

Senate Finance and Public Administration Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
SUPPLEMENTARY BUDGET ESTIMATES 2015-16

Finance Portfolio
20 October 2015

Department/Agency: All
Outcome/Program: General
Topic: Staffing - employment of non-Australian citizens

Senator: Ludwig
Question reference number: F98
Type of question: Written
Date set by the committee for the return of answer: Friday, 4 December 2015

Number of pages: 6

Question:

I refer you to section 22 (8) of the Public Service Act 1999 which says:

"An Agency Head must not engage, as an APS employee, a person who is not an Australian citizen, unless the Agency Head considers it appropriate to do so."

1. Does the department have guidelines or similar to assist Agency Heads to assess when it is appropriate to hire non-Australian citizens? If no, do individual agencies have their own guidelines? If yes to either:
 - a) Please provide a copy.
 - b) When did they come into effect?
 - c) Can Agency Heads decide to go against the advice? If yes, under what circumstances?
2. Are Agency Heads required to provide a reason to anyone for hiring non-Australian citizens? If yes:
 - a) Who are they required to report the reason to?
 - b) Does this reporting happen before or after the hire has been made?
 - c) Is this reason provided in writing? If no, how is it provided?
 - d) Can you please provide a list of reasons that have been used since the Federal election in September, 2013.
3. Are there any provisions to over-rule a Head of Agency's decision to hire a non-Australian citizen? If yes:
 - a) Who can over-rule this decision?
 - b) Under what circumstances can it be over-ruled?
 - c) How many times has this occurred since the Federal election in September, 2013.

Answer:

Department/ Agency	Response
Finance	1. Yes, the Department of Finance has its own guidelines. a) The Department of Finance policy is attached (Attachment A). b) The Policy came into effect in July 2011. c) See the attached policy. 2. Yes. a) See the attached policy. b) Before the hire has been made. c) Yes. d) No requests have been submitted. 3. No. a) – c) Not applicable.
Australian Electoral Commission	1. No. a) – c) Not applicable. 2. Yes. a) The Electoral Commissioner. b) Before hiring. c) Yes. d) No instances have occurred since September 2013. 3. No. a) – c) Not applicable.
Commonwealth Superannuation Corporation	The CSC is not subject to the <i>Public Service Act 1999</i> . 1. – 3. Not applicable.
Future Fund Management Agency	1. Yes a) See the attached policy (Attachment B). b) June 2009. c) The Agency Head applies the guidelines. 2. – 3. No.

Title: Engagement of non-Australian Citizens

Number: 1.5

Effective Date: July 2011

Policy Outline

Purpose:

The purpose of this policy is to provide Finance managers and staff with guidelines in relation to the engagement of non-Australian citizens into the Australian Public Service.

Definitions:

Delegate - is a person to whom the power to recruit and select an APS employee under the *Public Service Act 1999* (PS Act) has been delegated by the Secretary.

Non-Australian citizen - is a person who is not an Australian citizen as defined in the *Australian Citizenship Act 1948*.

Context:

Under sub-section 22(8) of the PS Act, a Secretary must not engage, as an APS employee, a person who is not an Australian citizen unless the Secretary considers it appropriate to do so.

In addition, the Australian Government Protective Security Policy Framework states that the eligibility criteria for the granting of a security clearance includes the requirement for Australian citizenship.

In both instances, the Secretary has the power to waive the citizenship requirement where there are exceptional circumstances.

Advice from the Australian Public Service Commission (APSC) states that exceptional circumstances are when it is not possible to meet business needs via Australian employees. For further information please refer to <http://www.apsc.gov.au/publications04/conditions4.htm>.

Finance Security Policy (4.1.1 – Protective Security Clearances) identifies that as a condition of employment, all Finance staff must obtain a minimum security clearance at the Baseline (Protected) level. Any application for a citizenship waiver must be supported in writing by the Agency Security Adviser.

A range of issues must be taken into consideration when seeking a citizenship waiver. Special precautions are likely to be necessary such as the restriction of access to information, in particular access to security classified resources originating from a third party or country must be restricted unless approval has been provided for the release of information in accordance with bilateral agreements.

The Agency Security Adviser is able to provide specialist advice in regard to the requirements associated with the provision of security clearances in cases where a citizenship waiver has been granted.

The granting of a citizenship waiver does not automatically mean that a security clearance will be granted. The security clearance process remains unchanged and each application still needs to be assessed on its merits. For further information on security requirements, please contact the Departmental Security Team on 02 6215 3000.

Procedure:

As with all recruitment in Finance, employment opportunities should be advertised and filled on merit.

Finance considers 'Eligibility' waivers only in exceptional circumstances, where the following criteria have been met:

- the potential employee is a permanent resident (evidence of this supplied);
- the potential employee is eligible for citizenship and either has or is in the process of applying (evidence of this is requested to be supplied); and
- there is a scarcity of specific skills in the general workplace.

