

Senate Finance and Public Administration Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
BUDGET ESTIMATES 2014

Prime Minister and Cabinet Portfolio

Department/Agency: Australian Public Service Commission

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Topic: Question on Notice from February hearing

Senator: Faulkner

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Question:

Senator FAULKNER: This will not take long, Chair. Mr Sedgwick, at the last estimates round, I asked you some questions about section 32 of the Public Service Act in relation to nominees and nominations for public office for certain public servants who were not employed under the Public Service Act. I am not being critical of you. I think the questions have possibly just fallen through the cracks. I do not know if you have responded but the committee has not received them. I think they may have got missed out in the numbering of the questions on notice. No criticism intended and it is not urgent, but I would like to refer you to those questions which appear on pages 123 and 124 of the February estimates round. I do not want to take any time, but I just indicate to you that I am interested in pursuing that. I am interested in your response, and you were going to give some thought to them. I would appreciate it if they could be treated, if you like, as questions on notice for this estimates round. There may be some form of administrative foul-up. It is neither here nor there. I am just keen for it to be progressed.

Mr Sedgwick: Certainly. It did appear as a question on notice?

Senator FAULKNER: Yes. As I say, there is no criticism intended or anything like that. I am just keen for the issue to be addressed on notice by the APSC.

Hansard from February Estimates Hearing (FPA, Monday 24 February 2014, pages 123 and 124)

Senator FAULKNER: Mr Sedgwick, this will be brief. It is very rare for me to raise an issue like this which involves an individual—not without his understanding that that is going to take place. I am not raising this in a partisan way, and I could raise this with the Commonwealth Statistician but I am raising it with you. It relates, effectively, to what I suspect are probably unforeseen consequences of certain Commonwealth employees not being employed under the Public Service Act and therefore not enjoying the protection offered by section 32 of the Public Service Act. That relates to public servants who contest an election and their capacity to return to their job if they are unsuccessful. As you would appreciate there is an obligation, if you are employed by the Commonwealth, so you do not find yourself in conflict with section 44 of the Constitution and the like.

This is not a partisan matter, in my view, but I want to use this example—and the gentleman concerned is aware that I am doing this. We—the Labor Party—had a candidate, the endorsed federal candidate, working for the Australian Bureau of Statistics, who resigned his job, running in a safe coalition seat. This sort of thing happens all the time; it is politics. In fact, it happened to be in the Treasurer's seat, so he did not have a good, flash chance of actually winning. But, at the end of the day, because he was employed by the APS, he struck a problem. He is, in my view, a fine fellow, a former RAF group captain, Vietnam veteran and the like. But the point is this: I wonder whether in this circumstance the APSC has provided any advice to departments and agencies about, first of all, the operation of section 32 of the Public Service Act? In the case of the last federal election—as I say, this is not a partisan—

Mr Sedgwick: No, I understand, Senator.

Senator FAULKNER: I am quite genuinely interested in the principle here. I just wonder whether there were any issues or complaints about how the section of the act worked in the case of the last election. I am not aware of any but—

Mr Sedgwick: Neither am I. I think the most productive way for me to respond to the question is to actually take it on notice and come back to you.

Senator FAULKNER: All right; fair enough.

Mr Sedgwick: Did you say that the person was employed under the Public Service Act?

Senator FAULKNER: No, they are not; this is the point. They are employed as public servants.

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Mr Sedgwick: Section 32 is APS.

Senator FAULKNER: Of course; I appreciate that. So, in this case, there are different standards or conditions that apply to an employee at the ABS. This is not a criticism of the statistician; I suspect it is happenstance. But you have a long-term employee at the ABS performing a key function, and I believe performing it effectively, but unable to receive the protection that someone employed under the Public Service Act does under section 32 of the act. I suspect at the end of the day this is an anomaly. That is my guess and that is why I am raising it. Are you aware of the fact that certain employees of the Commonwealth, who might run for parliament, obviously do not have the protection of section 32 of the Public Service Act?

Mr Sedgwick: I do not know the answer to that, so let me look at it and come back to you.

Senator FAULKNER: I believe the gentleman concerned has possibly been successful in recently being offered at least some temporary work with the ABS, which is gratifying if that is the case. But I suspect we have an anomaly here. It may not just apply to the Australian Bureau of Statistics. There may be other agencies where you have a similar situation. It is pretty unusual for employees but not outlandish for such employees to contest and fail to win public office and hence be caught by these sorts of circumstances. I wonder whether it is appropriate in this circumstance for the Public Service Commissioner to address this issue with other employers of people in the Commonwealth service more broadly. Is that the case? I think there is a general principle here. I am using a specific example, but there is obviously a general principle here that could disadvantage individuals—I think it has happened on this occasion—into the future. As I say: it is not partisan; it is a matter of sorting something out which appears to me to be anomalous, basically.

Mr Sedgwick: I understand. Let us have a look at it, and we will come back to you. My formal responsibility is as set out in the Public Service Act, but we do have conversations with—

Senator FAULKNER: I thought it better, Mr Sedgwick, firstly to be honest about it and secondly to raise it with the Australian Public Service Commissioner as opposed to the Commonwealth statistician, because he is the direct employer. There is no criticism of the individuals involved here; I suspect there are other categories of employment where this same situation might apply—in the future particularly—and I think it appropriate that the Public Service Commissioner perhaps have a look at that, even though I accept that individuals in the Australian Bureau of Statistics are not employed under the Australian Public Service Act. You have it? It is clear? It is a bit convoluted, but it is—

Mr Sedgwick: I understand your point.

Senator FAULKNER: I would appreciate it, if you address it with the statistician or any other relevant agencies, that you do make the point that it is not being progressed in a partisan way and that this may well affect individuals—

Mr Sedgwick: both sides of politics—yes, sure.

Senator FAULKNER: Thank you.

Answer:

The provisions of the *Public Service Act 1999* (PS Act) governing the re-engagement of persons who resign from their Australian Public Service (APS) employment to contest an election and fail to be elected are not able, under the current legislative framework, to be imposed on those Commonwealth bodies that do not employ their staff under the PS Act.

While there are a number of non-APS bodies (including the Australian Parliamentary Service, the Australian Federal Police, the Commonwealth Scientific and Industrial Research Organisation and the Australian Defence Force) that provide similar entitlements to those applying in the APS, including a right to be re-engaged, there are currently no Commonwealth-wide arrangements in place in relation to the re-engagement of election candidates.

Policy responsibility for employment matters in non-APS Commonwealth bodies is quite decentralised – generally speaking, individual Ministers, agency chief executive officers, and/or agency Boards have responsibility for the management of these statutory and non-statutory bodies.

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The Australian Public Service Commission (APSC) has commenced consultations with other central agencies to investigate the potential for non-APS agencies to adopt similar re-engagement arrangements to those applying on the APS.

In the particular case raised by Senator Faulkner, the person in question was a non-APS employee of the Australian Bureau of Statistics (ABS) who did not therefore have access to the relevant provisions of the PS Act regarding re-engagement. The APSC has been advised that in this particular case, the ABS exercised its discretion to re-employ the person in question in his former capacity.

In relation to the other questions raised by Senator Faulkner on this issue:

- The APSC has issued guidance for APS agencies on the operation of these provisions which is contained on the APSC's website at <http://www.apsc.gov.au/aps-employment-policy-and-advice/recruitment-and-selection/reengagement-candidate>.
- The APSC is not aware of any issues or complaints lodged about how the section of the PS Act worked in the case of the last election.