

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Program: General

Question No. SBE15/087

Senator Ludwig asked the following question at the hearing on 20 October 2015:

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?
 - a. If no, do individual agencies have their own guidelines?If yes:
 - a. Please provide a copy.
 - b. When did they come into effect?
 - c. Can Agency Heads decide to go against the advice?
 - d. 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?

The answer to the honourable senator's question is as follows:

1. Yes the Department has an Employee Relations Advice – Working for the Attorney-General's Department – Australian Citizenship Requirements – No. 12/2008.
 - a) Attached.
 - b) May 2008.
 - c) *Public Service Act 1999* provides that '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'.
 - d) In circumstances where a recruitment delegate is of the view that a suitable field of applicants for a particular vacancy is not likely to be available if the Australian citizenship requirement is applied, the delegate may seek approval from the Secretary to waive the citizenship requirement for that vacancy.

2. No

3. a & b) The security vetting agency may decline the request for clearance if, notwithstanding the citizenship waiver, other minimum checks are unable to be made, or standards met. It may not be possible for the vetting agency to conduct the required checks overseas or, if checks can be conducted, to have confidence in the level of assurance provided by the checks.

c) None.