2018**.

Form of response

If you wish to comment on the proposed report extract, please provide your response in the following form:

- a letter that will constitute the formal Thales Australia response to the report extract and will be reproduced as an appendix to the final public report;
- a short summary of your formal response (one or two paragraphs) that will be included in the report summary; and
- editorial matters (if any) you may wish to bring to our attention.

In preparing any response to the public report, please bear in mind the requirements of the Attorney-General's certificate, which requires the non-disclosure of particular information in a public report of the Auditor-General.

Confidentiality

The proposed report extract is covered by the confidentiality obligations in the Act and must be safeguarded at all times. In this respect, I draw your attention to the handling notes included in the cover sheet to the extract.

- The Auditor-General has consented, under subsection 36(2C) of the Act, to the confidential disclosure of copies of this extract by you within Thales Australia Limited, to assist in preparing comments on the report.

- The extract may also be provided to those Thales Australia Limited legal advisers to whom the Auditor-General has previously given consent.
- All recipients of the extract should be advised by Thales Australia Limited of their confidentiality obligations.
- The report is not to be disclosed to other organisations or persons without the Auditor-General's consent.

Tabling

Tabling is planned to occur during the parliamentary sittings that begin on 10 September.

Contacts

We are available for further discussions on the proposed report extract as required. I can be contacted using the details below, or alternatively your staff may wish to contact the Audit Manager, Dr Patrick O'Neill on [REDACTED]

Yours sincerely

(Dr) Tom Ioannou

Group Executive Director

| Performance Audit

Australian National Audit Office
[REDACTED]

PROTECTED
Sensitive: Legal



Australian Government
Department of Defence

Mr Greg Moriarty
Secretary

General Angus J. Campbell, AO, DSC
Chief of the Defence Force

SEC/OUT/2018/264
CDF/OUT/2018/592

Mr Grant Hehir
Auditor-General
PO Box 707
Canberra ACT 2601

**DEPARTMENT OF DEFENCE RESPONSE – ANAO FOURTH REVISED DRAFT
FINAL REPORT: *ARMY'S PROTECTED MOBILITY VEHICLE – LIGHT***

Dear Mr Hehir

Thank you for your correspondence on 2 August 2018, which contained the Fourth Revised Draft Final and Confidential Report for the ANAO performance audit *Hawkei – Army's Protected Mobility Vehicle-Light*.

Defence acknowledges the changes made to the previous draft report and appreciates the opportunity to review and provide further commentary on the final and confidential report.

Defence notes the findings of the draft final and confidential report. The identified Key Learnings are acknowledged and will support Defence's approach to capability acquisition.

[REDACTED]

[REDACTED]

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PROTECTED
Sensitive: Legal

- █ [REDACTED]
 - █ [REDACTED]
 - █ [REDACTED]
- With the release of the 2018 Defence Industrial Capability Plan, the Hawkei Protected Mobility Vehicle is a Sovereign Industrial Capability within the '*Land Combat Vehicle Technology Upgrade*' priority.

[REDACTED] While some delays were incurred, the project continues to operate within the capability, budget and schedule parameters approved by Government.

Defence also disagrees with ANAO's assertion that as a result of the decision to delay the 2017 Gate Review, the project entered Low Rate Initial Production without the appropriate level of scrutiny. This decision was made with the appropriate level of senior management oversight and the two subsequent Gate Reviews did not raise concerns regarding this decision.

Defence maintains that the Hawkei provides Australia with a domestically developed and sovereign capability that can be modified to meet emerging threats and protect Australian Defence Force personnel. [REDACTED]. Defence is confident that the Hawkei will be able to be modified to meet the requirements of our security partners and provide these nations with a highly effective capability.

Attached to this letter are Defence's proposed amendments, editorials and comments (Annex A). This constitutes Defence's formal response to both versions of the final report.

Defence remains committed to assisting you with the successful completion of this performance audit.

