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SECRETARY
DEPARTMENT OF HOME AFFAIRS
Statement
Senate Legal and Constitutional Affairs Legislation Committee

Monday, 13 February 2023

To assist the Committee, I would like to table a letter that I sent to the Minister for Home Affairs, along with a chronology of key events and actions related to the sunseting of the Instrument that designated Nauru as a regional processing country under section 198AB of the *Migration Act 1958*.

The failure to seek to have Nauru redesignated as a regional processing country ahead of the repeal occurred as a result of human and administrative error within the Department.

Internal due diligence in December 2022, regarding a separate legal Instrument, identified that the designation had not been remade in advance of the repeal of the original Instrument.

Immediately on identification of the error, the Department provided preliminary advice to the Office of the Minister for Home Affairs late on the evening of 15 December 2022. On 16 December 2022, the Department provided subsequent advice confirming the existence of sufficient legal authorities to ensure the continuity of activities related to Operation Sovereign Borders. This was supported by acting Commander Joint Agency Task Force Operation Sovereign Borders. The Department then received a direction to take the necessary steps to redesignate Nauru as a regional processing country.

On more than one occasion from January 2021, the Department was notified of the instruments due for sunseting on 1 October 2022, however failed to adequately monitor, track and report on the sunseting of the Instrument that designated Nauru as a regional processing country. Furthermore from June 2022, the Minister for Home Affairs sought and was provided assurances from the Department that all administrative requirements to support Operation Sovereign Borders were in place, including relevant legislative instruments. This occurred on at least 7 times, either in regular Operation Sovereign Borders briefings or planning meetings in relation to operations. Separately, the Minister for Immigration, Citizenship and Multicultural Affairs also sought advice of instruments sunseting or expiring prior to this instrument expiring. The sunseting of this Instrument was not identified by the Department in any of those processes.

The Department has taken immediate actions to address these issues and implement improved administrative processes in order to ensure more effective monitoring and tracking of all Instruments. These measures include a new reporting regime and regular spot checks.

I must stress that the repeal of this Instrument has had no impact on operations during the intervening period between the repeal and the redesignation, and appropriate powers remained available to Operation Sovereign Borders.

The Australian Government continues to support the Government of Nauru's implementation of regional processing arrangements.

[ENDS]