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COMMERCIAL-IN-CONFIDENCE

5 January 2018

The Hon. Christian Porter MP
Attorney-General
Robert Garran Offices
3-5 National Circuit
BARTON ACT 2600

Email: [REDACTED]
[REDACTED]

Dear Attorney-General

Application pursuant to section 37(1)(b) of the *Auditor-General Act 1997* (Cth)

Pursuant to section 37(1)(b) of the *Auditor-General 1997* (Cth) (**Act**) Thales Australia Limited (**Thales Australia**) is seeking the issue of a certificate to the Auditor-General preventing the inclusion of sensitive information (as identified below) in an Australian National Audit Office Report on Army's Protected Mobility Vehicle-Light dated 19 December 2017 (**ANAO Report**).

Thales Australia received only highly redacted extracts of the ANAO Report. The Auditor-General has not granted his consent for Thales Australia to provide you with a copy of the ANAO Report but has consented to Thales Australia referring as necessary to relevant parts of the ANAO Report for the purpose of framing this application. In addition, the Auditor-General requires me to remind you of the obligation under the Act to maintain the confidentiality of information from an audit report or extract. Please note that the Auditor-General has consented to you distributing this application to relevant officers of your Office or Department, to assist in your deliberations.

I understand from the Auditor-General's office that you will be provided with a copy of the ANAO Report as well as a copy of the proposed final audit report (without redaction) directly by the Auditor-General. The point of contact in the Auditor-General's office is:

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

[REDACTED]

Thales Australia received previous iterations of the ANAO Report on 8 November 2017, 8 December 2017 and finally on 19 December 2017.

In response to each extract, Thales Australia wrote to the Auditor-General, first on 30 November 2017 and then on 12 December 2017 and 13 December 2017 (copies of those letters are annexed to this letter). In these letters, we expressed our concerns that, and the reasons for our concerns, release of the report, initially in its original form but also in its revised forms, will unfairly prejudice the commercial interests not only of Thales Australia (and its contractors and suppliers), but also the commercial interests of the Commonwealth of Australia. [REDACTED]

To date, we have received the following response from the Auditor-General: "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. [REDACTED]

We remain firmly of the view that the report is unfairly prejudicial to the commercial interests of Thales Australia (and its contractors and suppliers) and the Commonwealth of Australia.

We therefore formally request that, under subsection 37(1)(b) of the Act, the Attorney-General issue a certificate to the Auditor-General preventing the public disclose of [REDACTED]

[REDACTED] We make that request as the information¹ is sensitive information that, if published in a public report, would prejudice the commercial interests of Thales Australia, its contractors and suppliers and the Commonwealth for reasons set out in subsection 37(2)(e) of the Act.

Subsection 37(2)(e) of the Act states the Attorney-General may form the opinion that a report, or part thereof, is contrary to the public interest if its publication will unfairly prejudice the commercial interests of any body or person. If the Attorney-General forms that opinion, the Auditor-General *must not* include the information in a public report.

We consider that the information contained in [REDACTED] of the ANAO Report is of a such a character that the Attorney-General, properly considering the matter, can only form the opinion that the information, if published in a public report, would prejudice the commercial interests of Thales Australia, its contractors and suppliers and the Commonwealth for reasons set out in subsection 37(2)(e). Any other conclusion would amount to reviewable error.

The key reasons that these sections of the Report will unfairly prejudice the commercial interests, not only of Thales Australia and its contractors and suppliers on the Hawkei Program, but also the Commonwealth of Australia's own commercial interests are stated below. They are also expressed in further detail in our letters on 30 November 2017 and 12 December 2017:

¹ As set out in our previous letters, our fundamental complaint is that [REDACTED] Although in a different context, "information" which is wrong is nonetheless "information": *Mansfield v R* [2012] HCA 49 (2012) 247 CLR 86



The Auditor-General has advised Thales Australia of its intention to publish the final version of the ANAO Report, inclusive of the sensitive information referred to above, in the week commencing 15 January 2018. Thales Australia is concerned to protect its interests.