Yours sincerely

[REDACTED]

Greg Moriarty
Secretary

General Angus J. Campbell, AO, DSC
Chief of the Defence Force

15 August 2018

15 August 2018

PROTECTED
Sensitive: Legal

SENSITIVE



Australian Government
Department of Defence

Mr Greg Moriarty
Secretary

General Angus Campbell, AO, DSC
Chief of the Defence Force

SEC/OUT/2018/263
CDF/OUT/2018/591

Mr Grant Hehir
Auditor-General
PO Box 707
Canberra ACT 2601

**DEPARTMENT OF DEFENCE RESPONSE – ANAO FOURTH REVISED DRAFT FINAL
REPORT: *ARMY'S PROTECTED MOBILITY VEHICLE – LIGHT***

Dear Mr Hehir

Thank you for your correspondence on 2 August 2018, which contained the Fourth Revised Draft Final Report for the ANAO performance audit *Hawkei – Army's Protected Mobility Vehicle-Light*.

Defence acknowledges the changes made in response to feedback on the previous proposed report and we appreciate the opportunity to review and provide further commentary on the final draft.

Defence notes the findings contained in the draft final report, including the identified key learnings, which will support and inform Defence's approach to capability acquisition.

However, Defence does not agree with the assertion made by the ANAO that as a result of the decision to delay the 2017 Gate Review, the project entered Low Rate Initial Production without the appropriate level of scrutiny. This decision was made with the appropriate level of senior management oversight and subsequent Gate Reviews did not flag concerns with this decision.

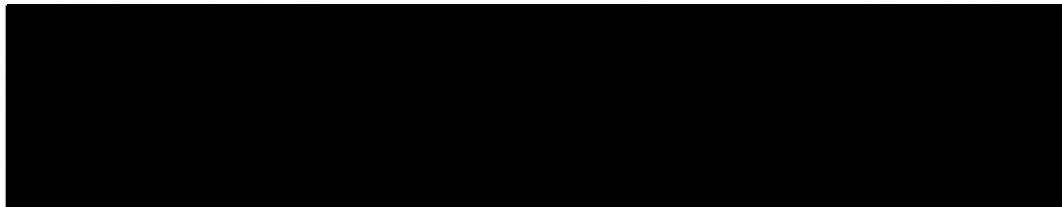
Defence maintains that the Hawkei provides Australia with a domestically developed and sovereign capability that can be modified to meet emerging threats and protect Australian Defence Force personnel. Defence is also confident that the Hawkei has the potential to be modified to meet the requirements of our security partners and provide these nations with a highly effective capability.

SENSITIVE

SENSITIVE

Defence remains committed to assisting you with the successful completion of this performance audit.

Yours sincerely



Greg Moriarty
Secretary

General Angus J. Campbell, AO, DSC
Chief of the Defence Force

15 August 2018

15 August 2018

SENSITIVE

Summary Response

The Department notes the ANAO's findings regarding the acquisition of the Hawkei – Protected Mobility Vehicle – Light and appreciates the work undertaken by the ANAO to consider Defence's feedback in preparing the Final Report. The identified Key Learnings are acknowledged and will support Defence's approach to capability acquisition.

The Hawkei provides Australia with a domestically developed and sovereign capability that can be modified to meet emerging threats and protect Australian Defence Force personnel.

Defence is also confident that the Hawkei has the potential to be modified to meet the requirements of our security partners and provide these nations with a highly effective capability.

From: [Tom Ioannou](#)
To: [COUCHE James](#)
Cc: [Patrick O'Neill](#)
Subject: Performance audit report of Army's Protected Mobility Vehicle—Light (Hawkei) [SEC=UNCLASSIFIED]
Date: Friday, 24 August 2018 2:27:40 PM
Attachments: [image002.png](#)
[image004.jpg](#)

Mr James Couche
Vice President Legal and Contracts
Thales Australia Limited

via email: [REDACTED]

Dear Mr Couche

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

I refer to your correspondence to the Auditor-General dated 20 August 2018, advising that Thales Australia Limited (Thales Australia) has made a further application to the Attorney-General for a certificate under subsection 37(1)(b) of the *Auditor-General Act 1997* (the Act). I also note your advice in that correspondence that it was copied to the Attorney-General.

Thales Australia's further application relates to an extract (the extract) of the Fourth Revised Draft Final Report of a performance audit of Army's Protected Mobility Vehicle—Light (Hawkei). I provided Thales Australia with the extract for comment on 3 August 2018, as part of the consultation process for completion of the report.

