



**Australian Government**  
**Attorney-General's Department**  
**Deputy Secretary**  
**Legal Services and**  
**Families Group**

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

Dear Senator Smith

***Inquiry into the publication of Audit Report No. 6 (2018-19) Army's Protected Mobility Vehicle - Light***

Mr Moraitis has asked me to respond to your letter dated 15 October 2018, as I was the officer with the relevant responsibilities over the period in question.

Your letter asked the Department to provide further information about the deliberative process used by "the Attorney-General's Department" in coming to its views. The Committee seeks information about the particular matters taken into consideration to inform the final decision. The Committee also asks what, if any, are the broader implications for future decisions regarding the relevant provisions of the *Auditor-General's Act 1997*. The Committee also asked for copies of the correspondence detailed in the Department's supplementary submission.

The Department is keen to assist the Committee to the extent possible.

In the context of this matter, it is however important to bear in mind that:

- The decision that the Committee is concerned with is a decision made by the Attorney-General, not by the Department, so there was no deliberative process used by the Department, and
- The decision made by the Attorney-General under section 37(1)(b) of the *Auditor-General Act 1997* was that it would be contrary to the public interest for certain information contained in the draft report of the Auditor-General to be published.

Accordingly, the Department is under some limitations as to what it is able to provide to the Committee, both by way of submission and by way of documentary and oral evidence.

With regard to the first of these limitations, the Department can identify the matters that were before the Attorney-General when he made his decision to issue a certificate under section 37(1)(b) of the *Auditor-General's Act 1997*, and can make some general comments about the decision-making process.

The power to issue a certificate under section 37(1)(b) is discretionary and is an independent decision for the Attorney-General.

Section 37(1)(b) involves a consideration of the specific public interest in not publishing particular information, for the reasons set out in section 37(2), in a context where other parts of the *Auditor-General Act 1997* recognise the general public interest in the Auditor-General disclosing performance audit findings and material which the Auditor-General considers is relevant to those findings.

Section 37(1)(b) is not limited to information that has been obtained in the course of an audit. It can equally apply to ANAO analysis or conclusions, if the analysis or conclusions contain information that it would be contrary to the public interest to publish, for the reasons set out in section 37(2).

Section 37(2) contains a number of different elements. For example, the prohibition against publication in relation to commercial interests in section 37(2)(e) refers to interests being “unfairly prejudiced”, not merely “prejudiced”, whereas the prohibition in relation to security, defence or international relations of the Commonwealth in section 37(2)(a) simply refers to “prejudice”.

I confirm that legal advice was provided by the Department to the Attorney-General about:

- the nature of the decision-making process with respect to an application for a certificate under section 37(1)(b);
- whether in considering to issue a certificate the Attorney-General was limited to the reason identified by Thales or whether he could have regard to other reasons set out in section 37(2), and about whether he was able to seek further information from other interested parties for the purpose of considering the application by Thales; and
- the form that a certificate under section 37(1)(b) might take, given that no such certificate had previously been issued.

The material before the Attorney-General when he came to consider the application to issue a certificate consisted of:

- A letter from Thales Australia Limited to the Attorney-General dated 5 January 2018 seeking the issue of a certificate under section 37(2)(e) of the *Auditor-General Act 1997* with respect to specified information in the draft audit report, and also enclosing copies of correspondence from Thales to the Auditor-General dated 30 November 2017, 12 December 2017 and 13 December 2017;
- A draft of the proposed audit report, provided by the Auditor-General, noting that over time three successive drafts were provided, with the first draft being provided to the Attorney-General by the Auditor-General on 8 January 2018;
- A letter from the Auditor-General to the Attorney-General dated 23 February 2018 in response to the Attorney-General's request that the Auditor-General confirm whether there was any additional correspondence between Thales and the ANAO or the Department of Defence and the ANAO that might assist the Attorney-General's consideration of the application by Thales, or whether there was any further material the ANAO considered appropriate that the Attorney-General should consider by way of a specific response to the Thales application. In the course of this letter the Auditor-General



advised that there was no additional relevant correspondence between Thales and the ANAO, referred to representations made to him by the Department of Defence during the audit, and expressed views about the audit and about the public interest in the full publication of the audit report;

- A letter from the then Minister for Defence and the then Minister for Defence Industry to the Attorney-General received on 17 April 2018, with an attached table listing specific information in the draft report which in the view of the Ministers and of the Department of Defence should not be published with regard to sections 37(2)(e) and section 37(2)(a) of the *Auditor-General Act 1997*. This information extended beyond that covered by the Thales application;
- Letters from the Auditor-General to the Speaker of the House of Representatives and to the President of the Senate dated 20 April 2018 with respect to litigation by Thales against the Auditor-General;
- A letter from the Auditor-General to the Attorney-General dated 9 May 2018;
- The legal advice from the Department referred to above; and
- Covering submissions from the Department.