If you require further information please contact me or alternatively James Couche (Thales Australia General Counsel) on _____ or _____

Yours faithfully

CHRIS JENKINS
Chief Executive Officer
Thales Australia & NZ

Annexure 1



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30 November 2017

COMMERCIAL-IN-CONFIDENCE

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

Email:

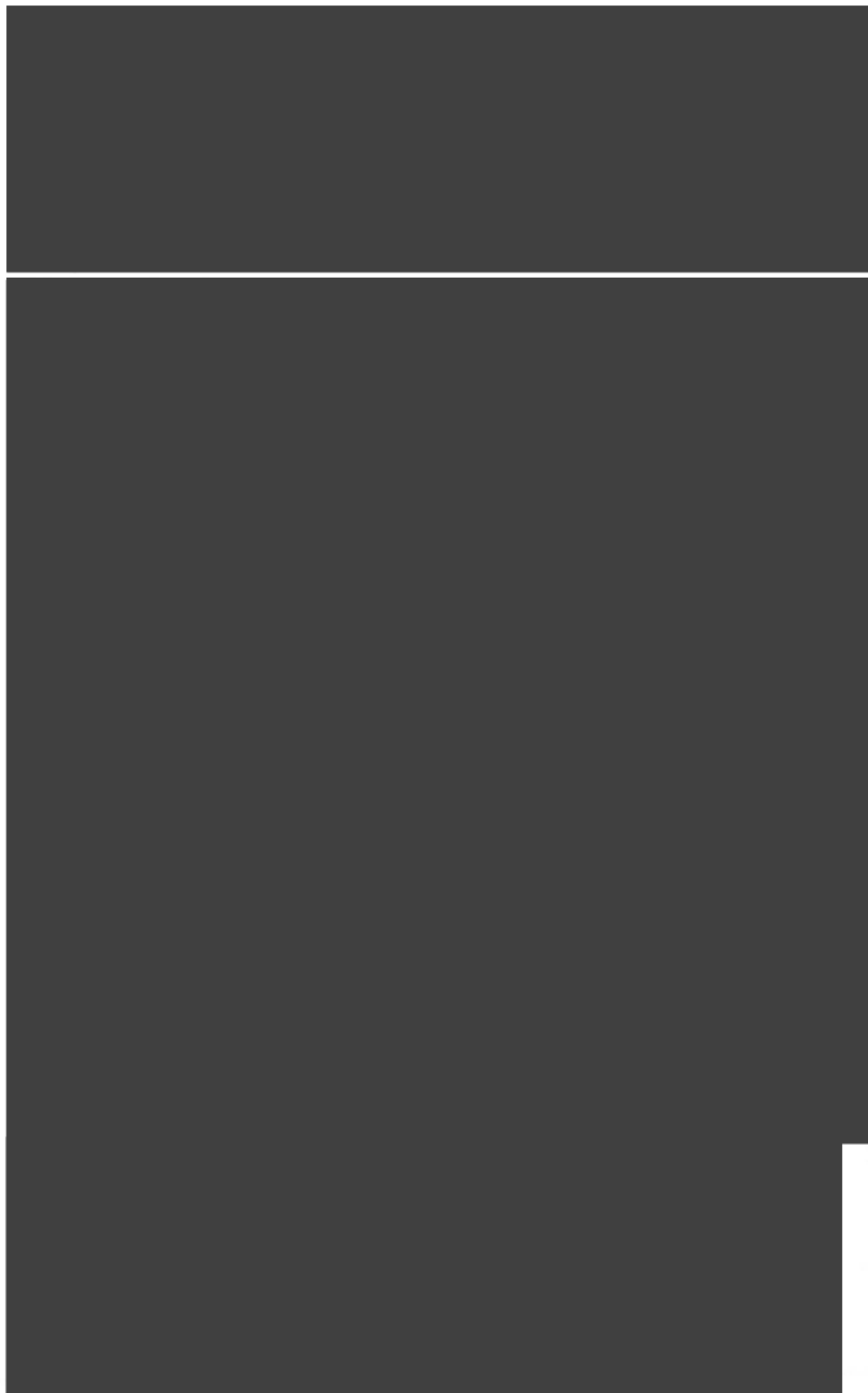
Dear Mr Hehir

I am writing in relation to the draft ANAO report on the Land 121-4 Hawkei acquisition to express Thales Australia's concern that release of the report in its current form will cause significant and unjustifiable commercial damage. It will unfairly prejudice the commercial interests not only of Thales Australia but also the many supporting partners, suppliers and contractors on the Hawkei program, many of which are Australian SMEs.

Thales Australia is currently in the process of preparing detailed comments on the highly redacted sections of the draft report that have been made available to us. We appreciate the access to your audit team, David