In your 20 August correspondence, you submit that it would not be in the public interest to include the following information in a public report:

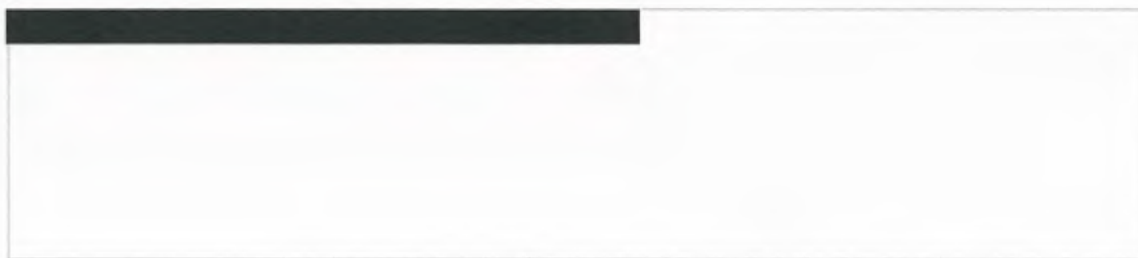
[REDACTED]

The Auditor-General does not agree that there are public interest grounds, under section 37 of the Act, to omit this particular information from a public report.

That said, the Auditor-General has removed paragraph [REDACTED] and related footnotes [REDACTED] from the proposed public report. The Auditor-General has also removed the reference to [REDACTED] in paragraph [REDACTED] of the proposed public report. Paragraph [REDACTED] and the related footnote [REDACTED] are now identical to the versions which the Attorney-General considered when deliberating on the certificate issued on 28 June 2018 under subsection 37(1)(b) of the Act.

These amendments have been made by the Auditor-General as they do not have a material impact on the audit findings.

The version of paragraph [REDACTED] to be included in the final public report is reproduced below:



The ANAO is considering the other comments provided by Thales Australia in concluding the report. The final report will include the summary response you provided to me in your e-mail of 20 August 2018, and will reproduce in full the written response provided to the Auditor-General by the Chief Executive Officer of Thales Australia, dated 20 August 2018.

As previously advised, the Auditor-General plans to present this report for tabling in the sitting weeks commencing 10 September 2018.

Yours sincerely

(Dr) Tom Ioannou
Group Executive Director
| Performance Audit
Australian National Audit Office



www.anao.gov.au

From: [Tom Ioannou](#)
To: [COUCHE James](#)
Cc: [Patrick O'Neill](#)
Subject: Performance audit report of Army's Protected Mobility Vehicle—Light (Hawkei) [SEC=UNCLASSIFIED]
Date: Friday, 31 August 2018 4:28:30 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.jpg](#)

Dear Mr Couche

Thank you for acknowledging receipt of my e-mail of 24 August 2018 about amendments to the performance audit report of Army's Protected Mobility Vehicle—Light (Hawkei).

You have also asked for an advance copy of the finalised report before it is tabled in the Parliament.

This was an audit of the Department of Defence's administration of a Commonwealth procurement. It was not an audit of Thales Australia Limited (Thales Australia). In the course of the audit, the Department of Defence was provided with a copy of the proposed report due to its responsibility for the procurement. Thales Australia was provided with an extract of the proposed report in late 2017 pursuant to subsection 19(6) of the *Auditor-General Act 1997* (the Act). The extract, as amended, was subsequently provided to Thales Australia pursuant to section 23A of the Act, again at the Auditor-General's discretion.

As you know, the Auditor-General's performance audits are reports to Parliament. The Auditor-General is not required to provide a copy of a finalised performance audit report to any person or organisation before it is presented for tabling. This arrangement reflects the statutory independence of the Auditor-General and respects the Parliament's role as the recipient of Auditor-General reports. We intend to handle the report to Parliament in line with our normal practice.

