

Additional Comments – Australian Greens

1.1 The Australian Greens wish to express concern about the nature of responses from the Department of Immigration and Border Protection (DIBP, the department) in relation to questions about refugees and the Manus and Nauru regional processing centres (RPCs) during the estimates process.

1.2 Estimates hearings provide an opportunity for all senators to scrutinise taxpayer-funded expenditure by government departments.

1.3 While questions are asked by individual senators, responses provided assist the committee and the Senate to carry out their important scrutiny function.

1.4 Throughout the course of the budget estimates hearings, as well as in responses to questions on notice, DIBP have refused to answer a number of questions placed by Australian Greens senators and have frequently relied on previous claims of public interest immunity (PII).

Shooting at Manus on Good Friday

1.5 Over the course of budget estimates, the department was asked many questions about the events that took place on Manus Island on Good Friday this year (14 April 2017). The Australian Greens consider the answers provided are incomplete evidence concerning these events.

1.6 Regarding this incident, the department put a number of facts on the record during the estimates hearing of 22 May 2017, including that 'quite a number' of shots were fired laterally into the RPC and that nine people were injured. As Mr Pezzullo told the committee:

I think, based on what is now known-as opposed to what might have been known in the first hour or two of the incident-it appears as though, and I say that with a very strong caveat, dependent on the inquiries that are currently on foot and what they turn up, the number of weapons employed was greater than one.

...Again, subject to relying on PNG inquiries to establish that as a matter of fact, it appears as though, in light of the information that subsequently has become available, as opposed to what might have been available in the first hour or two, some shots, quite a number it seems, were fired laterally into the compound-yes...¹

1.7 Regarding the number of injuries sustained, the department stated that:

The advice that I have to hand at the moment is that nine personnel were injured. None of those were serious injuries, as I understand. Five of those were service provider personnel, one was a PNG Defence Force officer, one

1 Mr Michael Pezzullo, Secretary, *Proof Committee Hansard*, 22 May 2017, p. 19.

was an Immigration and Citizenship Service Authority officer and two were residents from within the MRPC.²

1.8 On 14 April 2017, immediately following the incident, the department released information to Fairfax, which now appears to be inaccurate, and played down the seriousness of the shootings:

There are reports PNG military personnel discharged a weapon into the air during the incident. No-one was injured.³

1.9 The Australian Greens are concerned that, as at the budget estimates hearing of 22 May 2017, the information provided to Fairfax on 14 April 2017 had still had not been corrected on the department's website page 'Correcting the Record', more than one month after the incident took place. Furthermore, it seems as if Minister Dutton has not acknowledged the seriousness of the attack, including that a significant number of staff or residents of the MRPC were injured.⁴

1.10 The Australian Greens are concerned that the department and Minister have allowed innuendo and insinuation to persist regarding the behaviour of RPC residents. It seems the department indicated to the Minister that the trigger for the shooting was an incident in which a young local boy was guided into the centre by some residents, which the Minister later cited publicly.⁵

1.11 The Australian Greens note that the local police have been clear—both publicly and privately—that this incident had 'nothing at all to do with the Good Friday shootings'.⁶

1.12 It is therefore of some concern that the Minister and his department have not corrected this information, which has allowed innuendo and insinuation to persist about the behaviour of some RPC residents in this incident.

1.13 Lastly, the Australian Greens are concerned that Mr Pezzullo suggested to the committee that the Papua New Guinean defence and police forces were inquiring into this matter, and so it was not a matter for investigation for the Commonwealth:

In the circumstances, given the seriousness of the matter, the best course of action, and one that I thoroughly endorse, is to then await the conclusion of the two relevant inquiries—one is a military justice inquiry and the other is a criminal justice inquiry in the civil jurisdiction—and, then, if we have got more to say at that point, we will say more at that point.⁷

2 Mr Kingsley Woodford-Smith, Assistant Commissioner, Detention, Compliance and Removals Division, *Proof Committee Hansard*, 22 May 2017, p. 19.