If a Deputy Secretary believes an exceptional circumstance exists to appoint a non-Australian Citizen, a formal submission to the Secretary or an authorised delegate must be made through the Agency Security Adviser.

If citizenship is waived, the Secretary or delegate will need to sight official documentation confirming the employee has the necessary visa and work rights appropriate to the employment being offered in Finance. Clarification of documentation required for working in Australia is provided by the [Department of Immigration and Citizenship](#).

Conversely, if a potential employee is eligible for Australian citizenship and has no intention of becoming a citizen then a waiver will not be granted.

Once approval has been obtained from the Secretary or delegate, a copy of the documentation must be sent to HR Shopfront for placement on the employee's personnel file and if applicable, the recruitment file. Information about the documentation required for working in Australia is available from the Department of Immigration and Citizenship (<http://www.immigration.gov.au/>).

The immigration laws pertaining to New Zealand citizens are slightly different to other non-Australian citizens. The following link to Fact Sheets on the Department of Immigration and Citizenship website outlines the requirements for New Zealanders entering Australia: [Department of Immigration and Citizenship Fact Sheets](#).

References and Links:

- [Department of Finance and Administration Protective Security Policy Manual - 4.1.3. Security Clearances for non-Australian Citizens](#)
- [Public Service Act 1999, Section 22](#)
- [APSC Advice - Engagement of an Ongoing Employee, Movement and Promotion](#)
- [APSC Advice - Engagement of a Non-ongoing Employee](#)
- [Department of Immigration and Citizenship website](#)

Author: HR Services Branch
Authorised by: Assistant Secretary
HR Services

Date: June 2009
Date: July 2011



Engagement of Non-Australian Citizens

Effective Date: **June 2009**

Policy Outline

Purpose:

The purpose of this policy is to provide managers and staff with guidelines in relation to the engagement of non-Australian citizens into the Australian Public Service.

Definitions:

Non-Australian citizen is a person who is not an Australian citizen as defined in the *Australian Citizenship Act 1948*.

Delegate is a person to whom the power to recruit and select an APS employee under the *Public Service Act 1999* (PS Act) has been delegated by the CEO.

Context:

Under sub-section 22(8) of the PS Act, an Agency Head must not engage, as an APS employee, a person who is not an Australian citizen, unless the Agency Head considers it appropriate to do so. Further information on this section of the PS Act can be obtained via the www.comlaw.gov.au website.

In exceptional circumstances, the Agency Head has the power to waive the citizenship requirement. Advice from the Australian Public Service Commission (APSC) states that exceptional circumstances are when it is not possible to meet business needs via Australian employees.

In addition to the requirements of the PS Act, there are a number of security considerations associated with the potential engagement of a non-Australian citizen. The Commonwealth Protective Security Manual 2005 (Part D, clause 6.4 to 6.5) states that the eligibility criteria for the granting of a security clearance includes the requirement for Australian citizenship.

The granting of a waiver of these requirements can only occur if the Agency Head has agreed to the appointment of a non-Australian citizen. Security considerations must be taken into account before any formal approach is made to the Agency Head for approval of the engagement of a non-Australian citizen.

Procedure:

1. As with all recruitment in the Agency, employment opportunities should be advertised in the Gazette and filled on merit.
2. Clarification of documentation required for working in Australia is provided by the Department of Immigration and Citizenship.
3. If the Manager believes an exceptional circumstance exists which justifies the appointment of a non-Australian Citizen, a formal submission to the General Manager must be made. Waivers can be granted if a potential employee is

eligible for Australian Citizenship and is in the process of completing paperwork (and can demonstrate this) for assessment to become a citizen.

A waiver can also be granted if a potential employee is eligible for Australian Citizenship and has submitted all paperwork for assessment and is waiting a decision (and can demonstrate this).

Please Note: If citizenship is waived, the General Manager will need to sight official documentation confirming the employee has the necessary visa and work rights appropriate to the employment being offered in the Agency.

4. Conversely, if a potential employee is eligible for Australian Citizenship and has no intention of becoming a citizen then a waiver will not be granted.
5. Once approval has been obtained from the delegate, a copy of the documentation needs to be provided to HR and placed on the employee's personnel file and if applicable, the recruitment file.

The immigration laws pertaining to New Zealand citizens are slightly different to other non-Australian citizens. The following link to Fact Sheets on the Department of Immigration website outlines the requirements for New Zealanders entering Australia:

[Department of Immigration and Citizenship Fact Sheets.](#)

References and Links:

[Public Service Act 1999, Section 22](#)

[Department of Immigration and Citizenship website](#)

Author	Authorised by
Human Resources	General Manager
Date: June 2009	Date: June 2009