Yours sincerely

(Dr) Tom Ioannou
Group Executive Director
| Performance Audit
Australian National Audit Office

[www.anao.gov.au](#)

[Redacted signature block]

[Redacted text]

From: [Tom Ioannou](#)
To: [COUCHE James](#)
Cc: [Patrick O'Neill](#)
Subject: Performance audit report of Army's Protected Mobility Vehicle—Light (Hawkei) [SEC=UNCLASSIFIED]
Date: Thursday, 6 September 2018 4:53:08 PM
Attachments: [image001.png](#)
[image005.png](#)
[Letter to Auditor-General re 4th draft report \(5 September 2018\).pdf](#)
[image002.jpg](#)
Importance: High

Mr James Couche
General Counsel
Thales Australia Limited

via email: [REDACTED]

Dear Mr Couche

You wrote to the Auditor-General on 5 September 2018 seeking that: "...to avoid litigation in accordance with s19(6) of the *Auditor-General Act 1997* (Cth), please provide Thales with an advance copy of the Report or so much of that document which pertains to Thales' research, development and production of the Hawkei, in particular those paragraphs the subject of Thales request for amendment in the schedule to its letter to you dated 20 August 2018 by close of business, 6 September 2018."

In fact the process under subsection 19(6) of the *Auditor-General Act 1997* (the Act) has already been completed. On 6 November 2017, the Auditor-General provided Thales Australia with relevant extracts of the proposed report of the performance audit of the Department of Defence's procurement of Army's Protected Mobility Vehicle—Light expressly under subsection 19(6). In addition, the Auditor-General provided Thales Australia with relevant extracts from further iterations of the report, and further opportunities to comment. Thales Australia received extracts of the report on the following occasions:

- an extract of the proposed report was provided to Thales Australia in accordance with subsection 19(6) of the Act on 6 November 2017;
- an extract of a revised version of the report, referred to as the Draft Final Report, was provided to Thales Australia on 8 December 2017;
- an extract of a revised version of the report, referred to as the Revised Draft Final Report, was provided to Thales Australia on 19 December 2017;
- an extract of a revised version of the report, referred to as the Third Revised Draft Final Report, was provided to Thales Australia on 2 May 2018; and
- an extract of a revised version of the report, referred to as the Fourth Revised Draft Final Report, was provided to Thales Australia on 3 August 2018.

Section 19 of the Act envisages one opportunity for comment on a report prior to its finalisation. Thales Australia has already enjoyed substantially more opportunity to comment than is usual, or that subsection 19(6) requires.

This was an audit of the Department of Defence's administration of a Commonwealth procurement. It was not an audit of Thales Australia. The extracts which have been provided to date have been those parts of the report in which Thales Australia could reasonably be considered to have a special interest. Those parts of the report which were provided pertained to Thales Australia's [REDACTED] of the Hawkei. Moreover, Thales Australia's commercial interests have been thoroughly considered in the course of the preparation of this report, including through the section 19 process and also the applications for certificates made to the Attorney-General under section 37 of the Act. The Attorney-General was provided a full copy of the Revised Draft Final Report and the extract of the Revised Draft Final Report as provided to Thales Australia, to facilitate his consideration of Thales Australia's application of 5 January 2018 for a certificate under subsection 37(1)(b) of the Act. We note that, following the issuing of a certificate by the Attorney-General on 28 June 2018, Thales Australia consented to the dismissal of the Federal Court proceedings it had instituted and which were scheduled for hearing before Justice Griffiths. We understood this to be on the basis that Thales Australia was satisfied that the certificate adequately protected its commercial interests in connection with the report. Thales Australia applied to the Attorney-General for a second section

37 certificate on 20 August 2018. While the Auditor-General did not consider that there were public interest grounds, under section 37 of the Act, to omit the information subject to Thales Australia's application, the Auditor-General removed this information on the basis that it was not material to the audit findings. Therefore the audit report does not include any of the information that was either the subject of the Federal Court proceedings or Thales Australia's applications to the Attorney-General under section 37 of the Act.

Comments provided by Thales Australia have been considered by the Auditor-General in accordance with subsection 19(7). The Auditor-General has already revised the report in light of comments received from Thales Australia in the course of this process. As is required under subsection 19(8), the Auditor-General will also reproduce, in their entirety, the written comments provided by Thales Australia in its letter of 20 August 2018, signed by Mr Chris Jenkins (Chief Executive Officer) in the final report presented to Parliament.