The Department is consulting with the originators of the correspondence to ascertain whether they have any objection to it being provided to the inquiry, albeit with redactions to ensure that disclosing the content of the correspondence does not in so doing directly or indirectly disclose content which the Attorney-General has determined should not be published. However, the Attorney-General's correspondence is enclosed (with the necessary redactions).

Copies of the legal advice and submissions from the Department are not provided, given that they would directly or indirectly disclose content which the Attorney-General has determined would be contrary to the public interest to publish. In addition, it would not be appropriate for an official to disclose legal advice that has been provided to a Minister (as stated in paragraph 4.8.1 of the *Government Guidelines for Official Witnesses Before Parliamentary Committees and Related Matters*) and over which it is highly likely the Attorney would claim privilege.

The Auditor-General has commented in his submission to the inquiry on the time taken for the application by Thales to be considered.

The Attorney-General advised the Auditor-General in his letter dated 26 January 2018 that "my decision will be made without unreasonable delay...this is the first instance where an Attorney-General has been required to consider the question of whether to issue a certificate under subsection 37(1)(b) of the Act. In these circumstances, and given the nature of Thales' request, I will be following a deliberative process that will take the required amount of time for me to reach a considered decision on this matter."

In his letter to the Auditor-General dated 7 May 2018, the Attorney-General noted that "...while this process may not have allowed for your previously proposed tabling deadlines to be met, subject to my determination of the application, it will allow you to meet your statutory obligation to report as soon as practicable to Parliament."

When the Auditor-General first provided a draft of the audit report to the Attorney-General it was provided directly to the Attorney-General. Due to the secrecy provisions in the *Auditor-General's Act 1997*, the draft was not able to be provided to the Department (in order that advice could be provided to the Attorney-General) until it had been clarified that the Auditor-General consented to the Department receiving the draft. It might be that the Auditor-General could make clear his consent to this occurring when first providing a draft report to the Attorney-General, should this occur in future.

Similarly, although the Attorney-General wrote to the then Minister for Defence and the then Minister for Defence Industry by letter dated 19 February 2018 seeking any comments they wished to provide about the application by Thales, the Ministers were not able to consider the draft report until the Department of Defence received a copy of it from the Auditor-General by letter dated 6 March 2018, together with the Auditor-General's consent for it to be provided to the Ministers.

At various points legal advice was sought and provided to the Attorney-General, which also required time.

In terms of the broader implications for future decisions, I note that this is the first occasion on which there has been an application under section 37(1)(b) since the Auditor-General's Act was enacted in 1997, as far as the Department is aware, and that the precursor provision under the *Audit Act 1901* was only invoked on one occasion, as far as we are aware. Parliament has provided that there should be such a power, in case there should ever be a need to invoke it. It is not necessarily clear that there are any broader implications arising from such a provision being invoked once in over twenty years.

It may be that there will be future occasions on which an application is made to the Attorney-General seeking the issue of a certificate under section 37(1)(b). If that occurs, it will be a matter for the Attorney-General at that time to consider the request, as an independent decision-maker and having regard to the issues arising in that particular situation.

The Auditor-General has suggested in his submission to this inquiry that, based upon this single exercise of the power, several amendments could be made to the regime established by section 37(1)(b). The *Auditor-General Act 1997* is administered by the Prime Minister, not by the Attorney-General. If the JCPAA is minded to recommend any amendments, it will be a matter for the Government to consider those recommendations.

Yours sincerely

Iain Anderson  
17 October 2018



**ANAO AUDIT 'ARMY'S PROTECTED MOBILITY VEHICLE – LIGHT' – CORRESPONDENCE**

| <b>Date</b>      | <b>Item</b>   | <b>Further detail (if needed)</b>                                     | <b>Attachment</b>   |
|------------------|---|---|---------------------|
| 12 January 2018  | Letter from Attorney-General to Auditor-General advising a reasonable amount of time is required to consider the application under s 37(1)(b)                       | Correspondence of 8 January 2018 sent direct to AGO – not held by AGD | <b>Attachment A</b> |
| 12 January 2018  | Letter from Attorney-General to Thales Australia confirming receipt of application for certificate  |   | <b>Attachment B</b> |
| 26 January 2018  | Letter from Attorney-General to Auditor-General advising no specified timeframe for decision-making   |   | <b>Attachment C</b> |
| 15 February 2018 | Letter from Attorney-General to Auditor-General seeking further information to assist in making a decision  | Without attachments as Thales correspondence.                         | <b>Attachment D</b> |
| 19 February 2018 | Letter from Attorney-General to Minister for Defence and Minister for Defence Industry requesting information they believed relevant to the decision-making process |   | <b>Attachment E</b> |
| 7 May 2018       | Letter from Attorney-General to Auditor-General requesting that an interim redacted report not be tabled  |   | <b>Attachment F</b> |
| 28 June 2018     | Letter from Attorney-General to Auditor-General advising of decision to issue a certificate   |   | <b>Attachment G</b> |
| 28 June 2018     | Letter from Attorney-General to Defence Ministers advising of decision to issue a certificate   |   | <b>Attachment H</b> |
| 2 July 2018      | Letter from Attorney-General's Department to Thales advising of decision to issue a certificate   |   | <b>Attachment I</b> |
| 31 August 2018   | Letter from Attorney-General to Auditor-General acknowledging letter of 23 August 2018  |   | <b>Attachment J</b> |
| 31 August 2018   | Letter from Attorney-General to Thales asking it to confirm its application for a second certificate would be withdrawn   | Copy of letter provided to the Minister for Defence                   | <b>Attachment K</b> |



