QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 15 November 2016

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(*MLARPC001*) – Parliamentary Inquiry - Migration Legislation Amendment (Regional Processing Cohort) Bill 2016 -

Asked:

CHAIR: We had evidence from Ms McLeod, Senior Counsel, who is president-elect of the Law Council. She made some comments about the reviewable nature of decisions or non-decisions. I think you clarified that, but could you, on notice, have a look at what Ms McLeod said and see if you have any further comments?
Ms de Veau: I do think Senator McKim, Ms McLeod and I are at one as to what a non-compellable decision is—that is, once it is engaged, it is subject to judicial review but you cannot compel the person to engage with the decision. I think we have expressed it differently, depending on which way we come at the question.
CHAIR: I think you have added to that by saying there are certain provisions—which you have not gone into and which I am not particularly asking you about—of the international law, if I could call it that, which do require the minister to look at requests in certain circumstances.
Ms de Veau: It is more to say that we cannot legislate out of our international obligations. If there is, for instance, a non-refoulement issue that is alive for a particular application, then that will be put before the minister so that that can be considered. We cannot move away from that obligation and so those things in the sense will 'small c' compel the decision to be engaged with, rather than it being in statute.
Mr Pezzullo: But, that said, we will have a look at the previous evidence, which is what I think you asked us to do. We will look at it precisely once we get the Hansard and—
CHAIR: I think Ms de Veau sort of answered it, but perhaps what you say needs to be emphasised.

Answer:

The Department thanks the Committee for the opportunity to provide any further comments in relation to the reviewable nature of a decision. Having considered the transcript from the hearing, the Department does not have any further comments beyond the evidence provided at the hearing yesterday.

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IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(*MLARPC002*) – Parliamentary Inquiry - Migration Legislation Amendment (Regional Processing Cohort) Bill 2016 -

Asked:

CHAIR: I certainly do not want to mislead you into thinking that Ms McLeod was in any way excepting of the bill, but she did make a comment that there were some objectives mentioned in the minister's second reading speech that were not in the explanatory memorandum. I asked her if anything turned on that to which she gave, as you would expect, a very precise answer. I am wondering if you could have a look at that with a view to perhaps consider whether the explanatory memorandum needs any amendment as a result of that interaction. Can you do that for us?
Mr Pezzullo: We will take that on notice. To assist future judicial interpretation of what the parliament had in mind, it might well be something that is merited.

Answer:

The Department considers that the explanatory memorandum does not require amendment.

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Parliamentary Inquiry : 15 November 2016

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(*MLARPC0003*) – Parliamentary Inquiry - Migration Legislation Amendment (Regional Processing Cohort) Bill 2016 -

Asked:

Senator WATT: I think you, Mr Pezzullo, mentioned that people have the opportunity since Sunday to put in EOIs in this US deal. How many have you received so far?
Mr Pezzullo: It is tracking daily and hourly. I will ask Ms Noble if she has any data.
Ms Noble: I cannot give you the exact numbers, but I am happy to take it on notice and we can give you the number of people as of the date of this hearing.

Answer:

As at 15 November 2016, there are 857 people who have registered their interest in Manus, Nauru and Australia (for those persons who are here for medical treatment).

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Parliamentary Inquiry : 15 November 2016

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(*MLARPC0004*) – Parliamentary Inquiry - Migration Legislation Amendment (Regional Processing Cohort) Bill 2016 -

Asked:

Senator WATT: I know these sections quite well because in a previous life I acted for asylum seekers who were affected by these sections. With my questions I am actually thinking of one of my former clients. You might remember the baby Faruz case, a little boy who was born in Brisbane. His parents had come to Australia by boat. There were concerns about Mum's pregnancy, she was brought to Brisbane and she had the baby there. At that time, at least, there were about 100 other kids in the same situation, whose families had come by boat but the baby was born on Australian soil.
CHAIR: Do you have a question?
Senator WATT: I am coming to the question—please.
CHAIR: Well, your time is—
Senator WATT: I know, and you went over time as well. This is a very important issue affecting people living in Australia. I spoke to his father this morning just to check what the latest was.
CHAIR: Do you have a question?
Senator WATT: The family have now been settled in Melbourne for about two years. The father has begun a mechanic apprenticeship, the kids are in school in Australia and my understanding is they are now on bridging visas. My concern is that for families like that, who have built up a life in Australia and undertaken employment and training, regardless of all of that—this is what I think you are saying—they will be expected to go to the US. Is that correct?
Mr Pezzullo: No. I will use the shorthand in the interests of time. If they are here effectively on the basis of 198 repatriation for the original medical issue, they have been bridged—you say that they are settled, and I do not want to speak to specific details because it gets invidious.
CHAIR: Mr Pezzullo, a lot of the question was about Senator Watt's concerns, his beliefs and his opinions, which you should not comment on.
Mr Pezzullo: I am not planning to.
CHAIR: There was eventually a question.
Mr Pezzullo: I am just going to relate it to the question.
CHAIR: I am not quite sure what it was. But please stick to the question and the facts.
Mr Pezzullo: I will stick to the question. So, leaving aside the specifics, because I do not want to comment on them, if a person is here under 198 and they have been bridged back here for temporary purposes, they are still offshore illegal maritime arrivals.
Senator WATT: And therefore would be expected to take up the resettlement deal in

the US—
Mr Pezzullo: Wherever, because there is the opportunity of being on Nauru for 20 years. There is the opportunity of going to Cambodia or to the US.
Senator WATT: Do you know how many families are in that situation in Australia right now?
Mr Pezzullo: Not offhandedly. I would have to take that on notice.
Senator WATT: It would be in the hundreds, though, wouldn't it? I know of at least a hundred personally.
Mr Pezzullo: I am not sure, senator, but we will take it on notice

Answer:

The Migration Legislation Amendment (Regional Processing Cohort) Bill will prevent people who were over 18 when first transferred to a regional processing country after 19 July 2013 from being able to make a valid visa application.

There are 377 transitory people in Australia who have been temporarily transferred from Nauru or PNG to Australia for a temporary purpose such as medical treatment.

- Of those, 245 were aged 18 years or older when they were first transferred to an RPC and will therefore be barred by the new legislation.

- This includes around 90 family units.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 15 November 2016

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(*MLARPC005*) – Parliamentary Inquiry - Migration Legislation Amendment (Regional Processing Cohort) Bill 2016 -

Asked:

CHAIR: While I am chairing the committee, we will do it according to the rules. Mr Pezzullo and Ms de Veau, there were a number of quite definitive statements from a group of people, many of whom were lawyers, about this legislation being illegal. I have asked you this before, but can I ask you to look at the transcript very carefully, go through these allegations of illegality or non-constitutionalness of the law—or whatever the accusation was—and respond on notice to this committee—but, if not on notice, at least to alert the minister so that, when this comes up in debate, there is an answer to those questions, because, of all the submissions to this inquiry, that is the one that perhaps was the most important to me. So my question to you is: can you look at that and either provide answers to this committee, if you have time, or alternatively, for the minister in the Senate debate, at least have answers to those.
Ms de Veau: I think we can at least indicate what we say the position is in relation to some of those matters, including matters like article 31. It is obviously a longstanding position that the legal advice that underpins that position is not necessarily given in detail to—
Mr Pezzullo: I think this is what the chair is inviting us to do: for those matters on which we can come back to the committee on notice sensibly, we will, but otherwise, if there are matters that involve us providing advice to the minister for the committee stage of the Senate's deliberations—
CHAIR: Yes.
Mr Pezzullo: We certainly will scrutinise the Hansard.
CHAIR: I would be interested myself, but you may not have time. We table on the 22nd, and we ask for answers to questions on notice by tomorrow, so it might be in the minister's debate rather than answers on notice. That is all that I have.

Answer:

The Department has considered the submissions on these issues and remains of the view that the Bill does not impose a penalty in breach of Article 31 of the Refugees Convention.

Other human rights issues, including those relating to children and families, are addressed in the Statement of Compatibility. The Statement of Compatibility confirms that the availability of a ministerial power to allow an application to be made in the public interest allows Australia to comply with these obligations.