

Question on notice no. 199

Portfolio question number: AE24-217

2023-24 Additional estimates

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

Senator David Shoebridge: asked the Federal Court of Australia on 26 February 2024—

- (1. Regarding the decision to engage Mr B, what processes or investigations are currently being undertaken?
2. Is it true that Mr B was provided with his contract of employment, by a member of the selection committee considering applications for the National Registrar role he was selected to fill, 28 days before the selection committee had made a formal decision on 5 October 2018?
3. Is it true that Mr B was provided with his contract of employment, by a member of the selection committee considering applications for the National Registrar role he was selected to fill, 28 days before the Agency Head's delegate endorsed the selection committee's decision selecting Mr B as a successful candidate for a National Registrar role on 5 October 2018?
4. Who was the Agency Head's delegate who endorsed the selection committee's decision selecting Mr B as a successful candidate for a National Registrar role on 5 October 2018?
5. Is it true that, at the time he was selected as the successful candidate for a National Registrar role on 5 October 2018, Mr B has not been admitted as a practitioner of the Supreme Court of a State or Territory, or the High Court of Australia?
6. When was Mr B first admitted as a practitioner of the Supreme Court of a State or Territory, or of the High Court of Australia?
7. When was Mr B first directed to exercise powers of the Federal Court of Australia pursuant to a direction by a judge under section 35A of the Federal Court of Australia Act 1976 (Cth) ?
8. Is it true, as reported in an article in The Australian in May 2023, that two of three members of the selection committee that selected Mr B - David Pringle and Andrea Jarrat - exchanged email correspondence, after they had selected Mr B as a National Registrar, advertng to or in any way discussing Mr B's completion of a practical legal training course?
9. Is it true, as reported in an article in The Australian in February 2022, that senior administrators in the Federal Court of Australia raised concerns about Mr B's lack of legal experience with either or both of Andrea Jarrat or Sia Lagos in February 2019?
10. Is it true that, in response to his claim about his "demonstrated knowledge of the Federal Court's jurisdiction, practices and procedures, or the ability to acquire such knowledge quickly and the ability to interpret and apply rules and regulations", Mr B commenced his response with "It was my paralegal role ... where I first acquired a heightened understanding of the Federal Court's jurisdiction and procedure, albeit in family law"?

11. Is it true that Mr B's supervisor, at the time that Mr B applied for the National Registrar role and at the time the he was interviewed for the role, was David Pringle, a member of the selection panel?

12. In an article published in The Australian on 8 February 2022, the authors of the article advert to an applicant who was not selected for the National Registrar role given to Mr B despite the fact that she was "a lawyer who had been a litigator since 1994 specialising in Federal Court matters" and that "she had previously been a deputy district registrar with the court, lectured at the University of NSW and had published several books about Federal Court litigation." Is the lawyer in question Dr Natalie Cujes, a former deputy district registrar of the Federal Court and a noted expert on the subject of the Federal Court's jurisdiction and procedures?

13. In the light of all evidence available to the Federal Court, will the Chief Executive and Principal Registrar assure the Legal and Constitutional Affairs committee that the decision made by Sia Lagos, David Pringle and Andrea Jarrat on 5 October 2018 to select Mr B as National Registrar was a merit-based selection decision, in conformity with the requirements of the Public Service Act 1999 (Cth) and the prevailing version of the Australian Public Service Commissioner's Directions?

Answer —

Please see the attached answer.

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

ATTORNEY-GENERAL'S PORTFOLIO

ADDITIONAL ESTIMATES 2023-2024

PA-Federal Court of Australia

AE24-217 - National Registrar - Mr B

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12. In an article published in The Australian on 8 February 2022, the authors of the article advert to an applicant who was not selected for the National Registrar role given to Mr B despite the

fact that she was "a lawyer who had been a litigator since 1994 specialising in Federal Court matters" and that "she had previously been a deputy district registrar with the court, lectured at the University of NSW and had published several books about Federal Court litigation." Is the lawyer in question Dr Natalie Cujes, a former deputy district registrar of the Federal Court and a noted expert on the subject of the Federal Court's jurisdiction and procedures?

13. In the light of all evidence available to the Federal Court, will the Chief Executive and Principal Registrar assure the Legal and Constitutional Affairs committee that the decision made by Sia Lagos, David Pringle and Andrea Jarratt on 5 October 2018 to select Mr B as National Registrar was a merit-based selection decision, in conformity with the requirements of the Public Service Act 1999 (Cth) and the prevailing version of the Australian Public Service Commissioner's Directions?

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

1. There are no processes or investigations currently being undertaken. The Australian Public Service Commission (the APSC) conducted an investigation under the *Public Interest Disclosure Act 2013* (Cth) into the relevant recruitment process, which was concluded in 2020.