COPY

emailed to ANAO 12/01

**The Hon Christian Porter MP**  
Attorney-General

MC

MS18-000081

12 JAN 2018

Mr Grant Hehir  
Auditor-General for Australia  
Australian National Audit Office  
19 National Circuit  
BARTON ACT 2600

Dear Mr Hehir

Thank you for your email of 8 January 2018 regarding the Australian National Audit Office's (ANAO) proposed final performance audit report titled *Army's Protected Mobility Vehicle – Light*.

As you are aware, on 5 January 2018, Thales Australia Limited (Thales) made an application to me to consider issuing a certificate under subsection 37(1)(b) of the *Auditor-General Act 1997* (the Act).

I note that you had intended to have the ANAO report tabled in Parliament in the week commencing 15 January 2018 however, due to Thales' application, you now intend to defer tabling of the report until the week commencing 5 February 2018.

I am informed that this is the first instance where an Attorney-General has been required to consider the question of whether to issue a certificate under subsection 37(1)(b) of the Act. In these circumstances, and given the nature of Thales' request, I require a reasonable amount of time to give this matter proper consideration to inform my decision such that it may not allow for your proposed tabling timelines to be met (subject to my determination of Thales' application).

I will inform the ANAO of my decision in due course.

Yours sincerely

**The Hon Christian Porter MP**  
Attorney-General





**The Hon Christian Porter MP**  
Attorney-General

**COPY**

emailed to THALES 12/01

MC

MS18-000081

**12 JAN 2018**

Mr Chris Jenkins  
Chief Executive Officer  
Thales Australia & New Zealand  
PO Box 7510  
SILVERWATER NSW 2128

By email:

Dear Mr Jenkins

Thank you for your letter to me dated 5 January 2018, requesting the issuing of a certificate by me under section 37(1)(b) of the *Auditor-General Act 1997* (Cth) in relation to the Australian National Audit Office's proposed final performance audit report titled *Army's Protected Mobility Vehicle – Light*.

As you will appreciate, I require a reasonable amount of time to give this matter proper consideration to inform my decision on Thales Australia Limited's application and will write to you in due course with my decision.

The contact officer in my Department on this matter is  
(02) 6141      or

who can be contacted on

Yours sincerely

**The Hon Christian Porter MP**  
Attorney-General

**PROTECTED**

**Sensitive: Legal**



**The Hon Christian Porter MP**  
Attorney-General

MC18-000765

26 JAN 2018

Mr Grant Hehir  
Auditor-General for Australia  
Australian National Audit Office  
19 National Circuit  
BARTON ACT 2600

Dear Mr Hehir

Thank you for your letter of 18 January 2018 in relation to Thales Australia Limited's application for me to consider issuing a certificate under subsection 37(1)(b) of the *Auditor-General Act 1997* (the Act). In your letter, you seek my advice on what I consider to be a reasonable time for addressing the application.

I understand your obligations under subsection 17(4) of the Act to table a report as soon as practicable after completing it (noting that the ANAO has prepared the report over what it considered to be a sufficient period of time).

As you would be aware, there is no specified timeframe for the making of a decision by me under subsection 37(1)(b) of the Act. Nevertheless, my decision will be made without unreasonable delay, as referenced in subsection 7 of the *Administrative Decisions (Judicial Review) Act 1977* dealing with circumstances where there is no statutorily prescribed period of time in which to make a decision on a matter. I again note that this is the first instance where an Attorney-General has been required to consider the question of whether to issue a certificate under subsection 37(1)(b) of the Act. In these circumstances, and given the nature of Thales' request, I will be following a deliberative process that will take the required amount of time for me to reach a considered decision on this matter. Therefore, this process may not allow for your proposed tabling timelines to be met, however (subject to my determination of the application) it will allow you to meet your statutory obligation to report as soon as practicable to Parliament.