Brunoro, Patrick O'Neill and Sophie Gan, and their willingness to engage on our response. However the potential impact of this report, [REDACTED] is so significant I feel that it must be raised directly with you.

Thales Australia Limited
ABN 66 008 642 751

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Detailed comments and suggested changes on these and a range of other matters canvassed in the report are being provided to the audit team. I have not attempted to cover all of them here. I would however be keen to meet with you or arrange a phone call to discuss these issues.

Yours sincerely

~~CHRIS JENKINS~~
Chief Executive Officer
Thales Australia & NZ

Annexure 2



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12 December 2017

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

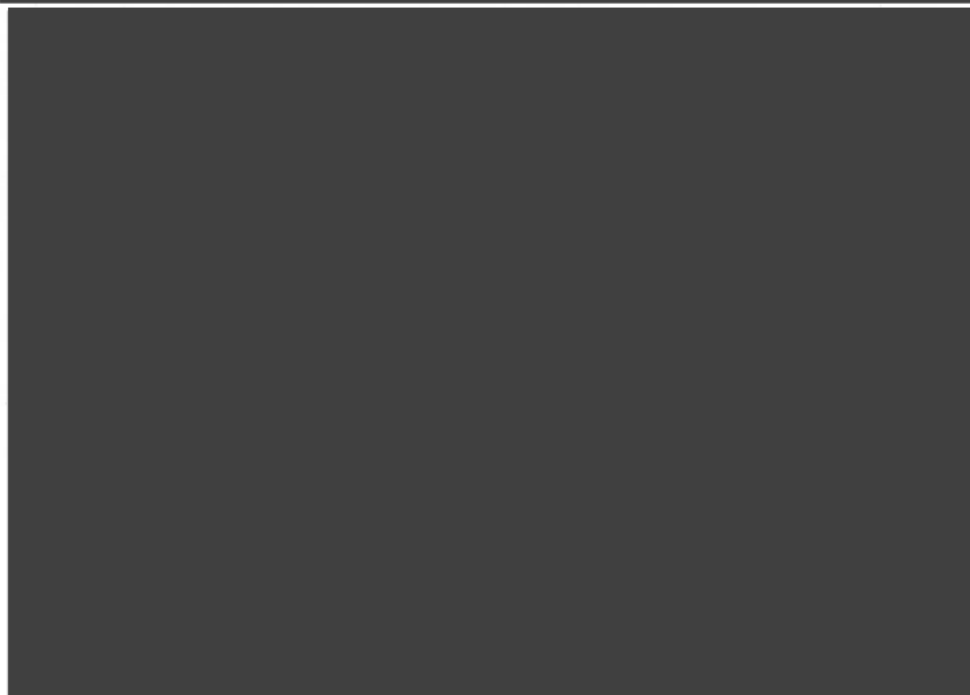
Email:

Dear Mr Hehir

Thales Australia response to ANAO Report on Army's PMV-L Acquisition

Thales Australia received only highly redacted extracts from the ANAO Report on Army's PMV-L acquisition, limiting our ability to comment to the following.