2. On 22 August 2018, Ms Sia Lagos (as chair of the selection panel) provided the former Chief Justice, and the former CEO and Principal Registrar (Mr Warwick Soden) with the selection panel's recommendations regarding appointments to a number of National Registrar roles.

On 3 September 2018, Mr Soden accepted the recommendation of the selection panel and gave instructions for offers to be made to a number of successful candidates, including Mr B.

In accordance with Mr Soden's instructions, the Court's People and Culture team who supported the management of this recruitment exercise, prepared documentation for the engagement of a number of National Registrars. The documentation was signed by the Director, National Operations (Ms Andrea Jarratt).

On 7 September 2018 Mr B was sent an offer of engagement by the Court's People and Culture team, that upon signing equated to his contract of employment. The offer of engagement was accepted on 19 September 2018.

On 5 October 2018, the selection report was signed by the members of the selection panel.

3. See answer to Question 2 above.

4. At the time, the Agency Head was Mr Soden.

The selection report was signed by the Agency Head's delegate on 5 October 2018. The Agency Head's delegate was, at that time, the Principal Judicial Registrar and National Operations Registrar (Ms Sia Lagos).

5. Yes. Mr B had a law degree but had not yet been admitted, and as noted by the APSC there was a clear pathway to eligibility to Mr B's admission within a reasonable time after the recruitment process.

6. Mr B was admitted as a solicitor of the Supreme Court of New South Wales on 8 February 2019.

7. Mr B was appointed as a Registrar on 21 February 2019 to perform the National Registrar role.

The former Chief Justice made a relevant direction under section 35A of the *Federal Court of Australia Act 1976* (Cth) on 27 February 2019. It should be noted, however, that this is not a direction ‘to exercise’ powers – rather, it provides that certain powers ‘may’ be exercised by a Registrar.

The first occasion identified by the Court that Mr B exercised a power delegated to him as a Registrar of the Federal Court was not until 2 December 2020 – 21 months after being sworn in and delegated those powers.

By way of further clarification, the Court’s established practice is that the delegation of powers by the Chief Justice or judge follows proximately upon the formal appointment of a Registrar. At the relevant time the Court had (and continues to have) a work structure and allocation process for ensuring that:

- a) powers are only exercised after appropriate induction and training, including supervision by senior and experienced registrars; and
- b) the permitted exercise of delegated powers is managed through administrative processes that restrict the exercise of different powers by registrars commensurate with their seniority and experience.

The duties initially performed by Mr B upon appointment and delegation were at the most junior registrar level, predominantly concerned with internal administrative processes for the allocation (under supervision and guidance) of registrar and judicial workload. The administrative nature of those duties did not give rise to circumstances in which delegated judicial powers would be exercised.

8. Yes, in the context of the timing of Mr B’s admission.

9. Yes, in the context of whether Mr B would exercise all the delegated powers of a Registrar.

10. Yes, immediately preceding a further 13 sentences within which Mr B directly addressed his knowledge of the Federal Court’s jurisdiction, practices and procedures or ability to acquire such knowledge.

11. Yes. This circumstance is routine in the public service given that internal applicants often apply for advertised roles, and was not the subject of any adverse finding by the APSC.

12. The Court notes that any decision to apply as part of a recruitment process, and information disclosed for that recruitment purpose, is necessarily confidential. It would be inappropriate for the Court to disclose personal information about candidates for a recruitment process.

13. It is noted at the outset that the named members of the selection panel did not make ‘the decision ... on 5 October 2018 to select Mr B as National Registrar’. On 22 August 2018, the selection panel provided a recommendation to Mr Soden, the former CEO and Principal Registrar. On 3 September 2018, Mr Soden accepted the recommendation of the selection panel and gave instructions for offers to be made to a number of successful candidates, including Mr B.

The selection of Mr B was a merit-based selection decision in conformity with the requirements of the *Public Service Act 1999* (Cth) and the prevailing version of the APSC’s Directions. However, it is acknowledged that an improved process could have been followed, as recommended by the APSC as outlined below, and that was adopted for future exercises.

By way of further clarification, the APSC conducted an investigation under the *Public Interest Disclosure Act 2013* (Cth) into the recruitment process of Mr B. It was satisfied that the allegations of disclosable conduct concerning the recruitment process of Mr B was not substantiated. However, the APSC stated that as a matter of best practice it may have been advisable for the selection panel to more explicitly record the reason for shortlisting, interviewing and selecting such a candidate. The APSC reiterated a recommendation that Court staff be provided with guidance and/or training about the APS Employment Principles prior to undertaking any recruitment action.