3 *Proof Committee Hansard*, 22 May 2017, p. 19.

4 *Proof Committee Hansard*, 22 May 2017, p. 20.

5 *Proof Committee Hansard*, 22 May 2017, p. 51.

6 *Proof Committee Hansard*, 22 May 2017, p. 22.

7 *Proof Committee Hansard*, 22 May 2017, p. 21.

1.14 The Australian Greens consider that the Minister and department have abrogated Australian responsibility in this matter, both in allowing incorrect and misleading information to persist, and by not investigating the incident sufficiently. This is especially considering the injuries sustained by employees and contractors working to sustain the Commonwealth's immigration policies, as well as several victims of these policies who are resident in the Manus RPC.

Relying on previous claims of public interest immunity

1.15 The Legal and Constitutional Affairs Legislation Committee has received only one PII claim from the Minister for Immigration and Border Protection in relation to estimates during the 45th Parliament. This claim was received by the committee on 21 October 2016 and related to a question from Senator Nick McKim at the supplementary budget estimates hearing on 17 October 2016, regarding the third-country resettlement of refugees in RPCs.

1.16 Throughout the budget estimates hearing on 22 May 2017, DIBP referred to that previous PII claim often when matters concerning Operation Sovereign Borders were raised.⁸

1.17 At one point during the hearing, officers chose not to answer questions on boat turn-backs and made reference to that previous PII claim.⁹

1.18 The secretary of the department stated that he was making a PII claim and that it was his view that the matter did not need to be referred the minister, as the minister had made a previous claim in relation to Operation Sovereign Borders maritime activities.¹⁰ The question was not pursued by the committee at the hearing or taken on notice by the department.

1.19 Under Procedural Order of Continuing Effect 10, an officer must refer a question to the minister on the request of the committee or a senator, and that is a matter for the minister to provide grounds to the committee.

1.20 While that claim included a general statement that 'the government does not believe it is in the public interest to release information that may compromise Operation Sovereign Borders and foreign relations', it did not set out a specific claim relating to questions on boat turn-backs and was related only to third-country resettlements.

1.21 Therefore, the Australian Greens do not consider that this previous claim has any relevance to the questions posed in relation to boat turn-backs.

Relying on a claim made to another committee

1.22 The Australian Greens also wish to note two responses to DIBP questions on notice from additional estimates received by the committee.

8 *Proof Committee Hansard*, 22 May 2017, pp. 26, 81, 98, 101–2 and 108–9.

9 *Proof Committee Hansard*, 22 May 2017, pp. 98 and 101.

10 *Proof Committee Hansard*, 22 May 2017, p. 101.

1.23 Responses to questions on notice AE17/220 and AE17/221, questions from Senator McKim related to the resettlement of refugees in RPCs, did not provide answers and relied on a PII claim made to another committee. The responses both stated that the department would not:

... disclose details of confidential discussions with other governments as it would disclose information captured by the public interest immunity claim made by the Minister for Immigration and Border Protection on 7 January 2017.¹¹

1.24 The Australian Greens note that the claim made by the Minister for Immigration and Border Protection on 7 January 2017 was made to the Legal and Constitutional Affairs References Committee, in relation to that committee's inquiry into regional processing centres in Papua New Guinea and Nauru.

1.25 It is the view of the Australian Greens that a PII claim made to another committee should not be referred to for the purpose of estimates and that any such claim must be stated to the relevant estimates committee.

Conclusion

1.26 While the Australian Greens note that answers to questions taken on notice during the budget estimates hearings are not due until 7 July 2017, the department is reminded that the Senate has on several occasions resolved that there are no areas of expenditure of public funds by statutory authorities which are not open to scrutiny.

1.27 If the department is unable to provide Senators with answers to their questions for reasons of public interest immunity, a claim for this immunity should follow from the minister, in accordance with the requirements of Procedural Order of Continuing Effect 10.

Senator Nick McKim
Australian Greens

11 Department of Immigration and Border Protection, answers to written questions on notice AE17/220 and AE17/221, received 28 April 2017.