It is not the usual process for the Auditor-General to provide an entity in the position of Thales Australia with a copy of the final report prior to its presentation to the Parliament. There is no duty in the Act to do so. We are not aware of any circumstance in this case that would cause the Auditor-General to depart from the usual process. If you consider there are special circumstances you are welcome to raise them with us.

Yours sincerely

(Dr) Tom Ioannou
Group Executive Director
| Performance Audit
Australian National Audit Office

[Redacted]

www.anao.gov.au

[Redacted]



Auditor-General for Australia



6 September 2018

The Hon Scott Morrison MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

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

The purpose of this letter is twofold: to brief you on the attached confidential performance audit report which the ANAO has prepared under subsection 37(5) of the *Auditor-General Act 1997* (the Act) and to seek to meet with you to discuss my concerns about the operation of section 37 of the Act.

Confidential performance audit report

The confidential performance audit report has been prepared and provided to Ministers under paragraph 37(5)(b) of the Act. That provision enables me to provide a report to you, the Finance Minister and any responsible Minister (in this case the Minister for Defence and the Minister for Defence Industry) if the Attorney-General requires me to omit information from a public report.

Information has been omitted from the public report following a decision by the Attorney-General, under paragraph 37(1)(b) of the Act, that in his opinion the disclosure of particular information would be contrary to the public interest for one or both of the reasons set out in paragraphs 37(2)(a) and 37(2)(e) of the Act. The Attorney issued a certificate to this effect on 28 June 2018, following receipt of an application for a certificate for reasons set out under paragraph 37(2)(e) of the Act from Thales Australia Limited (Thales Australia) on 5 January 2018. I received the certificate on 29 June 2018.

A copy of the Attorney-General's certificate is included as an appendix to the audit report. Information required to be omitted in the public report by virtue of the certificate has been retained and highlighted in the confidential report.

This is the first certificate issued by an Attorney-General under the Act and as such, its production and impact on the public report may well attract Parliamentary and public attention. In my view, its existence, the process to determine it and the accountability for it require further thought and discussion.

Information subject to the certificate

The Parliament has chosen to include a process in the Act to safeguard the public interest. This is a check and balance to the information gathering powers it has given to the Auditor-General under the Act.

In the first use of this statutory responsibility afforded the Attorney-General, I believe the Attorney has operated in a way that has resulted in an unexpectedly broad interpretation of this check and balance. Much of the particular information I am required to omit from the public report is analysis by the Australian National Audit Office (ANAO). Further, the required omissions reach into my audit conclusion. It is hard to see how this approach could have been contemplated in the drafting of section 37.

With or without the required omissions, my audit conclusion stands and has been included in the confidential report. However, it cannot be included in full in a public report because the certificate requires that the following parts of my audit conclusion be omitted:

- part of the overall conclusion against the audit objective, as set out in paragraph 10; and
- part of the conclusion formed against specific audit criteria, as set out in paragraph 13.

The requirement that I omit part of my conclusion has the effect of limiting the scope of my audit, as that part of the conclusion that cannot be reported is pervasive to the overall objective of the audit. I am therefore unable to provide a report to the Parliament which meets the auditing standards under which ANAO audits are conducted. Accordingly, I have included a disclaimer of conclusion in the public report to the effect that I am unable to table a report that contains a clear expression of my conclusion against the audit objective.

This is the first disclaimer of conclusion I have included in a performance audit report since my appointment in 2015. As mentioned earlier, the Attorney-General's requirement to omit part of the conclusion is of concern to me and has the appearance of the Government suppressing my view of the evidence analysed in the course of the audit. It would concern me if this certificate set a precedent for government to regularly suppress elements of an Auditor-General's conclusion in a public report.

The treatment of sensitive information arises regularly in the context of Defence auditing. I welcome and review all Defence and contractor advice on such matters. In this audit, Defence and the ANAO worked together through an iterative process to identify and manage potential risks. In the course of the audit, a number of issues were raised with my Office and dealt with in respect of sensitive information. The omission of information considered to raise security issues was acknowledged by Defence in correspondence to me of 12 December 2017. On 18 April 2018, Defence requested the removal of additional information, which I also agreed to. I should emphasise that the omission of information does not mean that it ceases to inform an audit and it is not unusual for an audit conclusion to have been formed in the knowledge of information which has been omitted.

