

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

Prime Minister and Cabinet Portfolio

**Department/Agency: Australian National Audit Office**

**Outcome/Program:**

**Topic:** Staffing – employment of non-Australian citizens

**Senator:** Senator Ludwig

**Question reference number: 319**

**Type of question:** Written

**Date set by the committee for the return of answer:** 4 December 2015

**Number of pages:** 2

**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:
  1. Please provide a copy.
  2. When did they come into effect?
  3. 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:
  1. Who are they required to report the reason to?
  2. Does this reporting happen before or after the hire has been made?
  3. Is this reason provided in writing? If no, how is it provided?
  4. 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:
  1. Who can over-rule this decision?
  2. Under what circumstances can it be over-ruled?
  3. How many times has this occurred since the Federal election in September, 2013.

**Answer:**

1. The ANAO does not engage as an APS employee any person who is not an Australian citizen. It therefore has no guidelines or similar to assist the Auditor-General to assess when it is appropriate to hire non-Australian citizens.
2. Not applicable.
3. Not applicable

**Senate Finance and Public Administration Legislation Committee**

ANSWERS TO QUESTIONS ON NOTICE  
Budget Estimates Hearing October 2015  
Prime Minister and Cabinet Portfolio

<b>Department/Agency:</b>	Office of the Inspector-General of Intelligence and Security
<b>Outcome/Program:</b>	Outcome 1
<b>Topic:</b>	Staffing – employment of non-Australian citizens
<b>Senator:</b>	Ludwig
<b>Question reference number:</b>	319
<b>Type of question:</b>	Written
<b>Date set by the committee for the return of answer:</b>	4 December 2015
<b>Number of pages:</b>	1
<b>Question:</b>	

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:**

1. No. All OIGIS employees must hold a high level security clearance. The Australian Government Protective Security Policy Framework requires a person to hold Australian citizenship in order to be eligible for a security clearance.
2. Not applicable.
3. Not applicable.

**Senate Finance and Public Administration Legislation Committee**  
**ANSWERS TO WRITTEN QUESTIONS ON NOTICE**  
**SUPPLEMENTARY BUDGET ESTIMATES 2015-2016**

Prime Minister and Cabinet Portfolio

**Department/Agency:** Office of the Commonwealth Ombudsman

**Outcome/Program:**

Outcome 1. Fair and accountable administrative action by Australian Government entities and prescribed private sector organisations, by investigating complaints, reviewing administrative action and statutory compliance inspections and reporting.

**Topic:** Staffing – employment of non-Australian citizens

**Senator:** Senator Ludwig

**Question reference number:** 319

**Type of question:** Written

**Date set by the committee for the return of answer:** 4 December 2015

**Number of pages:** 2

**Question:**

**Senator LUDWIG:**

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:**

1. No.
2. No.
3. No.

**Senate Finance and Public Administration Legislation Committee**  
**Supplementary Estimates – October 2015**  
**ANSWER TO QUESTIONS ON NOTICE**

Prime Minister and Cabinet portfolio

**Department/Agency:** Office of the Official Secretary to the Governor-General

**Program 1:** Support for the Governor-General and Official Activities

**Outcome 1:** The performance of the Governor-General's role is facilitated through the organisation and management of official duties, management and maintenance of the official household and property and administration of the Australian Honours and Awards system.

**Topic:** Staffing - employment of non-Australian citizens

**Senator:** Ludwig

**Question reference number:** 319

**Type of Question:** Written

**Date set by the committee for the return of answer:** 4 December 2015

**Number of Pages:** 2

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:**

The Office of the Official Secretary to the Governor-General is not governed by the Public Service Act 1999 (it is established under the Governor-General Act).

The Office does not engage non-Australian citizens.

**Senate Finance and Public Administration Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**  
Supplementary Budget Estimates Hearings 19-23 October 2015