**PROTECTED**

**Sensitive: Legal**



I will inform you of my decision in due course.

Yours sincerely

**The Hon Christian Porter MP**  
Attorney-General

**PROTECTED**  
**Sensitive: Legal**



**The Hon Christian Porter MP**  
Attorney-General

MC18-000765

15 FEB 2018


Mr Grant Hehir  
Auditor-General for Australia  
Australian National Audit Office  
19 National Circuit  
BARTON ACT 2600

Dear ~~Mr Hehir~~ 

I refer to our recent correspondence regarding Thales Australia Limited's (Thales) application to consider issuing a certificate under subsection 37(1)(b) of the *Auditor-General Act 1997* (the Act).

For completeness, I enclose a copy of the letter to me from Thales dated 5 January 2018, which letter attached three letters from Thales to the ANAO dated 30 November, 12 December and 13 December 2017 that comprises Thales' application pursuant to subsection 37(1)(b) of the Act (Thales Application).

By email dated 8 January 2018, you provided me with a copy of your proposed final performance audit report on the *Australian Army's Protected Mobility Vehicle – Light acquisition* (Report).

In your email, you note that in the course of the ANAO's audit, Thales and the Department of Defence both made representations to you to not include in the Report 

As a result, and having regard to my obligations in considering this matter, I would be grateful if you could confirm as soon as practicable whether:

1. There is any additional correspondence between Thales and the ANAO and/or the Department of Defence and the ANAO that was produced during the course of the audit that may assist in my consideration of the Thales Application.

In this regard, I note that Appendix 1 of the Report titled "Department of Defence response" extracts (at page 74 of the Report) the final page only of what appears to be a joint letter dated 12 December 2017 from the Acting Secretary of the Department of Defence, Rebecca Skinner and the Chief of the Defence Force, Air Chief Marshal, Mark Binskin AC.

2. There is any further material that the ANAO considers appropriate that I should consider by way of a specific ANAO response to the Thales Application.



**PROTECTED**  
Sensitive: Legal

I look forward to your response.

Yours sincerely

**The Hon Christian Porter MP**  
Attorney-General

**PROTECTED**  
**Sensitive: Legal**



**The Hon Christian Porter MP**  
Attorney-General

19 FEB 2018

Senator the Hon Marise Payne  
Minister for Defence  
Parliament House  
CANBERRA ACT 2600

The Hon Christopher Pyne MP  
Minister for Defence Industry  
Parliament House  
CANBERRA ACT 2600

Dear Ministers *Marise & Christopher*

I am writing to you in the context of a recent performance audit report by the Australian National Audit Office (ANAO) of the acquisition by the Commonwealth of the Hawkei light protected mobility vehicle, manufactured by Thales Australia Limited (Thales).

As the Department of Defence may have advised you, the ANAO has completed its proposed performance audit report, titled *Australian Army's Protected Mobility Vehicle – Light acquisition* (the Report).

Under section 37(1)(b) of the *Auditor-General Act 1997* (the Act), I have power to issue a certificate to the Auditor-General in circumstances where I am of the opinion that the disclosure of particular information in a public audit report would be contrary to the public interest on any of the grounds specified in section 37(2) of the Act. Those grounds include:

- prejudice to the security, defence or international relations of the Commonwealth (section 37(2)(a));
- disclosure of deliberations of decisions of the Cabinet or of the Committee of the Cabinet (section 37(2)(b)); and
- unfair prejudice to the commercial interests of any body or person (section 37(2)(e)).

If I issue a certificate under section 37(1)(b) of the Act, section 37(1) then operates to require the Auditor-General to exclude the identified information from the relevant report.

On 5 January 2018, Thales wrote to me requesting that I issue a certificate under s 37(1)(b) of the Act thereby requiring the Auditor-General to remove certain information from the Report (Thales Application). [REDACTED]

As a result of the Thales Application, the Report is yet to be tabled by the ANAO.



On 8 January 2018, the Auditor-General, Mr Grant Hehir, provided me with a copy of the Report by email.

[REDACTED]

I have since written to Mr Hehir requesting he confirm whether there is any additional correspondence between Thales and the ANAO and/or the Department of Defence and the ANAO that was produced during the course of the audit that may assist my considerations in this matter.

[REDACTED]

Therefore, I would be grateful if you could provide to me within three weeks of the date of this letter any information from the Department of Defence regarding the ANAO audit that may be relevant to my decision-making process in this matter.

I look forward to your response.

