



1 August 2022

Australian Human Rights Commission Legislation Amendment (Selection and Appointment) Bill 2022: AHRC Background Briefing Note

Background

1. On Wednesday 27 July 2022, the Attorney-General, the Hon Mark Dreyfus MP, introduced to Parliament the Australian Human Rights Commission Legislation Amendment (Selection and Appointment) Bill 2022 (Bill). The [Bill](#) proposes amendments to address concerns about the rigour of the selection and appointment process of Commissioners.
2. This background Briefing Note emphasises the importance of the Bill for the Commission's institutional independence, legitimacy and international credibility. In particular, it details the international accreditation issues that have arisen due to the deficiencies in the existing legislative model for appointments of Commissioners and the urgent need for Parliament to address them.
3. **The Australian Human Rights Commission (Commission) has long advocated for these reforms to strengthen the integrity and independence of the Commission and unreservedly supports the passage of the Bill and the proposal for accompanying guidelines.**

Overview of the Bill

4. The Bill requires that appointments to the Commission are made through a merit-based and transparent process that is publicly advertised.¹ This removes the possibility of direct appointments to the Commission.
5. The Bill also amends the relevant Acts to clarify that the maximum term of appointment for the President and Commissioners is 7 years, including any reappointments. The existing legislation is ambiguous and potentially has no limits on length of tenure.
6. The Bill will also ensure the qualification requirements for Commissioners are consistent across the relevant Acts, by inserting a provision requiring the person to have appropriate qualifications, knowledge or experience. This provision is currently included legislatively for only 6 of the 8 statutory positions of the Commission.

¹ This is done by amending the *Australian Human Rights Commission Act 1986* (Cth), *Age Discrimination Act 2004* (Cth), *Disability Discrimination Act 1992* (Cth), *Racial Discrimination Act 1975* (Cth) and *Sex Discrimination Act 1984* (Cth).

7. The Attorney-General has indicated that the legislative provisions will be supported by [comprehensive policy guidelines](#), to provide further guidance on the conduct of merit-based selection processes.

Why is the Bill necessary?

8. The existing legislation is not sufficient to support the legitimacy of the Commission, as it does not require all statutory appointments to be conducted through robust, merit-based processes. This affects public confidence and trust in the Commission and its appointed Commissioners.
9. The existing legislation has been criticised by the [Global Alliance of National Human Rights Institutions \(GANHRI\)](#) for several years. It has now put Australia on notice that the Commission is at risk of being downgraded to a 'B status' National Human Rights Institution (NHRI) if the provisions are not amended by October 2023.
10. The Bill will support the Commission's reaccreditation as an 'A status' NHRI, which is essential to its institutional independence, legitimacy and international credibility.

What is an 'A status' National Human Rights Institution?

11. National Human Rights Institutions in countries around the world promote and monitor the effective implementation of international human rights standards at the national level. To operate with the necessary level of institutional independence and credibility, NHRIs are rated against the standards for independence of NHRIs known as the '[Paris Principles](#)'.²
12. GANHRI, through the [Sub-Committee on Accreditation](#) (SCA), is responsible for accrediting NHRIs in terms of compliance with the Paris Principles.³ Institutions accredited with 'A status' are those that fully comply with these Principles. 'B status' institutions are those that only partially comply.

Why is an 'A status' NHRI important for Australia?

13. Advocating for all nations to establish and maintain A status NHRIs has been a key pillar of the Australian Government's own foreign policy for many decades, including by Australia's leading the resolutions in the UN General Assembly and UN Human Rights Council on the importance of such institutions. It was one of the five pillars of the [Australian Government's voluntary commitments](#) when seeking membership of the UN Human Rights Council and is a key signifier of Australia's commitment to human rights, democracy and the rule of law. A downgrade in status of Australia's NHRI would have a marked impact on Australia's standing as a leader in human rights internationally and in our own region.
14. The Department of Foreign Affairs and Trade has emphasised the importance of the Commission's international engagement to Australia's foreign policy priority of advancing human rights globally, including the Commission's role with UN reporting processes as an A status institution. The Australian Government's work with, and

² United Nations General Assembly Principles relating to the Status of National Institutions, UN General Assembly Resolution 48/134, 20 December 1993 (Paris Principles).