Prime Minister and Cabinet Portfolio

**Department/Agency:** Aboriginal Hostels Limited  
**Topic:** Staffing - employment of non-Australian citizens

**Senator:** Senator Ludwig

**Question reference number:** 319

**Type of question:** Written

**Date set by the committee for the return of answer:** 4 December 2015

**Number of pages:** 1

**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:**

1. Aboriginal Hostels Limited complies with section 22 (8) of the PS Act when applying conditions of employment in recruitment selection processes. AHL has not established agency-specific guidelines or procedures regarding employment of non-Australian citizens. To be eligible for employment with AHL, all successful applicants are required to demonstrate Australian Citizenship as per the *Public Service Act 1999*. All applicants are asked to declare their citizenship status on submission of their application for employment form. On commencement new employees of AHL are required to produce documentation in line with the 100 points of ID check, which must include proof of citizenship with either an Australian passport or birth certificate.
2. The Chief Executive Officer (CEO), AHL, can authorise a waiver to allow employment of a non-Australian citizen. These are usually in exceptional circumstances, where previous recruitment activity has failed to identify a suitable candidate with the appropriate skills to undertake the inherent requirements of the role. When considering the employment of a non-Australian citizen the CEO takes into consideration the individual circumstances, on a case-by-case submission. Where the potential employee is currently undertaking application for Australian citizenship, the CEO will support employment on the condition citizenship is achieved in an appropriate timeframe.
3. AHL's CEO promotes APS Values and Employment Principles and complies with all applicable Australian laws. Currently AHL is unaware of any provisions that would over-rule the employment decision of the CEO. Since the Federal election in 2013, the CEO has not received any request to over-turn a decision on the employment of a non-Australian citizen.

**Senate Finance and Public Administration Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**  
Supplementary Budget Estimates Hearings 19-23 October 2015

Prime Minister and Cabinet Portfolio

**Department/Agency:** Anindilyakwa Land Council  
**Topic:** Staffing - employment of non-Australian citizens

**Senator:** Senator Ludwig

**Question reference number:** 319

**Type of question:** Written

**Date set by the committee for the return of answer:** 4 December 2015

**Number of pages:** 1

**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:**

The Anindilyakwa Land Council has no non-Australian citizen employees

**Senate Finance and Public Administration Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**  
Supplementary Budget Estimates Hearings 19-23 October 2015

Prime Minister and Cabinet Portfolio

**Department/Agency:** Central Land Council

**Topic:** Staffing - employment of non-Australian citizens

**Senator:** Senator Ludwig

**Question reference number:** 319

**Type of question:** Written

**Date set by the committee for the return of answer:** 4 December 2015

**Number of pages:** 1

**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:**

1. The Central Land Council recruitment policy requires non-Australian citizens must provide evidence of eligibility to work in Australia.
2. No.
3. No.

**Senate Finance and Public Administration Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**  
Supplementary Budget Estimates Hearings 19-23 October 2015

Prime Minister and Cabinet Portfolio

**Department/Agency:** Indigenous Business Australia  
**Topic:** Staffing - employment of non-Australian citizens

**Senator:** Senator Ludwig

**Question reference number:** 319

**Type of question:** Written

**Date set by the committee for the return of answer:** 4 December 2015

**Number of pages:** 1

**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:**

Indigenous Business Australia staff are employed under the Aboriginal and Torres Strait Islander Act 2005 and the organisation is not, therefore, subject to the stated section of the Public Service Act 1999 nor does the ATSI Act include such restrictions.

As such, the questions raised are a matter for the Department.

**Senate Finance and Public Administration Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**  
Supplementary Budget Estimates Hearings 19-23 October 2015

Prime Minister and Cabinet Portfolio

**Department/Agency:** Indigenous Land Corporation  
**Topic:** Staffing - employment of non-Australian citizens

**Senator:** Senator Ludwig

**Question reference number:** 319

**Type of question:** Written

**Date set by the committee for the return of answer:** 4 December 2015

**Number of pages:** 1

**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:**

The ILC is not bound by the *Public Service Act 1999*.

**Senate Finance and Public Administration Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**  
Supplementary Budget Estimates Hearings 19-23 October 2015

Prime Minister and Cabinet Portfolio

**Department/Agency:** Northern Land Council  
**Topic:** Staffing - employment of non-Australian citizens

**Senator:** Senator Ludwig  
**Question reference number:** 319  
**Type of question:** Written  
**Date set by the committee for the return of answer:** 4 December 2015

**Number of pages:** 1

**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:**

The Northern Land Council (NLC) is not subject to the provisions of the *Public Service Act 1999*. To this end, the NLC advises a 'nil' response.

**Senate Finance and Public Administration Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**  
Supplementary Budget Estimates Hearings 19-23 October 2015

Prime Minister and Cabinet Portfolio

**Department/Agency:** Office of the Registrar of Indigenous Corporations  
**Topic:** Staffing - employment of non-Australian citizens

**Senator:** Senator Ludwig

**Question reference number:** 319

**Type of question:** Written

**Date set by the committee for the return of answer:** 4 December 2015

**Number of pages:** 1

**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:**

ORIC has no non-Australian employees.

**Senate Finance and Public Administration Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**  
Supplementary Budget Estimates Hearings 19-23 October 2015

Prime Minister and Cabinet Portfolio

**Department/Agency:** Office of Township Leasing  
**Topic:** Staffing - employment of non-Australian citizens

**Senator:** Senator Ludwig

**Question reference number:** 319

**Type of question:** Written

**Date set by the committee for the return of answer:** 4 December 2015

**Number of pages:** 1

**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:**

The staff of the Office of Township Leasing are provided by the Department of the Prime Minister and Cabinet, under Section 20P of the Aboriginal Land Rights (Northern Territory) Act 1976.

