

3.1 Australia: Australian Human Rights Commission (AHRC)

Decision: The SCA decides that further consideration of the re-accreditation application of the AHRC will be **deferred** for 18 months (or three sessions).

While the SCA acknowledges the efforts made by the AHRC to address the previous recommendations made both through its advocacy and activities since its last review in 2016, the SCA notes that the progress made on its previous recommendation on selection and appointment has not fully addressed the SCA's previous recommendations.

The SCA encourages the AHRC to continue its efforts to promote and protect all human rights, and to continue to strengthen its institutional framework and effectiveness in line with the recommendations below.

The AHRC is encouraged to continue to actively engage with the OHCHR, GANHRI, APF, other NHRIs, as well as relevant stakeholders at international, regional, and national levels, in particular, in order to continue strengthening their institutional framework and working methods.

The SCA decided to defer consideration of the AHRC on the following grounds. The SCA encourages the AHRC to take the actions necessary to address these issues and to provide further information and evidence, as required:

1. Selection and appointment

The Australian Human Rights Commission Act (AHRC Act) and the Anti-Discrimination Acts provide that the Governor-General appoints AHRC members. The AHRC reports that, by convention, the Governor-General usually makes appointments to the AHRC on the basis of advice from the Executive Council, which is a body established by the Australian Constitution and comprises some or all members of the Cabinet.

The SCA notes that some merit-based criteria are provided in the relevant enabling laws, and that the process for the assessment of candidates is specified in the 'Government's Merit and Transparency Policy' of the Australian Public Service Commission (APSC). The APSC policy includes requirements to advertise vacancies, provide detailed selection criteria, and assess candidates by a panel that includes an APSC representative, whose role is to ensure that the process is in accordance with the policy. On the completion of the assessment process, the panel determines a pool of suitable candidates and provides a report to the APSC Commissioner for endorsement and transmission to the Attorney-General. Subsequently, the Attorney-General seeks the Prime Minister's approval for the appointment of the candidate by the Governor-General as AHRC President or Commissioner.

The SCA notes, however, that the APSC policy provides for circumstances where the Attorney-General may consider that a full selection process is not required. This includes where there is an urgent requirement to fill a position, as was the case for the Disability Discrimination Commissioner in 2019. It is also relevant in relation to the availability of an eminent person 'where there would be little value in conducting a selection process', as was the case for the Human Rights Commissioner in 2021. In this respect, the SCA reiterates its

2016 concern that such appointments have the potential to bring into question the legitimacy of the appointees and the independence of the NHRI. The SCA reiterates that it is critically important to ensure the formalization of a clear, transparent, and participatory selection and appointment process for an NHRI's decision-making body, and the application of the established process in all cases.

The SCA notes that the AHRC has advocated for changes to the selection process to ensure compliance with the Paris Principles, and calls on it to continue to advocate for such changes. The SCA also notes that the Attorney-General has recently written to the AHRC advising that future appointments of Commissioners will be openly advertised. However, the SCA is not satisfied that the commitment from the Attorney-General is sufficient to indicate that full compliance with the Paris Principles standards on selection and appointment will be forthcoming, either in terms of amendments to the existing process or future appointments in practice.

The SCA encourages the AHRC to continue to advocate for a selection process in law and practice that includes explicit requirements to:

- a) Publicize vacancies broadly;
- b) Maximize the number of potential candidates from a wide range of societal groups;
- c) Promote broad consultation and/or participation in the application, screening, selection and appointment process;
- d) Assess applicants on the basis of pre-determined, objective and publicly available criteria; and
- e) Select members to serve in their own individual capacity rather than on behalf of the organization they represent.

The SCA refers to Paris Principle B.1 and to its General Observation 1.8 on 'Selection and appointment of the decision-making body of NHRIs'.

The SCA notes the following additional issues, which were not grounds for deferral, but were considered relevant to accreditation.

2. Term of office

The AHRC Act and the Anti-Discrimination Acts provide that members are eligible for reappointment. The SCA notes that the law is silent on the number of times a member can be reappointed, which leaves open the possibility of unlimited tenure.

In order to promote institutional independence, the SCA is of the view that it would be preferable for the term of office to be limited to one reappointment.

The SCA encourages the AHRC to continue to advocate for amendments to its enabling legislation to provide for such limits on the term of office.

The SCA refers to Paris Principle B.3 and to its General Observation 2.2 on 'Full-time members of an NHRI'.

3. Mandate

The SCA continues to note that the AHRC Act does not include explicit references to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) or the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

The SCA acknowledges that the AHRC interprets its mandate to encompass all human rights. The Paris Principles require that an NHRI must be legislatively mandated for both the promotion and protection of all human rights. The SCA welcomes the AHRC's ongoing advocacy for the inclusion of a broad definition of human rights in the AHRC Act.

An NHRI's mandate should be interpreted in a broad, liberal, and purposive manner to promote a progressive definition of human rights, which includes all rights set out in international, regional, and domestic instruments, including economic, social, and cultural rights.

The SCA encourages the AHRC to continue broadly interpreting its mandate and advocating for amendment within the AHRC Act to include all core human rights treaties ratified by Australia.

The SCA refers to Paris Principles A.1, A.2, and A.3, and to its General Observation 1.2 on 'Human rights mandate'.

4. Adequate funding

The SCA notes that the AHRC has raised concerns regarding the sustainability of its funding base and specific challenges in the past 12 months concerning cash flow and operations. The AHRC reports that it has faced significant challenges in this regard, including:

- The appointment of two Commissioners without additional funding being provided (in particular, funding was removed for the Disability Discrimination Commissioner in 2014, and was not restored when appointments to this role were made in 2016 and 2019; funding was not provided when the Human Rights Commissioner was appointed in 2016, and is yet to be confirmed following the appointment of a Human Rights Commissioner in 2021);
- A sustained increase in complaints of discrimination and human rights violations without dedicated additional funding;
- A substantial increase in complaints during the COVID-19 pandemic, with no additional funding support; and
- No general increase in the AHRC overall budget, requiring increased property and staffing costs to be met through the existing appropriation.

The SCA emphasizes that, to function effectively, an NHRI must be provided with an appropriate level of funding in order to guarantee its ability to freely determine its priorities and activities. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realization of improvement in the NHRI's operations and the fulfilment of its mandate.

Provision of adequate funding by the State should, at a minimum, include the following:

- a) The allocation of funds for premises, which are accessible to the wider community, including for persons with disabilities. In certain circumstances, in order to promote independence and accessibility, this may require that offices are not co-located with government agencies. Where possible, accessibility should be further enhanced by establishing a permanent regional presence;
- b) Salaries and benefits awarded to staff comparable to those of civil servants performing similar tasks in other independent institutions of the State;
- c) Remuneration of members of the decision-making body (where appropriate);
- d) The establishment of a well-functioning communications system including telephone and internet; and
- e) The allocation of a sufficient amount of resources for mandated activities. Where the NHRI has been designated with additional responsibilities by the State, additional financial resources should be provided to enable it to assume the responsibilities of discharging these functions.

The SCA encourages the AHRC to continue to advocate for an appropriate level of funding to ensure the sustainability of its funding base in carrying out its mandate.

The SCA refers to Paris Principle B.2 and to its General Observation 1.10 on 'Adequate funding'.