

QUESTION TAKEN ON NOTICE

ADDITIONAL ESTIMATES HEARING : 27 February 2017

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(AE17/010) - Legal action in PNG - Internal Product (DIBP)

Senator McKim, Nick (L&CA 23) asked:

Senator McKIM: I am happy to come back to that. Are you aware of the legal action currently afoot—and I am happy to ask this of the minister, if it is more appropriate—in the Papua New Guinea Supreme Court, which is basically alleging various breaches of the PNG constitution in terms of the way people seeking asylum and refugees have been dealt with by Papua New Guinea, including being detained indefinitely?

Senator Cash: I would need to take that on notice and refer it to the minister, but I understand that the secretary may be able to assist you.

Mr Pezzullo: There is some action on foot post the so-called Namah decision, which I think is operative here. Namah is a settled case, as you know. But I think there is a follow-on case that deals with, at least from the plaintiff's point of view, the assertion of ongoing wrongful detention.

Senator McKIM: Just to be clear: that is one of the matters involved in the case. There is actually a range of matters.

Mr Pezzullo: A range of matters, yes.

Senator McKIM: So, my specific question, I guess, is: are you aware that this is under foot? Do you have any advice about the potential liability to the PNG government should the courts find in favour of the applicants?

Mr Pezzullo: I would be a brave secretary providing advice to this committee about legal liabilities faced by a foreign government. I would not even begin to go down that path.

CHAIR: And it is not part of your role—or our role—either, to question another constitutional entity.

Senator McKIM: It is part of my role to ask this question: has the Australian government informed the Papua New Guinea government that the Australian government will cover any financial costs associated with this case, including financial costs or awards granted by the Papua New Guinea Supreme Court.

Senator Cash: I would need to take that on notice and refer it to the minister.

Senator McKIM: Mr Pezzullo, has your department informed your colleagues in Papua New Guinea that the Australian government will cover the costs of this case to the PNG government, including any awards made by the Supreme Court in favour of people seeking asylum or refugees?

Mr Pezzullo: The costs in terms of any potential adverse finding?

Senator McKIM: Yes.

Mr Pezzullo: I am almost certain, but I would just want to check this, that we have had no such discussion as it relates to this case. As to whether such a request would be made as just part of general discussions about costs in terms of supporting PNG, in terms of them providing regional processing services, I could not exclude that. In relation to this case, I doubt it very much, but I will want to check.

Senator McKIM: All right. So, you will take that on notice, I understand you to have said. Just to be clear: the question is—and there are probably a couple of parts to it—firstly, is the Australian government assisting the PNG government in terms of its legal costs—

Mr Pezzullo: For this case?

Senator McKIM: For this case. And by the way, there are 731 applicants, if you like—731 signatories. And when I say 'this case', my understanding is that there is possibly a tranche of cases that we are dealing with here, but I am advised that the total number of people who are involved in current legal action in the PNG Supreme Court is 731. Can I also then ask you take on notice the second part, which is, has there been any assurance given to the PNG government by the Australian government that if there are findings that award financial compensation as a result of the case getting up that the Australian government will cover that? I think you will find that the sum we are talking about here is very substantial indeed, based on previous awards made by the PNG—

Mr Pezzullo: We will take it on notice, both as to costs and as to underwriting any compensation that is directed by the courts.

Answer:

The Australian Government is supporting the Papua New Guinea (PNG) Government with legal costs related to the Regional Resettlement Arrangement (RRA). This assistance is in accordance with the terms of the Memorandum of Understanding (MOU) between the governments of Australia and PNG relating to the transfer to, and assessment and settlement in PNG of certain persons and related issues, whereby the Australian Government has agreed to bear all direct costs arising out of the implementation of the MOU.

There has not been an assurance or commitment by Australia to PNG to cover compensation awarded in RRA related litigation.