

**Senate Standing Committee on Education Employment and Workplace
Relations**

**QUESTIONS ON NOTICE
Additional Estimates 2011-2012**

Outcome 5 - Workplace Relations & Economic Strategy

DEEWR Question No. EW1017_12

Senator Ronaldson provided in writing.

Question

Appointing of acting Fair Work General Manager

According to the Department's written answer to Question No.EW0726_12: The Department recommended to the Minister that Ms Bernadette O'Neill was a suitable candidate for appointment as Acting General Manager of Fair Work Australia by virtue of her qualifications and broad range of experience in industrial relations. The recommendation was made following discussions with the President of Fair Work Australia and potential appointees. Was the Department aware before 2 September 2011 that Tim Lee would be vacating the role of General Manager? - Did Mr Lee leave as general manager immediately thereafter? - How much time was the Department given to recommend an acting General Manager? - What process did the Department go through to select an acting General Manager? Was the position advertised? If so, when and by what means? If not, why not? - Who from the Department signed off on the recommendation? - How long did/does the Department envision that Ms O'Neill would be acting in the capacity of General Manager? - Was Ms O'Neill known to the President of Fair Work Australia (Justice Giudice) prior to her appointment? - Who recommended Ms O'Neill to the President? - Did the Department put forward Ms O'Neill with the approval and/or recommendation of the President? - Answer EW0726_12 states that 'The recommendation [to appoint Ms O'Neill] was made following discussions with the President of Fair Work Australia and potential appointees' – who were the potential appointees? - Including Ms O'Neill, how many of 'potential appointees' were there? - Did the Department present a shortlist of applicants to the Minister in addition to the recommendation that Ms O'Neill be appointed?

Answer

The department was aware that Mr Lee would resign as General Manager of FWA following his appointment as a Commissioner of FWA. It was expected that Mr Lee would advise of his resignation as General Manager FWA following Executive Council consideration of his nomination on 1 September 2011 but before his appointment as a Commissioner took effect on 8 September. Mr Lee wrote to the Governor-General on 5 September 2011 advising of his resignation with effect from 7 September 2011.

While the department was not given a specific timeframe within which to make an acting appointment, it was considered desirable that an acting appointment be made to coincide with Mr Lee's resignation to ensure continuity of FWA operations.

The position of acting General Manager was not advertised, as it was intended that there be a short term acting appointment while the position was advertised for a substantive appointment. The Australian Public Service Commission guidelines for merit-based selection of statutory office holders do not apply for short-term acting appointments. As required by the *Fair Work Act 2009*, the President was consulted prior to the appointment of the acting General Manager. Those discussions with the President identified two candidates from within FWA considered suitable for appointment as acting General Manager. Both individuals were subsequently contacted to ascertain their preparedness to act in the position of General Manager pending a substantive merit-based appointment. Only one individual, Ms O'Neill, indicated preparedness to do so. The President was again consulted prior to the recommendation to appoint Ms O'Neill as acting General Manager being provided to the Minister, and the President advised that he had no objection to such an appointment.

Ms O'Neill was initially appointed as acting General Manager for a 3 month period, subsequently extended to 12 months, pending the completion of a merit-based selection process to make a substantive appointment. Following completion of that process Ms O'Neill was appointed to the position of General Manager on 8 March 2012.