The Land 121-Phase 4 acquisition of Hawkei as the Army's Protected Mobility Vehicle – Light is entirely consistent with these policy positions, and is delivering world-leading capability that has been designed, developed and manufactured in Australia, maintaining a life-saving industrial capability in this country.

Yours sincerely

CHRIS JENKINS
Chief Executive Officer
Thales Australia & NZ

Annexure 3

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COMMERCIAL-IN-CONFIDENCE

13 December 2017

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

Email: _____


Dear Mr Hehir,

Thales Australia Limited (**Thales Australia**) received an extract of the ANAO Proposed Report into the 'Army's Protected Mobility Vehicle – Light', otherwise known as the 'Hawkei Program or Land 121 Phase 4 Program' on Friday, 8 November 2017. It received a further extract of the Draft Final ANAO Report into 'Army's Protected Mobility Vehicle – Light' on Friday, 8 December 2017.


In response to each extract, Thales Australia wrote to you, first on 30 November 2017 and then on 12 December 2017 (copies of those letters are annexed to this letter). In these letters, we expressed our concerns that, and the reasons for our concerns, release of the report, initially in its original form but also in its revised form, will unfairly prejudice the commercial interests not only of Thales Australia (and its contractors and suppliers), but also the commercial interests of the Commonwealth of Australia. [REDACTED]

To date, we have not received any formal response from you regarding these letters specifically responding to our position that the report is unfairly prejudicial to the commercial interests of Thales Australia (and its contractors and suppliers) and the Commonwealth of Australia. [REDACTED]

¹ As set out in our previous letters, our fundamental complaint is that the "information" [REDACTED] [REDACTED] Although in a different context, "information" which is wrong is nonetheless "information": *Marsfield v R* (2012) HCA 49 (2012) 247 CLR 60



Subsection 37(2)(e) of the Act states the Auditor-General may form the opinion that a report, or part thereof, is contrary to the public interest if its publication will unfairly prejudice the commercial interests of any body or person. If the Auditor-General forms that opinion, the Auditor-General *must not* include the information in a public report.





Thales Australia is concerned to protect its interests. We request that you inform us by 5pm Friday 15 December 2017 whether you will omit [REDACTED] of the Draft Final Report [REDACTED] from any public report. We have identified that deadline in light of the unfortunate terms of Dr Ioannou's email to us, sent at 7.48pm on 12 December 2017. If you require further information (this letter is sent in the context of the unreasonable deadline imposed by Dr Ioannou) please contact me.

Otherwise, we request your undertaking to give Thales Australia three business days' notice of any proposed publication of a public report, containing in [REDACTED] of the Draft Final Report [REDACTED] or any variant of those paragraphs, to allow us sufficient time to apply to restrain that publication.