Yours sincerely

**The Hon Christian Porter MP**  
Attorney-General

**PROTECTED**  
**Sensitive: Legal**



**The Hon Christian Porter MP**  
Attorney-General

MC18-000765

Mr Grant Hehir  
Auditor-General for Australia  
Australian National Audit Office  
19 National Circuit  
BARTON ACT 2600

07 MAY 2018

By email:

Dear ~~Auditor-General~~ 

Thank you for your letter dated 2 May 2018 regarding your presently planned tabling in Parliament of what you describe in your letter as an “interim redacted audit report” for the ANAO’s performance audit of *Army’s Protected Mobility Vehicle-Light* (Report).

### **Chronology**

The recent procedural history of this matter can be summarised as follows:

- On 5 January 2018, I received a letter from Thales Australia Limited (Thales) seeking the issuing of a certificate by me preventing the inclusion in the Report of what Thales says amounts to material that “*would unfairly prejudice the commercial interests of any body or person*” pursuant to section 37(2)(e) under the *Auditor-General Act 1997* (the Act).
- On 8 January 2018, I received an email from you noting the application made by Thales regarding the Report and your proposed tabling timeline.
- On 12 January 2018, I wrote separately to both you and Thales noting receipt of the Thales application and the fact that “*I require a reasonable amount of time to give this matter proper consideration to inform my decision*”.
- On 18 January 2018, you wrote to me acknowledging that I would need “*a reasonable amount of time*” to consider the Thales application, while also noting your reporting obligations to Parliament. In your letter, you requested advice on what I considered to be “*a reasonable time for addressing the application*”. I note that you did not in this letter raise the prospect of the tabling of any “interim redacted report” or any view that my consideration of the matter currently before me was separate and distinct from your ability to table any revised form of the Report ahead of the conclusion of my decision-making process.
- On 26 January 2018, I responded to your letter dated 18 January 2018, and noted that “*there is no specified timeframe for the making of a decision by me under subsection 37(1)(b) of the Act. Nevertheless, my decision will be made without unreasonable*”

*delay, as referenced in subsection 7 of the Administrative Decisions (Judicial Review) Act 1977 dealing with circumstances where there is no statutorily prescribed period of time in which to make a decision on a matter". Additionally, my letter further stated that "this is the first instance where an Attorney-General has been required to consider the question of whether to issue a certificate under subsection 37(1)(b) of the Act. In these circumstances, and given the nature of Thales' request, I will be following a deliberative process that will take the required amount of time for me to reach a considered decision on this matter".*

- On 15 February 2018, I wrote to you, having regard to my obligations in considering this matter, requesting confirmation of any additional correspondence produced during the course of the ANAO audit that may assist in my consideration of the Thales application and any further material that the ANAO considered germane to my consideration by way of a specific response to the application.
- On 19 February 2018, I wrote to the Minister for Defence, Senator the Hon Marise Payne and the Minister for Defence Industry, the Hon Christopher Pyne, noting my ability to seek information from them for the purpose of considering whether to issue any certificate pursuant to the Act, either for the reason advanced by Thales in its application or for any other reason under section 37(2) of the Act. As a result, I requested "*any information from the Department of Defence regarding the ANAO audit that may be relevant to my decision-making process in this matter*".
- On 23 February 2018, you responded to my letter dated 15 February 2018 providing additional information to assist in my deliberation of the Thales application. I note that in your letter you acknowledged receipt of my letter dated 26 January 2018 informing you that my "*decision will be made without unreasonable delay*". In this regard, you appeared to have accepted in this and earlier correspondence that any tabling of the Report was subject to my decision on this matter and you did not raise the prospect in this letter of tabling an "interim redacted report" before the conclusion of my decision-making process before receipt of your recent letter dated 2 May 2018.
- On 17 April 2018, I received a letter from the Ministers for Defence and Defence Industry providing information to assist in my deliberation on this matter.
- On 20 April 2018, my Office requested a submission from my Department with all of the relevant material to allow me to make a decision on this matter. I am awaiting receipt of this submission which I expect to receive by the end of next week (e.g. 11 May 2018).
- On 2 May 2018, I received your letter providing me with notice of your intention to table an "interim redacted report" ahead of the conclusion of my decision-making process in this matter.

### **Obligations under the Act**

As advised in my letter to you dated 26 January 2018, I understand your obligation under subsection 17(4) of the Act to table a report to the Parliament as soon as practicable after completing it.

However, in that letter I also advised you that I would be following a deliberative process that would take the required amount of time for me to reach a considered decision on the matter.



Therefore, while this process may not have allowed for your previously proposed tabling timelines to be met, subject to my determination of the application, it will allow you to meet your statutory obligation to report as soon as practicable to Parliament.

As set out in the above Chronology, the process I have undertaken to be in a position to fully consider this matter has involved me requesting any relevant further information from you and the Ministers for Defence and Defence Industry. I am currently considering all of the information provided to me by the interested parties in this matter in order to make a decision in the near future.