³ Information about the accreditation process and the SCA is available here: <https://ganhri.org/accreditation/>.

accommodation of, an independent NHRI is the most powerful example Australia can provide to other countries to advance global human rights.

15. A downgrade to B status would mean that the Commission will lose participation rights in UN fora – such as human rights treaty committees, the UN Human Rights Council, its subsidiary bodies and some General Assembly bodies and mechanisms. This would likely be a significant focal point for international criticism in UN treaty body reviews, the Universal Periodic Review and the UN Human Rights Council.

The Commission's A status accreditation review

16. The Commission underwent its 5 yearly accreditation review as an A status NHRI in March 2022. On 29 March 2022, the [SCA deferred](#) its review of the Commission for 18 months (or three sessions) on the basis that Australia's appointment process for Commissioners did not comply with the Paris Principles. While the SCA noted that the then Attorney-General had undertaken that future appointments of Commissioners would be openly advertised, the absence of a legislative requirement to this effect did not address the SCA's concerns.
17. The 2022 report reflects feedback from the SCA over a 10-year period about Australia's appointment process under the Commission's enabling legislation, as well as how appointments have been made in practice. Three appointments in this timeframe did not meet the accreditation standards.
18. As set out in the SCA's [Practice Note 1 on Deferrals](#), the review of an NHRI may be deferred where there are serious concerns of non-compliance. The deferral is to provide time for the NHRI and its government to address these concerns.
19. A final decision on the Commission's status is to be taken by the Committee in **October 2023**. The Commission will be required to provide a written submission to the SCA on **1 June 2023** indicating whether the concerns raised by the SCA have been addressed or not.

The appointment and selection process

20. The current process for appointment and selection of Commissioners and the President is conducted in accordance with the Australian Public Service Commission's [Government's Merit and Transparency Policy](#) – which includes Guidelines for the selection of all statutory office holders.
21. The APSC Guidelines are not sufficient to meet the Paris Principles requirements for a clear, transparent, merit-based and participatory selection and appointment process, that is formalised in relevant legislation, regulations or binding administrative guidelines.⁴

⁴ SCA [General Observation 1.8 on Selection and Appointment](#) includes requirements to: Publicise vacancies broadly; Maximise the number of potential candidates from a wide range of societal groups; Promote broad consultation and/or participation in the application, screening, selection and appointment process; Assess applicants on the basis of pre-determined, objective and publicly available criteria; Select members to serve in their own individual capacity rather than on behalf of the organisation they represent.

22. The APSC Guidelines also breach the Paris Principles requirements by allowing for appointments to be made without publicly advertised processes in exceptional circumstances.⁵
23. There are two Commissioners who will complete seven-year terms in 2023: the Sex Discrimination Commissioner and the Age Discrimination Commissioner. Evidence of publicly advertised, merit-based selection processes being utilised for each of these future appointments, and the legislative and policy basis to underpin them, will be of crucial importance in the 2023 accreditation review.
24. **The Australian Human Rights Commission has advocated for these reforms for some time and unreservedly supports the passage of the Bill as a priority.**

Yours sincerely

A handwritten signature in black ink that reads "Rosalind Croucher". The signature is written in a cursive, flowing style.

Emeritus Professor Rosalind Croucher AM
President

⁵ The APSC Guidelines provide for circumstances where the Attorney-General may consider that a full merit-based selection process is not required, such as: (a) where there is an urgent requirement to fill a position; (b) the availability of an eminent person 'where there would be little value in conducting a selection process'; (c) where there is another office holder at a similar level that the Prime Minister considers should be appointed to the position.