

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 05 February 2016

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(BTB/001) – Minors on-board -

Asked:

Senator HANSON-YOUNG: You treated her as if she was pregnant. What about the one-year-old child—were you aware that there was a one-year-old child on board the boat?

Major Gen. Bottrell: I do not have that information at hand.

Senator HANSON-YOUNG: Were you aware that there were any children on board the boat?

Major Gen. Bottrell: I would have to take that on notice and come back to the committee in terms of the number and ages of the individuals, although I do remind the committee that in the past we have only provided detail in regards to the individuals on vessels where they have involved take-backs where we have worked in conjunction with the country that they are being returned to.

Answer:

The Government does not comment on or disclose operational details where this would prejudice the outcome of current or future operations.

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IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(BTB/002) – Legal ramifications for personnel -

Asked:

Senator HANSON-YOUNG: One of the issues that were put to us by previous witnesses was that, if any of these alleged payments of cash to people smugglers had occurred, in fact under domestic law in Indonesia and indeed international law the only immunity that would be available to Australian officers in conducting these operations would be if the Australian government claimed that it was necessary. There was an accusation put by previous witnesses that by not confirming these types of activities you actually create the risk of or the potential for criminal action towards our individual officers who were directed to undertake these actions. What is your response to that? If you have not looked at it, Mr Pezzullo, could you take that on notice, because I am quite concerned that we might be actually opening Australian Navy and Border Force personnel up to international court action because of this obsession with secrecy.

Mr Pezzullo: There is no-one in this room who has got a greater regard and more concern for the protection of my officers and those who are seconded to my department, including from the Australian Defence Force, so thank you for the shared concern. I am happy to take, through the committee staff, reference to the particular witness who has raised those matters. As you have described it—and I was trying to follow the flow of the logic—it seems to me to be a highly incoherent argument. I do not understand the logic of it. The activities that we undertake, pursuant to all the relevant acts of parliament that have a bearing, are all lawfully based, both in terms of Australian domestic law and to the extent to which international law and international obligations are encoded in Australian law. If our actions are lawfully based, then we are not exposing officers to that international risk. If there is some clever international legal argument that our quite extensive array of lawyers have not thought of, I am sure that they will take a careful look at the evidence, but, prima facie—and perhaps I am mishearing it; perhaps I have not had enough coffee this morning—it sounds like an incoherent line of logic, poorly reasoned and poorly expressed. But perhaps that is just my meagre interpretation.

Senator HANSON-YOUNG: If I can refer you to the evidence given by the witnesses—

Mr Pezzullo: I am very happy to look at it.

Senator HANSON-YOUNG: in the first session and if you could please respond within the time frame set by the committee—

Mr Pezzullo: I am very happy to take it on notice but, as I said—and maybe it is just my inability to comprehend it—it sounds like faulty logic. But we will have a look at it.

Answer:

Robust measures and safeguards remain in place to enable OSB-related actions and activities to be undertaken in a manner consistent with Australian domestic law and Australia's obligations under international law. It would be inappropriate to speculate as there is no suggestion of any criminal action by Indonesian authorities or any international bodies against Commonwealth officials with respect to the May 2015 venture.