Yours sincerely


CHRIS JENKINS
Chief Executive Officer
Thales Australia & NZ



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10 May 2018

Attention: Grant Hehir

Australian National Audit Office
16 National Circuit
BARTON ACT 2600

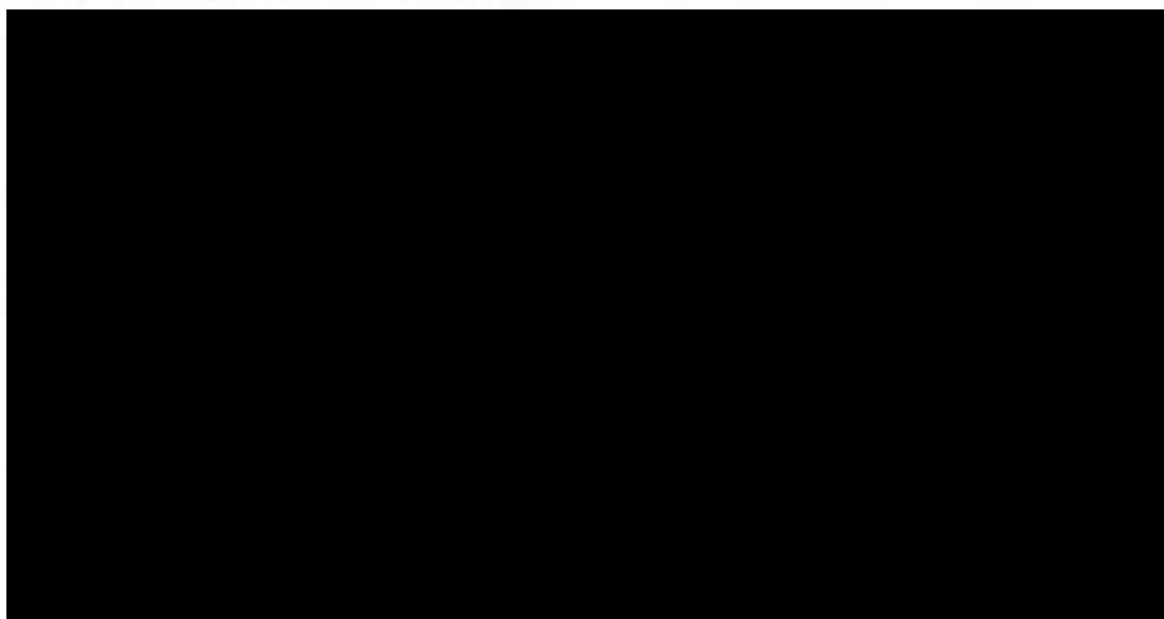
Dear Mr Hehir

**Third Revised Draft Final Report
Thales Australia Limited v Auditor-General for the Commonwealth
Federal Court of Australia proceeding NSD 77 of 2018 (Proceeding)**

We refer to the emails from Dr Tom Ioannou of 2 May 2018 attaching the Third Revised Draft Final Report and of yesterday.

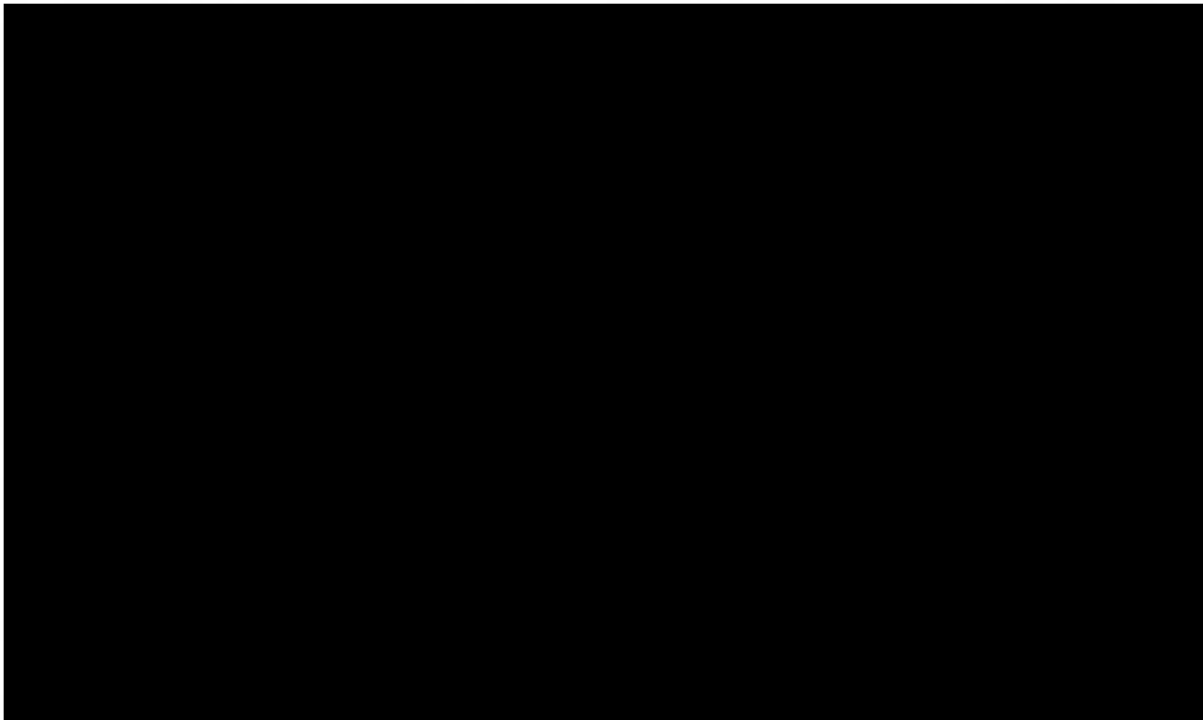
We further refer to the letter of 7 May 2018 to your office from the Honourable Christian Porter, the Commonwealth Attorney-General.