In this respect an assumption that appears to have been made by your office is that the particular information that is subject to my consideration under section 37 of the Act is confined to the particular information that is subject of the Federal Court action brought by Thales. Your proposed course, as set out in your letter appears to reveal a consideration by you that by redacting paragraphs [REDACTED] appearing in the audit conclusions and supporting findings, my statutory discretion in determining whether particular information should not be disclosed will be preserved. This is not correct.

In this regard, your tabling obligation under the Act is clearly as a matter of plain statutory interpretation subject to the overriding process set out in subsection 37(1) of the of the Act. As you are aware, the terms of subsection 37(1) of the Act are as follows:

*“(1) The Auditor-General must not include particular information in a public report if:*

*(a) the Auditor-General is of the opinion that disclosure of the information would be contrary to the public interest for any of the reasons set out in subsection (2); or*

*(b) the Attorney-General has issued a certificate to the Auditor-General stating that, in the opinion of the Attorney-General, disclosure of the information would be contrary to the public interest for any of the reasons set out in subsection (2)”. [emphasis added]*

Subsection 37(2) of the Act relevantly allows the Attorney-General to consider security, defence or international relations of the Commonwealth; disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet; unfair prejudice to the commercial interests of any body or person; or any other reason that could form the basis for a claim by the Crown in right of the Commonwealth in a judicial proceeding that the information should not be disclosed.

The Act is silent on who can request a certificate referred to in section 37(1)(b) of the Act.

As noted in the above Chronology, my consideration of the issuing of a certificate was made by Thales on 5 January 2018. And this request required me to seek information from the Ministers for Defence and Defence Industry regarding any information the Department of Defence considered relevant to my consideration of the Report.

### **Proposed tabling of “interim redacted audit report” by the ANAO**

The proposed tabling by the ANAO of what is now described as an “interim redacted audit report” would be undertaken despite the ANAO being aware that I am currently considering a request to me by Thales to issue a certificate under subsection 37(1)(b) of the Act.

In summary, the Report is presently subject to my consideration of a request that the Attorney-General exercise a statutory power to issue a certificate requiring certain information potentially be redacted from the Report.

What you presently propose is to table a version of the Report which you would now call an "interim redacted audit report", where the difference between the Report and the "interim redacted audit report" is essentially the absence of material, which in your view might otherwise be required to be redacted by the potential issuing by me of a certificate pursuant to the statutory authority and process set out in section 37(1) of the Act.

In effect, by tabling what you describe as an "interim redacted audit report" you would be seeking to substitute your Office's view of what should be redacted from the Report on the grounds set out in section 37(1) and (2) of the Act over my view on that same issue; after I had been formally requested to make such a determination and before I had been able to finalise that determination.

In my view, for the ANAO to table any form of the Report at this stage would be nothing other than an attempt to circumvent the statutory decision-making process and power now underway and provided for in section 37 of the Act. What you propose to do would pre-empt and attempt to prejudice my decision in this important matter, and amount to an abuse of process that would impact all interested parties, including the standing of the ANAO.

#### **Request not to table**

In the circumstances, and having regard to my ongoing consideration of an application related to my powers under the Act, I request that you do not table the proposed "interim redacted audit report" in any form until I have concluded my present deliberation.

As a result, I look forward to receiving confirmation at your earliest convenience that you will refrain from tabling any report on this matter until I have notified all of the interested parties of my decision.

In circumstances where you have provided a copy of the "interim redacted audit report" to the Department of Defence and an extract of that version of the report to Thales (while noting that you have not provided me with a copy of any such version of the report), I have provided a copy of this letter to the Ministers for Defence and Defence Industry and to Thales for their information about the status of this matter and my request contained herein for you to not table any "interim redacted audit report" ahead of my decision in this matter.

I look forward to your response.

Yours sincerely

**The Hon Christian Porter MP**  
Attorney-General



**PROTECTED**  
**Sensitive: Legal**



**The Hon Christian Porter MP**  
Attorney-General

MS18-000916

Mr Grant Hehir  
Auditor-General for Australia  
Australian National Audit Office  
19 National Circuit  
BARTON ACT 2600

28 JUN 2018

Dear ~~Mr Hehir~~ *GM*

I refer to my earlier correspondence about a request to me for the issuing of a certificate under s 37(1)(b) of the *Auditor-General Act 1997* (the Act) in relation to certain information contained in the ANAO's proposed performance audit report titled *Army's Protected Mobility Vehicle – Light*.

I have considered the matter carefully and have decided that in my opinion disclosure of certain information contained in the audit report, identified in the attached Schedule, would be contrary to the public interest for one or both of the following reasons set out in s 37(2) of the Act:

- it would prejudice the security, defence or international relations of the Commonwealth (s 37(2)(a));
- it would unfairly prejudice the commercial interests of any body or person (s 37(2)(e)).