The Defence contractor, Thales Australia, was also provided with extracts of my proposed audit report and asked that certain material and the ANAO analysis be removed on the grounds of unfair prejudice to its commercial interests. While I made a number of adjustments to the proposed audit report, I considered that the public interest was clearly balanced in favour of disclosure of the ANAO analysis. Thales Australia subsequently applied to the Federal Court of Australia for orders to prevent me including certain material in my report to Parliament, in addition to seeking a certificate from the Attorney-General. The Federal Court action was dismissed by consent on 9 July 2018, shortly after the Attorney's certificate was issued.

I remain of the view 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 Defence's conduct of the procurement process as assessed against the audit objective. I also note that the particular information subject to the certificate discloses no information of Thales Australia to which commercial confidentiality considerations would normally apply.

Nonetheless, the Attorney-General formed a different opinion.

The Attorney-General's considerations leading to this opinion have not been made known nor explained to me. Further, the certificate does not provide detail on the substantive reasons for the Attorney's decision and is therefore of limited assistance to my own future consideration of the public interest under paragraph 37(1)(a) of the Act.

Under the Act, the Auditor-General cannot be required and is not permitted to disclose information omitted under subsection 37(1) to a House of the Parliament, a member of a House of the Parliament, or any committee of the Parliament. This includes my oversight committee, the Joint Committee of Public Accounts and Audit (JCPAA). I have asked the Chair of the Committee that any discussion with the ANAO, after the tabling of the public report, be conducted in public hearings to assure the Parliament that the ANAO acts in accordance with the Act.

Public performance audit report

I plan to present my public report to the Parliament on 11 September 2018. In accordance with the ANAO auditing standards, both the public and confidential reports have been updated to reflect significant events in Defence's procurement of Hawkei vehicles until July 2018. As part of the consultation process for completing the public report, my Office provided Thales Australia with a report extract for comment in early August 2018. Thales Australia objected to the inclusion of particular information in the updated report and applied to the Attorney-General for a second certificate under paragraph 37(1)(b) of the Act in late August 2018. I have informed the Attorney and Thales Australia that while 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, I have removed it nonetheless. I am comfortable with excluding this information from my public report as it does not have a material impact on the audit findings. The information remains in the confidential report as it provides some additional assurance to Ministers that [REDACTED]

I made these amendments to the public report because I believe it best serves the interests of the Parliament for the report to be tabled as soon as possible and I do not wish to risk holding up its tabling through a further extended consideration of an application to the Attorney-General under paragraph 37(1)(b) of the Act. (I note in this respect that the Attorney's consideration of the certificate issued in June 2018 took almost six months and involved no direct discussion with me). The Attorney-General acknowledged my approach in correspondence dated 31 August 2018 and advised me that he has sought confirmation from Thales Australia about withdrawal of its application for a further certificate.

Certification process

While accepting in principle the underlying intent of paragraph 37(1)(b) of the Act, I have several concerns with how it has been applied in this, the first instance of its use. These concerns are based on the importance of maintaining actual independence in the exercise of the Auditor-General's functions, and the restrictions on that independence which paragraph 37(1)(b) imposes.

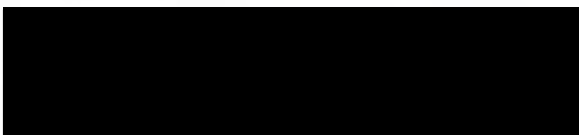
My key concern relates to the lack of accountability attaching to a decision by the Attorney-General to omit information from a public report of the Auditor-General. In the current case the Attorney has simply referenced the sections of the Act on which he has based his decision, but has provided no further substantive explanation to me as to why the relevant section has been applied. For example, after having worked through all national security issues with the Department of Defence, I remain completely unaware as to why the reasons set out in paragraph 37(2)(a) of the Act apply to the information that the Attorney-General has required be omitted from the public report. This situation creates a risk that in undertaking functions under the Act, similar considerations may be brought to bear by an Attorney-General in future Defence procurement audits without the full knowledge of the Auditor-General.

