

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING : 26 May 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(BE15/060) - Compensation Claims - IMA's - Programme 1.4: IMA Onshore Management

Senator Macdonald, Ian (L&CA 25) asked:

CHAIR: Perhaps on notice, could you tell me how many of these claims there have been over, say, the last five years and how many have been successful, with a one-line statement of what they were about—claim for hurt feelings or claim for a broken leg or claim for mental distress and anguish.

Mrs Grant: We will certainly take that level of detail on notice, Chair.

CHAIR: You would have all that detail though, would you?

CHAIR: No, but you do have it somewhere?

Mrs Grant: We do have the number of cases each year and we do have the number of cases where we actually paid compensation. I provided some evidence yesterday to the effect that, during the 2013-14 year, we had had 13 where we had actually paid some compensation. And during the 2014-15 year, we have had one case where we have paid compensation to date. So we do have that sort of information going back several years.

CHAIR: Perhaps if you could get us better details of that, and I would need to know whether the compensation is paid as a result of a court order or as a result of a settlement or negotiation—or conciliation, as they call it these days.

Mrs Grant: Yes. And quite often we do settle the matter, so we can provide information as to whether we settled or we had a full hearing.

CHAIR: Could I also get you to include the name of the legal firm representing the applicant?

Mrs Grant: If we have that detail, yes. I am just not sure if we do have that.

CHAIR: Well, it will be in the court record.

Mrs Grant: It would be in the court record, yes.

Mr Pezzullo: We will take it all on notice, Chair.

CHAIR: These are things that I think the Australian public should be aware of.

Mr Pezzullo: We will give you as much information on notice as we can.

Senator HANSON-YOUNG: The millions of dollars we are spending on compensation.

Senator REYNOLDS: Would it be possible also, as part of that additional information, to cover this question: if someone is making a claim for some sort of impact in the network, how do you ascertain what damage may have been done in the network, what damage was done by the boat trip, what damage was done by being in other third-party countries and what damage was incurred in their home country? Obviously not everything would specifically relate to their experience in detention. Do you have a method of assessing that in your conciliation process? What factors are taken into consideration?

CHAIR: In relation to confidentiality—this is a lawyer's question—are you able to, without breaching the confidentiality, give an indication along the lines of 'case No.1; claimed for a broken leg; \$3,000 claimed; \$2,000 settled; solicitors; counsel'? Are you able to give that sort of information? Does that breach confidentiality?

CHAIR: I am trying to get an understanding of the types of claims that are being made, the types of claims that are being settled and—

Mr Pezzullo: It might be possible to, as you suggested, just have an anonymised reference. If the case is so well known that even labelling it 'case No. 3' would give it away, we might have to exercise discretion.

CHAIR: I understand that. But if you can get to us what you can, it would be appreciated. I must say that I am a bit taken aback by even the detail that has been given. It had not occurred to me before. Ms Grant, you have another answer to an earlier question?

Answer:

Since 1 July 2010 to 30 April 2015, 74 claims for compensation from illegal maritime arrivals (IMAs) against the Commonwealth or the Department were filed in the courts. 10 claimed unlawful/ inappropriate detention, 63 claimed personal injury, and one related to an order for discovery.

58 of the 74 claims have matters ongoing before the courts. The remaining 16 matters have been finalised, 9 were resolved prior to hearing on the basis there was no legal liability on the part of the Commonwealth or where no further action was required (eg. the applicant withdrew from the proceedings) and 4 other matters resolved prior to hearing without compensation being paid.

Compensation was paid in relation to 3 matters, all of which were resolved prior to hearing. The total amount paid in settlement by the Commonwealth in regard to these matters was \$385,000.00. Some settlements were inclusive and others were exclusive of legal costs. The matters were managed by Comcover in accordance with the Department's insurance policy. All three claims were personal injury claims for psychological injury allegedly suffered during immigration detention.

In regard to ascertaining what factors are taken into account in determining liability for a claim, each matter is informed by legal advice that assesses liability based on current case law and authority, having regard to the facts and circumstances of the individual case, including pre-existing physical or psychological injury. Evidence, including relevant medical evidence, would inform whether compensation for a particular injury was compensable.

The level of compensation offered in individual cases varies widely and will depend on the level of harm suffered, the extent to which the Department's actions contributed to the harm and the value of any future medical treatment for which the Department may be liable.

Of the 74 filed claims made by IMAs, 2 claims involved plaintiffs who were self-represented. Plaintiffs may change legal representation during the course of the proceedings. However, Department records show that, of the 72 filed claims where plaintiffs are represented, the following law firms, centre or practitioners act for the plaintiffs.

- Blumers Lawyers
- Camatta Lempens Pty Ltd Lawyers
- Carroll & O'Dea Lawyers
- Duncan Basheer Hannon Lawyers

- George Newhouse, Shine Lawyers
- Johnston Withers
- Legal Aid - VIC
- Maurice Blackburn Lawyers
- O'Brien Solicitors
- Patrick Robinson & Co
- Sayan & Associates Solicitors
- Schreuder Partners Compensation Lawyers
- Shine Lawyers
- Slater and Gordon
- Stacks/Goudkamp Lawyers
- Tindall Gask Bentley
- Turner Freeman Lawyers
- Ward Keller Lawyers

Departmental systems do not separately record which Counsel is instructed to represent plaintiffs in matters, unless the plaintiff is directly briefing Counsel.