Any questions about the hiring of staff should therefore be directed to the Department of the Prime Minister and Cabinet.

**Senate Finance and Public Administration Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**  
Supplementary Budget Estimates Hearings 19-23 October 2015

Prime Minister and Cabinet Portfolio

**Department/Agency:** Outback Stores

**Topic:** Staffing - employment of non-Australian citizens

**Senator:** Senator Ludwig

**Question reference number:** 319

**Type of question:** Written

**Date set by the committee for the return of answer:** 4 December 2015

**Number of pages:** 1

**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:**

1. Not Applicable
2. Not Applicable
3. Not Applicable

**Senate Finance and Public Administration Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**  
**Supplementary Budget Estimates Hearings 19-23 October 2015**

**Prime Minister and Cabinet Portfolio**

**Department/Agency:** Tiwi Land Council

**Topic:** Staffing - employment of non-Australian citizens

**Senator:** Senator Ludwig

**Question reference number:** 319

**Type of question:** Written

**Date set by the committee for the return of answer:** 4 December 2015

**Number of pages:** 1

**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:**

1. No and No
2. No as there is no hiring of non-Australian citizens

3. No as there is no hiring of non-Australian citizens

**Senate Finance and Public Administration Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**  
Supplementary Budget Estimates Hearings 19-23 October 2015

Prime Minister and Cabinet Portfolio

**Department/Agency:** Torres Straight Regional Authority  
**Topic:** Staffing - employment of non-Australian citizens

**Senator:** Senator Ludwig

**Question reference number:** 319

**Type of question:** Written

**Date set by the committee for the return of answer:** 4 December 2015

**Number of pages:** 1

**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:**

1. No. The TSRA does not have department guidelines on the employment of non-Australian citizens. There is a general expectation that a person who is to be engaged as an APS

employee will be an Australian citizen (subsection 22(8) of the PS Act). The TSRA CEO (agency head) may, however, waive this requirement depending on the needs and circumstances of the TSRA (for example, a shortage of the skills or professional qualifications required to perform particular duties).

2. No. However, where the CEO of the TSRA deems it appropriate to engage a non-Australian citizen following confirmation that the person has the appropriate visa and work entitlements the CEO will notify the HR Manager and Chief Financial Officer/Corporate Services Manager as a courtesy.

3. The TSRA has not engaged any non-Australian citizens since the Federal election in September 2013. The TSRA does not have provisions to over-rule a Head of Agency's decision to hire a non-Australian citizen, this has not occurred since the Federal election in September 2013.

**Senate Finance and Public Administration Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**  
Supplementary Budget Estimates Hearings 19-23 October 2015

Prime Minister and Cabinet Portfolio

**Department/Agency:** Wreck Bay Aboriginal Community Council  
**Topic:** Staffing - employment of non-Australian citizens

**Senator:** Senator Ludwig

**Question reference number:** 319

**Type of question:** Written

**Date set by the committee for the return of answer:** 4 December 2015

**Number of pages:** 1

**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:

NO response to all three questions.

Although Wreck Bay Aboriginal Community Council is not an APS employer it does not employ any non-Australian citizens in any event. There is no Council policy or guideline existing which permits the employment of non-Australian citizens to occur either.

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

Prime Minister and Cabinet

**Department/Agency:** National Australia Day Council  
**Outcome/Program Group:** All  
**Topic:** Staffing – employment of non-Australian citizens

**Senator:** Senator Ludwig  
**Question reference number:** 319  
**Type of question:** Written

**Date set by the committee for the return of answer:** 4 December 2015  
**Number of pages:** 1

**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?

*Answer: No the NADC does not have specific guidelines.*

2. Are Agency Heads required to provide a reason to anyone for hiring non-Australian citizens?

*Answer: Yes*

If yes:

1. Who are they required to report the reason to?

*Answer: The NADC Board*

2. Does this reporting happen before or after the hire has been made?

*Answer: The NADC would be expected to do it prior to a hire being made.*

3. Is this reason provided in writing? If no, how is it provided?

*Answer: Yes*

4. Can you please provide a list of reasons that have been used since the Federal election in September, 2013.

*Answer: No non- Australian citizen has been engaged by the NADC 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?

*Answer: No*

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

**Prime Minister and Cabinet Portfolio**

**Department/Agency:** Australian Public Service Commission

**Outcome/Program:** 1.1

**Topic:** Staffing - employment of non-Australian citizens

**Senator:** Ludwig

**Question reference number:** 319

**Type of question:** Written

**Date set by the committee for the return of answer:** 4 December 2015

**Number of pages:** 19

**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:**

1. The website of the Australian Public Service Commission (the APSC) contains information about citizenship as a condition of engagement. Agencies may also have their own guidelines.