Please note the position of Thales as follows:



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THALES



Yours sincerely

James Couche
Vice-President - Legal and Contracts
Thales Australia

Copy to: Tom Ioannou
Australian National Audit Office
16 National Circuit
BARTON ACT 2600

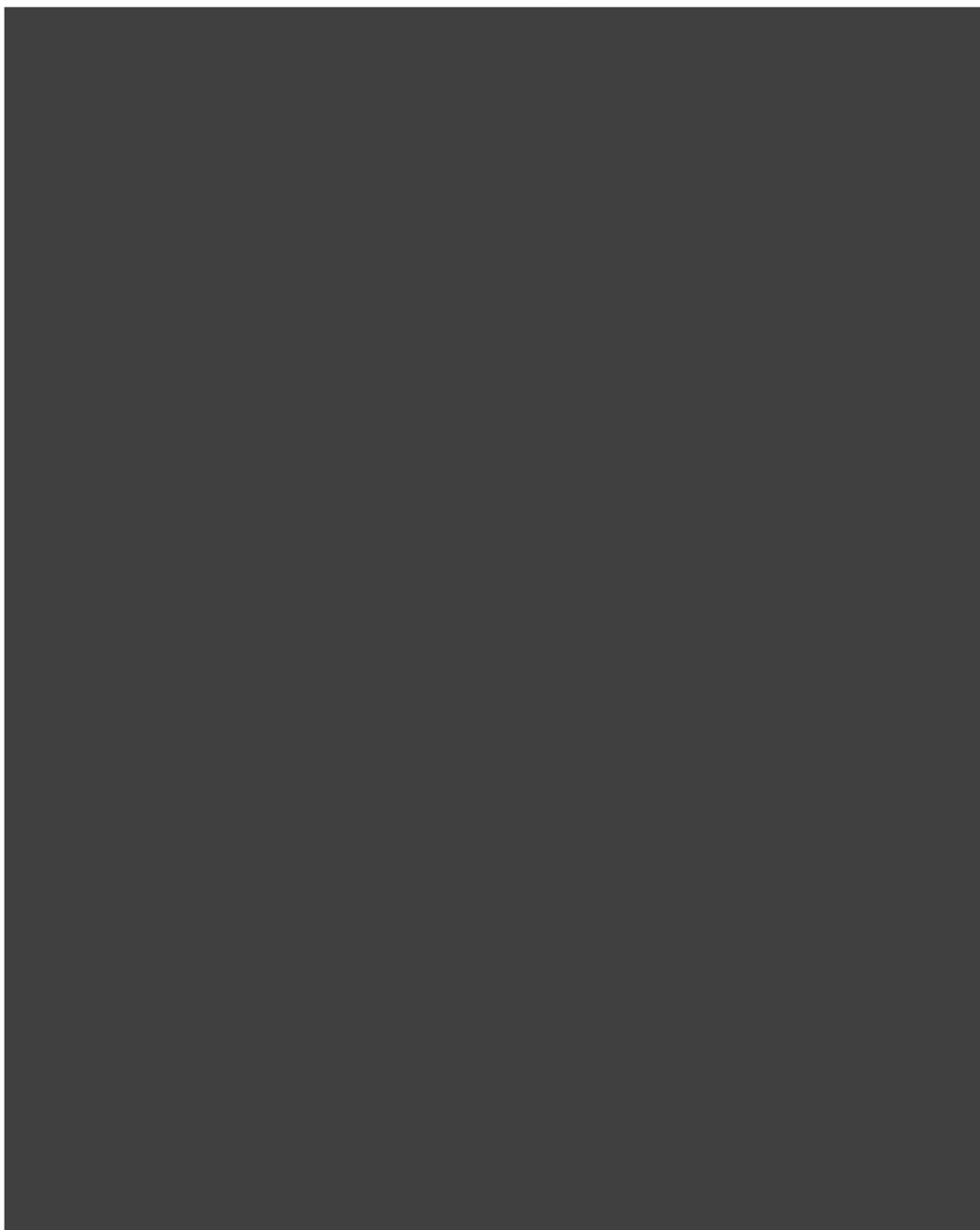
Justin Davidson
Australian Government Solicitor
4 National Circuit
BARTON ACT 2600

