

Question on notice no. 112

Portfolio question number: LCC-OBE22-112

2022-23 Budget estimates October and November

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

Senator Larissa Waters: asked the Federal Court of Australia on 21 November 2022

—

Following allegations that a number of National Judicial Registrars were appointed to the Federal Court at a low pay grade and then promoted to avoid recruitment caps, has any internal investigation or action been taken in response to the allegations?

? Can the Court confirm that all appointment and promotion decisions since 2018 have followed the required process and assessments have all been made on merit?

? Have all vacancies for National Judicial Registrars in the past 5 years been publicly advertised? If any vacancies were not publicly advertised, what was the reason given?

? A recent FOI decision stated that no vacancy notifications or job applications could be located relating to a number of National Judicial Registrar appointments, including Phillip Allaway,

? Is there a process within the Federal Court for assessing applications for re-classification? Has that process been followed for all reclassifications made in the past 5 years?

Answer —

Please see the attached answer.

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

ATTORNEY-GENERAL'S PORTFOLIO

BUDGET ESTIMATES OCT/NOV 2022-23

PA-Federal Court of Australia

LCC-OBE22-112 - Appointment of National Judicial Registrars

Senator Larissa Waters asked the following question on 21 November 2022:

Following allegations that a number of National Judicial Registrars were appointed to the Federal Court at a low pay grade and then promoted to avoid recruitment caps, has any internal investigation or action been taken in response to the allegations?

- Can the Court confirm that all appointment and promotion decisions since 2018 have followed the required process and assessments have all been made on merit?
- Have all vacancies for National Judicial Registrars in the past 5 years been publicly advertised? If any vacancies were not publicly advertised, what was the reason given?
- A recent FOI decision stated that no vacancy notifications or job applications could be located relating to a number of National Judicial Registrar appointments, including Phillip Allaway,
- Is there a process within the Federal Court for assessing applications for re-classification? Has that process been followed for all reclassifications made in the past 5 years?

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

Following allegations that a number of National Judicial Registrars were appointed to the Federal Court at a low pay grade and then promoted to avoid recruitment caps, has any internal investigation or action been taken in response to the allegations?

On 10 September 2020, the Federal Court was advised by the Australian Public Service Commission (APSC), that the APSC was conducting an investigation under the *Public Interest Disclosure Act 2013* (Cth) (the PID Act) into a range of allegations concerning the recruitment practices of the Federal Court.

On 23 December 2020, the APSC concluded its investigation, finding that it was satisfied that the allegations of disclosable conduct concerning each of the recruitment processes was not substantiated. Specifically, there was no adverse finding in respect of the recruitment and appointment of any National Judicial Registrars. In terms of the wider investigation by the APSC, there was a single adverse finding in respect of the recruitment of a more junior Registrar position, namely, that a person was appointed to that position whilst not satisfying a selection criterion. The selection panel had inadvertently failed to consider that criterion.

The APSC recommended that staff at the Federal Court be provided with guidance and/or training about the APS Employment Principles prior to undertaking any recruitment action, to prevent further incidents of this nature and that relevant Federal Court of Australia staff familiarise themselves with the APS Code of Conduct and in particular paragraph 13(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 Federal Court has complied with each of these recommendations.

The allegations reported in the Australian on 9 February 2021, concerning National Judicial Registrars and detailed in the question, relate to the recruitment exercises investigated by the APSC. The APSC was satisfied that these allegations of disclosable conduct were unsubstantiated.

The Court has not undertaken any internal investigations given these matters were the subject of an extensive investigation by the APSC.

Can the Court confirm that all appointment and promotion decisions since 2018 have followed the required process and assessments have all been made on merit.

The Court can confirm that all appointment and promotion decisions since 2018 have followed the required process and assessments have all been made on merit.

Have all vacancies for National Judicial Registrars in the past 5 years been publicly advertised? If any vacancies were not publicly advertised, what was the reason given?

All National Judicial Registrar roles that have been required to be advertised, have been advertised.

The initial ‘National Judicial Registrar’ roles came to be filled through assignment of duties at level under section 25 of the *Public Service Act 1999*, or via other publicly advertised merit based processes that were deemed similar in nature and at the same classification. Each of these actions was undertaken in consultation with, and consistent with advice provided by, the APSC.

A recent FOI decision stated that no vacancy notifications or job applications could be located relating to a number of National Judicial Registrar appointments, including Phillip Allaway?

As detailed in the response to the previous question, there was no vacancy notifications or job applications related to these National Judicial Registrar appointments, because the ‘National Judicial Registrar’ roles came to be filled through assignment of duties at level under section 25 of the *Public Service Act 1999*, or via other publicly advertised merit based processes that were deemed similar in nature and at the same classification. Each of these actions was undertaken in consultation with, and consistent with advice provided by, the APSC.

Is there a process within the Federal Court for assessing applications for re-classification? Has that process been followed for all reclassifications made in the past 5 years?

The Federal Court utilises the APSC’s Role Evaluation process to determine the appropriate classification for new or substantially different existing positions. The decision to allocate a classification is made by the Agency Head, or Delegate, as per section 6(1) of the *Public Service Classification Rules 2000*. The Federal Court has followed this process for all reclassifications in the past 5 years.