This letter and the attached Schedule together constitute my certificate for the purposes of s 37(1)(b) of the Act.

All references to the report in the Schedule are to the Draft Final Report dated 8 January 2018. I note that the draft audit report has been updated since that time. For clarity, the Schedule contains cross-references to the relevant paragraphs in the Third Revised Draft Final Report dated 2 May 2018, which you provided to me on 9 May 2018.

Yours sincerely

**The Hon Christian Porter MP**  
Attorney-General



**PROTECTED**

**Sensitive: Legal**

**Schedule – information to be omitted from public report – *Army's Protected Mobility Vehicle – Light***

| <b>Information (Draft Final Report of 8 January 2018)</b>                  | <b>Information in Third Revised Draft Final Report (2 May 2018)</b>                            | <b>Section 37(2) reason</b> |
|--|--|-----------------------------|
| Page 7, paragraph 4, second sentence                                       | Page 6, paragraph 10, second sentence  | s 37(2)(a) and s 37(2)(e)   |
| Page 8, paragraph 7, final sentence  | Page 7, paragraph 13, final sentence (text already redacted)                                   | s 37(2)(a) and s 37(2)(e)   |
| Page 10, paragraph 23, first and second sentences                          | Page 9, paragraph 29, first two sentences (text already redacted)                              | s 37(2)(a) and s 37(2)(e)   |
| Page 12, the two paragraphs of the Defence response                        | Page 10, the second and third paragraphs of the Defence response                               | s 37(2)(a) and s 37(2)(e)   |
| Page 25, footnote 18, second and third sentences                           | Page 24, footnote 19 (the sentences have been removed)   | s 37(2)(a)                  |
| Page 42, first text box, final sentence under heading 'Conclusion'         | Page 41, first text box, final sentence under heading 'Conclusion' (text already redacted)     | s 37(2)(a) and s 37(2)(e)   |
| Page 49, grey text box, paragraph 2, first and second sentences            | Page 48, grey text box, paragraph 2, first and second sentences (text already redacted)        | s 37(2)(a) and s 37(2)(e)   |
| Page 50, paragraph 4.36, second sentence and footnote 51                   | Page 49, paragraph 4.36, third sentence and footnote 51  | s 37(2)(a) and s 37(2)(e)   |
| Paragraphs 4.48 – 4.53, including the heading and the associated footnotes | Paragraphs 4.48 – 4.53, including the heading and associated footnotes (text already redacted) | s 37(2)(a) and s 37(2)(e)   |
| Page 68, footnote 85   | Page 68, footnote 87 (text already redacted)   | s 37(2)(a) and s 37(2)(e)   |



**PROTECTED**  
**Sensitive: Legal**



**The Hon Christian Porter MP**  
Attorney-General

MS18-000916

Senator the Hon Marise Payne  
Minister for Defence  
Parliament House  
CANBERRA ACT 2600

28 JUN 2018

The Hon Christopher Pyne MP  
Minister for Defence Industry  
Parliament House  
CANBERRA ACT 2600

Dear ~~Ministers~~

A handwritten signature in blue ink, appearing to read 'Marise &amp; Chris', written over the word 'Ministers'.

I refer to your request about issuing a certificate under s 37(1)(b) of the *Auditor-General Act 1997* (the Act) with respect to information contained in the ANAO's proposed final performance audit report titled *Army's Protected Mobility Vehicle – Light*.

I have considered the matter carefully and have decided that in my opinion disclosure of certain information contained in the audit report, identified in the attached Schedule, would be contrary to the public interest for one or both of the following reasons set out in s 37(2) of the Act:

- it would prejudice the security, defence or international relations of the Commonwealth (s 37(2)(a));
- it would unfairly prejudice the commercial interests of any body or person (s 37(2)(e)).

I attach for your information, a Schedule which contains the text subject to the certificate of non-disclosure.

All references to the report in the Schedule are to the Draft Final Report dated 8 January 2018. I note that since the date of this report, I received a Third Revised Draft Final Report dated 2 May 2018, from the Auditor-General on 9 May 2018. For clarity, the Schedule also contains cross-references to the relevant paragraphs in the Third Revised Draft Final Report.