A L Donohue
Norton Rose Fulbright
44 Martin Place
SYDNEY NSW 2000

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SCHEDULE



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20 August 2018

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

Email

Dear Mr Hehir

Re: Fourth Revised Draft Final Report – Army’s Protected Mobility Vehicle – Light

We refer to the extracts of the Fourth Revised Draft Final Report – Army’s Protected Mobility Vehicle – Light provided to us on 3 August 2018 (Draft Report).

We will write separately in response to certain paragraphs of the Draft Report which we consider to be incomplete or in error. This letter is directed to two particular paragraphs of the Draft Report which we consider attract the operation of s.37 of the Auditor-General Act 1997 (Cth) (Act). We consider that publication of the information included in [REDACTED] would not be in the public interest. We set out our reasons below.

[REDACTED]

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[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

In light of the foreshadowed publication of the final version of the Draft Report, we require a response to this letter, together with a revised Draft Report, by 3pm Friday 24 August 2018.

Also in light of the urgency of this matter, we have sent a copy of this letter, together with a request that a certificate be issued under s.37(1)(b) of the Act, to the Honourable Attorney-General.

Yours sincerely

James Couche
General Counsel
Thales Australia Limited

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20 August 2018

House of Representatives
Parliament House
Canberra ACT 2600

Attention: The Honourable Christian Porter MP

Dear Attorney-General

Re: Auditor-General's Fourth Revised Draft Final Report - Army's Protected Mobility Vehicle – Light

We enclose a copy of a letter of today's date addressed to the Auditor-General for the Commonwealth of Australia in relation to the Fourth Revised Draft Final Report - Army's Protected Mobility Vehicle – Light (Draft Report).

Considering the previous position of the Auditor-General in relation to this matter and the Auditor-General's stated intention of tabling in Parliament of the report in the week of 10 September 2018, we

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respectfully request that you issue a certificate under s 37(1)(b) of the Auditor-General Act 1997 in respect of the information set out in the paragraphs and footnotes above as soon as possible.

Yours sincerely

James Couche
General Counsel
Thales Australia

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4 September 2018

House of Representatives
Parliament House
Canberra ACT 2600

Attention: The Honourable Christian Porter MP

Dear Attorney-General

Re: Auditor-General's Fourth Revised Draft Final Report - Army's Protected Mobility Vehicle – Light

Thank you for your letter of 31 August 2018 regarding the above and Thales Australia's request that you issue a certificate under s 37(1)(b) of the Auditor-General Act 1997.

Given the Auditor-General has confirmed that he will make the amendments we requested to the final report, without the need for you to issue a certificate, I can confirm our application of 20 August 2018 is withdrawn.

Yours sincerely

James Couche

Vice-President – Legal and Contracts
Thales Australia

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