

Question on notice no. 106

Portfolio question number: LCC-SBE23-106

2022-23 Supplementary Budget estimates

Legal and Constitutional Affairs Committee, Attorney-General's Portfolio

Senator David Shoebridge: asked the Federal Court of Australia on 28 February 2023—

- (1. Are there ongoing investigations into promotions and appointments within the Federal Court?
2. What steps have been taken within the court to address the matters investigated by the Australian Public Service Commission regarding promotions and appointments?
3. What steps have been taken within the court specifically relating to the appointment of registrars to address the matters investigated by the Australian Public Service Commission?
4. Will the report received from the Australian Public Service Commission be made public?
5. Has there been external oversight of recruitment given the significant probity issues raised?

Answer —

Please see the attached answer.

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO
SUPPLEMENTARY BUDGET ESTIMATES 2022 - 2023

PA-Federal Court of Australia

LCC-SBE23-106 - Issues with promotions and appointments

Senator David Shoebridge asked the following question on 28 February 2023:

1. Are there ongoing investigations into promotions and appointments within the Federal Court?
2. What steps have been taken within the court to address the matters investigated by the Australian Public Service Commission regarding promotions and appointments?
3. What steps have been taken within the court specifically relating to the appointment of registrars to address the matters investigated by the Australian Public Service Commission?
4. Will the report received from the Australian Public Service Commission be made public?
5. Has there been external oversight of recruitment given the significant probity issues raised?

The response to the senator's question is as follows:

Are there ongoing investigations into promotions and appointments within the Federal Court?

No. The Commonwealth Ombudsman is investigating a complaint made against the handling of a Public Interest Disclosure investigation by the Australian Public Service Commission (APSC). This is not an investigation into the promotions and appointments within the Federal Court.

What steps have been taken within the Court to address the matters investigated by the Australian Public Service Commission regarding promotions and appointments?

The Federal Court has fully complied with all recommendations from the APSC, which related to a single appointment, by:

- providing staff of the Federal Court with refresher guidance and/or training about the APS Employment Principles prior to undertaking any recruitment action; and
- having relevant Federal Court staff familiarise themselves with the APS Code of Conduct, and in particular paragraph 12(11)(a) of the *Public Service Act 1999* (Cth), which states, relevantly, that employees must at all times behave in a way that upholds the APS Employment Principles.

No further issues were identified by the Australian Public Service Commission regarding recruitment conducted by the Federal Court.

What steps have been taken within the Court specifically relating to the appointment of registrars to address matters investigated by the Australian Public Service Commission?

There are no particular steps being taken by the Court specifically relating to the appointment of Registrars to address the matters investigated by the APSC, nor did the APSC make any recommendations requiring such steps.

The Federal Court has fully complied with all recommendations from the APSC by:

- providing staff of the Federal Court with refresher guidance and/or training about the APS Employment Principles prior to undertaking any recruitment action; and
- having relevant Federal Court staff familiarise themselves with the APS Code of Conduct, and in particular paragraph 12(11)(a) of the *Public Service Act 1999* (Cth), which states, relevantly, that employees must at all times behave in a way that upholds the APS Employment Principles.

The performance of the Courts Registrars in carrying out their delegated judicial and other duties continues to be exemplary and of the highest standard.

Will the report received from the Australian Public Service Commission be made public?

The report received from the APSC will not be made public by the Federal Court.

The APSC conducted its investigation and prepared the subsequent report pursuant to a complaint brought under the *Public Interest Disclosure Act 2013* (Cth). The report of the APSC, consistent with that Act, was provided on a confidential and need-to-know basis.

Has there been external oversight of recruitment given the significant probity issues raised?

The APSC, following its extensive investigation, found only a single incidence of non-compliance. The single incidence of non-compliance resulted from an inadvertent omission by a selection panel.

The Federal Court in compliance with section 26 of the *Australian Public Service Commissioner's Directions 2022*, engages a Commissioner's Representative in all SES selection processes. The proposed Commissioner's Representatives are approved by the APSC before undertaking their role. Commissioner's representatives have also been engaged for the purposes of registrar recruitment. Each Commissioner's representative certifies that the selection process complied with subsection 10A(2) of the *Public Service Act 1999* (Cth) and the requirements of the Directions.