Yours sincerely

**The Hon Christian Porter MP**  
Attorney-General

**Sensitive: Legal**  
**PROTECTED**



**PROTECTED**  
**Sensitive: Legal**

**Schedule – information to be omitted from public report – *Army's Protected Mobility Vehicle – Light***

| <b>Information (Draft Final Report of 8 January 2018)</b>                  | <b>Information in Third Revised Draft Final Report (2 May 2018)</b>                            | <b>Section 37(2) reason</b> |
|--|--|-----------------------------|
| Page 7, paragraph 4, second sentence                                       | Page 6, paragraph 10, second sentence  | s 37(2)(a) and s 37(2)(e)   |
| Page 8, paragraph 7, final sentence  | Page 7, paragraph 13, final sentence (text already redacted)                                   | s 37(2)(a) and s 37(2)(e)   |
| Page 10, paragraph 23, first and second sentences                          | Page 9, paragraph 29, first two sentences (text already redacted)                              | s 37(2)(a) and s 37(2)(e)   |
| Page 12, the two paragraphs of the Defence response                        | Page 10, the second and third paragraphs of the Defence response                               | s 37(2)(a) and s 37(2)(e)   |
| Page 25, footnote 18, second and third sentences                           | Page 24, footnote 19 (the sentences have been removed)   | s 37(2)(a)                  |
| Page 42, first text box, final sentence under heading 'Conclusion'         | Page 41, first text box, final sentence under heading 'Conclusion' (text already redacted)     | s 37(2)(a) and s 37(2)(e)   |
| Page 49, grey text box, paragraph 2, first and second sentences            | Page 48, grey text box, paragraph 2, first and second sentences (text already redacted)        | s 37(2)(a) and s 37(2)(e)   |
| Page 50, paragraph 4.36, second sentence and footnote 51                   | Page 49, paragraph 4.36, third sentence and footnote 51  | s 37(2)(a) and s 37(2)(e)   |
| Paragraphs 4.48 – 4.53, including the heading and the associated footnotes | Paragraphs 4.48 – 4.53, including the heading and associated footnotes (text already redacted) | s 37(2)(a) and s 37(2)(e)   |
| Page 68, footnote 85   | Page 68, footnote 87 (text already redacted)   | s 37(2)(a) and s 37(2)(e)   |

**Sensitive: Legal**  
**PROTECTED**



UNCLASSIFIED



**Australian Government**  
**Attorney-General's Department**

18/3130

2 July 2018

Mr Chris Jenkins  
Chief Executive Officer  
Thales Australia & New Zealand  
PO Box 7510  
SILVERWATER NSW 2128

Dear Mr Jenkins

I refer to your request to the Attorney-General to issue a certificate under s 37(1)(b) of the *Auditor-General Act 1997* (the Act) with respect to information contained in the ANAO's proposed final performance audit report titled *Army's Protected Mobility Vehicle – Light*.

The Attorney-General has considered the matter carefully and has decided that in his opinion disclosure of certain information as outlined in your letter dated 5 January 2018, contained in the audit report would be contrary to the public interest for both of the following reasons set out in section 37(2) of the Act:

- it would prejudice the security, defence or international relations of the Commonwealth (s 37(2)(a));
- it would unfairly prejudice the commercial interests of any body or person (s 37(2)(e)).

The Attorney-General advised of the Auditor-General of his decision on 29 June 2018.

Yours sincerely

Alex Mathews  
Assistant Secretary  
Strategy and Governance

Telephone:  
E-mail:

UNCLASSIFIED



**The Hon Christian Porter MP**  
Attorney-General

MS18-001339

31 AUG 2018

Mr Grant Hehir  
Auditor-General for Australia  
Australian National Audit Office  
19 National Circuit  
BARTON ACT 2600

Dear Mr Hehir

Thank you for your letter of 23 August 2018 regarding the Performance audit report of Army's Protected Mobility Vehicle – Light (Hawkei) written in response to a letter received from Thales Australia Limited (Thales) on 20 August 2018.

I confirm that I received a second application from Thales to issue another certificate under s.37(1)(b) of the *Auditor-General Act* (Cth) (the Act) in relation to certain information contained in the Fourth Revised Draft Final Report of the audit, that was not included in earlier drafts of the report. I acknowledge that you will make the amendments to the final report and advise Thales of your decision to do so. I appreciate your early consideration of the matter.

I will be writing to Thales today asking it to confirm that the application to issue a certificate is being withdrawn.

Yours sincerely

**The Hon Christian Porter MP**  
Attorney-General



**The Hon Christian Porter MP**  
Attorney-General

MS18-001339

31 AUG 2018

Mr James Couche  
General Counsel  
Thales Australia  
PO Box 7510  
SILVERWATER NSW 2128

Dear ~~Mr Couche~~ *James*

Thank you for your letter of 20 August 2018 regarding the Auditor-General's Fourth Revised Draft Final Report - Army's Protected Mobility Vehicle – Light (Hawkei) requesting the issuing of a certificate by me under section 37(1)(b) of the *Auditor-General Act 1997* (Cth).

I can confirm that the Auditor-General, Mr Grant Hehir, has written to me confirming that he will make the amendments you requested to the final report without the need for me to consider whether to issue a certificate.

I would appreciate your confirmation to me in writing that your application to issue a certificate is being withdrawn.

Yours sincerely

**The Hon Christian Porter MP**  
Attorney-General