Preserving the independence of the Auditor-General—an officer of the Parliament under subsection 8(1) of the Act—while ensuring that the public interest is served in respect of sensitive information, is a key challenge for the audit framework. In briefing the Joint Committee of Public Accounts and Audit through my budget submission process, the prospect of reviewing the *Auditor-General Act 1997* has been highlighted and the ANAO has commenced early work to identify possible legislative improvements with a focus on independence issues. The last major review of the Act was conducted by the Committee in 2011 and it is important to ensure that the Act reflects contemporary developments in international practice. The operation of section 37 of the Act is amongst the issues for consideration.

I have continued to brief the Committee on the progress of this particular audit since its tabling was delayed from December 2017. I expect that following the report's tabling, the Committee will wish to discuss the processes relating to the application for a certificate and its production, the certificate's impact on the audit, and its implications for independence and the Act. As noted above, given the legislative restriction on what I can say with regard to the certificate, I have indicated my preference for those discussions to occur through public hearings.

I would like the opportunity to meet with you, as the Minister responsible for the Act, to discuss in detail my concerns with the application of paragraph 37(1)(b) of the Act and possible amendments to address them while maintaining the intent of that provision.

Yours sincerely



Grant Hehir
Auditor-General



Auditor-General for Australia



6 September 2018

Senator The Hon Mathias Cormann
Minister for Finance and the Public Service
Parliament House
CANBERRA ACT 2600

Dear Minister

Confidential performance audit report — Army's Protected Mobility Vehicle—Light

I have undertaken an independent performance audit titled *Army's Protected Mobility Vehicle—Light*.

Attached is a confidential report to the Prime Minister and Ministers prepared under paragraph 37(5)(b) of the *Auditor-General Act 1997* (the Act). It is the complete report, not affected by a certificate issued by the Attorney-General on 28 June 2018. The certificate is discussed at paragraph 6 of the report.

The confidential report includes material that will appear in my public report scheduled for tabling on 11 September 2018. Accordingly, the confidentiality of this confidential report should be preserved pending the tabling of the public report.

A copy of this confidential report has also been provided, under paragraph 37(5)(b) of the Act, to:

- the Prime Minister;
- the Minister for Defence; and
- the Minister for Defence Industry.

Yours sincerely

A large black rectangular redaction box covering the signature of Grant Hehir.

Grant Hehir

From: ANAO Tabling
Sent: Thursday, 6 September 2018 4:07 PM
To: [REDACTED]
Subject: Under Embargo: Final Auditor-General report - Army's Protected Mobility Vehicle—Light [DLM=Sensitive]
Attachments: Embargoed - Auditor-General Report No.6 2018-19 Army's Protected Mobility Vehicle — Light.pdf
Importance: High
FilingDate: 6/09/2018 5:22:00 PM



Auditor-General for Australia



The Hon Scott Morrison MP
Prime Minister
By email: [REDACTED]

Dear Prime Minister

I have undertaken an independent performance audit titled *Army's Protected Mobility Vehicle—Light*. In accordance with the authority contained in the *Auditor-General Act 1997*, I plan to present the report of this performance audit in the Parliament on 11 September 2018.

An embargoed final copy of the report is attached for your information. It omits information as required under a certificate issued by the Attorney-General on 28 June 2018. As you will appreciate, the confidentiality of the report should be preserved pending the tabling of the report.

My office would be happy to provide you with a briefing on the performance audit before the report is tabled or at another convenient time. To arrange a briefing, please contact our External Relations area at [REDACTED]

Copies of the report have also been provided to:

- the Attorney-General;
- the Minister for Defence;
- the Minister for Defence Industry;
- the Secretary of the Department of the Prime Minister and Cabinet; and
- the Secretary of the Department of Defence and the Chief of the Defence Force.

Yours sincerely

[REDACTED]

Grant Hehir

GPO Box 707 CANBERRA ACT 2601

19 National Circuit BARTON ACT
Phone (02) 6203 7300 Fax (02) 6203 7777