- a) A copy of the APSC webpage on Citizenship in the Australian Public Service is attached.

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

- b) This website page has been available since 2007.
- c) Agency Heads are able to engage a person who is not an Australian citizen where he or she considers it appropriate to do so.

2. The *Public Service Act 1999* (the Act) does not require an Agency Head to provide a reason to anyone for making a decision to engage a person who is not an Australian citizen.

3. No provisions in the Act allow a decision of an Agency Head to engage a non-citizen to be over-ruled.

**Senate Finance and Public Administration Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**  
Supplementary Budget Estimates Hearing 19-23 October 2015

Prime Minister and Cabinet Portfolio

**Department/Agency:** Digital Transformation Office  
**Topic:** Staffing - employment of non-Australian citizens

**Senator:** Ludwig

**Question reference number:** 319

**Type of question:** Written

**Date set by the committee for the return of answer:** 4 December 2015

**Number of pages:** 2

**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.

17

PM 19

**Answer:**

- 1) No, the Digital Transformation Office is in the process of establishing guidelines for the CEO to assist decision making in relation to the hiring of non-Australian citizens.
- 2) No
- 3) There are no provisions to overrule an Agency Head's decision to waive citizenship as a condition of engagement, provided the employee meets all requirements under the *Migration Act 1958*, including a visa with work rights.

Senate Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Senate Estimates October 2015

Prime Minister and Cabinet Portfolio

**Department/Agency:** Office of National Assessments

**Outcome/Program:** 1

**Topic:** Staffing

**Senator:** Senator Ludwig

**Question reference number:** 319

**Type of Question:** Written

**Date set by the committee for the return of answer:**

**Number of pages:** 1

**Question:**

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?
2. Are Agency Heads required to provide a reason to anyone for hiring non-Australian citizens?
3. Are there any provisions to over-rule a head of Agency's decision to hire a non-Australian citizen?

**ONA Response:**

1. Yes.

ONA requires personnel to maintain a top secret positive vet security clearance. The Protective Security Policy Framework (Vetting practices guidelines – Section 4.2) details Australian citizenship as an eligibility criterion to hold an Australian security clearance. This requirement can be waived by the agency head. ONA uses the Vetting practices guidelines in the delivery of security clearances. ONA has no citizenship waivers in place.

2. No,

The Protective Security Policy Framework requires ONA to notify any waivers granted in accordance with the Attorney-General's Department Protective Security Governance Guidelines (GOV-7).

The PS Act requires agency heads to document the approval and retain it in the employee's personal records should they engage a non-citizen. The Director General does not need to consult, seek the agreement or provide and reason to the PS Commissioner to make such decisions. However the agency must ensure the employee is eligible to work (ie they hold the correct visas) before engagement.

3. No

**Senate Finance and Public Administration Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**  
**Supplementary Budget Estimates 19-23 October 2015**

**Prime Minister and Cabinet Portfolio**

**Department/Agency:** Department of the Prime Minister and Cabinet  
**Outcome/Program:** Outcome 1: Prime Minister and Cabinet  
**Topic:** Staffing - employment of non-Australian citizens

**Senator:** Senator the Hon Joe Ludwig

**Question reference number:** 319

**Type of question:** Written

**Date set by the committee for the return of answer:** 4 December 2015

**Number of pages:** 2

**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:**

1. The Secretary, or his delegate, refers to the following to assess whether it is appropriate to hire a non-Australian citizen:
    - i. *Citizenship in the APS*, developed by the Australian Public Service Commission, for the purpose of imposing citizenship as a condition of engagement.
    - ii. *Australian Government Protective Security Policy Framework (PSPF) Version 2.1*, developed by the Attorney-General's Department, for the purpose of issuing a citizenship eligibility waiver for a security clearance.
  - a)
    - i. <http://www.apsc.gov.au/working-in-the-aps/your-rights-and-responsibilities-as-an-aps-employee/citizenship-in-the-australian-public-service>.
    - ii. <https://www.protectivesecurity.gov.au/personnelsecurity/Pages/default.aspx#agency>
  - b)
    - i. latest version released on 1 July 2013.
    - ii. latest version released on 21 October 2014.
  - c) Yes. An Agency Head may waive imposing citizenship as a condition of engagement if they feel it is in the best interests of the agency to do so. For example, to address a shortage of skills or where professional qualifications are required to perform particular duties.
2. No.
3. There are no provisions to overrule an Agency Head's decision to waive citizenship as a condition of engagement, provided the employee meets all requirements under the *Migration Act 1958*, including holding a visa with work rights.