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EC23-000202

Minister for Home Affairs
Parliament House
CANBERRA ACT 2600

Dear Minister,

Since the federal election in 2022, my Department has been working closely with you on the Government's commitment to the continuation of Operation Sovereign Borders (OSB), including regional processing. As such, there has been ongoing discussions and comprehensive planning to ensure the ongoing effectiveness of OSB.

I acknowledge that throughout these discussions, your Office has given specific directions for the Department to ensure that all legal authorities and permissions were in place to ensure there were no impacts to the operation of OSB. My Department provided assurance that there were no concerns with any legal authorities or permissions.

On 5 December 2022, internal due diligence regarding a separate legal instrument raised the question of whether any action was required in relation to the sunset of the *Instrument of Designation of the Republic of Nauru as a Regional Processing Country* (the Designation) under subsection 198AB(1) of the *Migration Act 1958*. Internal enquiries were undertaken and it was subsequently confirmed on 15 December 2022 that the instrument to designate the Republic of Nauru (Nauru) as a regional processing country had sunset on 1 October 2022.

The specific designation of Nauru as a regional processing country was not considered before this time, or in discussing the matter with your Office. Allowing the designation of Nauru as a regional processing country to lapse, and not seeking to re-designate Nauru as a regional processing country before this occurred, was an error caused by an unacceptable administrative process failure in the Department.

In light of this error, I commissioned an internal review by the Department's Chief Operating Officer, a Deputy Secretary independent of this matter. The review found that, due to a combination of human error and administrative issues, the management and oversight of this instrument was not adequately coordinated and tracked. As a result, the Department has taken immediate action to remediate the issues identified and to implement improved administrative processes, including effective monitoring and tracking of all instruments through dedicated resources.

The Department is preparing a legislative instrument for you to re-designate Nauru as a regional processing country via tabling of an instrument into Parliament at the earliest opportunity in February 2023 (during a sitting period). The Department is working with your Office on this process.

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While there has been a lapse in the Designation of Nauru as a regional processing country, there has been no impact to the resolution of OSB operations, noting that appropriate powers remain available to OSB to take potential irregular immigrants to a place outside of Australia, including Nauru, until Nauru is re-designated as a regional processing country. Furthermore, Nauru not being designated as a regional processing country does not have any impact on transitory persons currently in Nauru.

I offer my sincere apologies for the failure in this process and can assure you that the appropriate steps have been taken to ensure this does not occur in the future.

Yours sincerely,

Michael Pezzullo AO
Secretary

27 January 2023

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