

**1a. Please provide a brief overview of the legislative framework adopted to establish a National Human Rights Institution (hereafter 'the Institution') in your country. Please cite the names of any such laws or regulations in full.**

The Australian Human Rights Commission (the Commission) is Australia's independent national human rights institution that is charged with promoting and protecting human rights and addressing discrimination.

The *Australian Human Rights Commission Act 1986* (AHRC Act), establishes the Australian Human Rights Commission and sets out the functions and powers of the Commission. The Commission is an independent statutory organisation and reports to the federal Parliament.

The Commission is responsible for administering the following Acts:

- *Australian Human Rights Commission Act 1986*
- *Racial Discrimination Act 1975*
- *Sex Discrimination Act 1984*
- *Disability Discrimination Act 1992*, and
- *Age Discrimination Act 2004*.

Functions under these Acts are vested in the Commission, individual members and the President as Chief Executive Officer or the Attorney-General.

The Commission's statutory responsibilities include:

- education and public awareness
- investigation and conciliation of discrimination and human rights complaints
- human rights compliance, and
- policy and legislative development.

**1b. Please indicate how these laws and regulations comply with international human rights standards, and in particular, the Paris Principles.**

The Commission currently holds A status accreditation with the International Coordination Committee of National Human Rights Institutions.

*Clearly defined and broad based mandate*

The Commission has a clearly defined and broad-based mandate, based on universal human rights standards.

'Human rights' are defined in section 3 of the AHRC Act. Human rights are defined as the rights and freedoms contained in specific international instruments that are scheduled to, or declared under, the AHRC Act. These instruments are:

- International Covenant on Civil and Political Rights
- Convention on the Rights of Persons with Disabilities
- Convention on the Rights of the Child
- Declaration of the Rights of the Child
- Declaration on the Rights of Disabled Persons
- Declaration on the Rights of Mentally Retarded Persons
- Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.

Human rights are separately defined in relation to the functions of the Social Justice Commissioner and include the above instruments as well as the Convention on the Elimination of All Forms of Racial Discrimination.

The Commission has human rights jurisdiction over the Australian Government (with the exception of the Australian intelligence agencies).

*Pluralism*

The Constitution of the Commission is defined in section 8 of the AHRC Act to be the President and seven specialist Commissioners. The specialist Commissioners must have appropriate qualifications, knowledge and experience that contribute to a diverse composition. The professional backgrounds of the members include NGOs, the legal profession, academics and Parliament.

The Commission's members currently include: four women and two men, a Commissioner with a disability and who has significant experience in disability advocacy and a Commissioner who is an Indigenous Australian and has extensive experience in Indigenous affairs.

The Commission has a Workplace Diversity Program in place to encourage pluralistic staff composition. The present staff is made up of: women (81.0%), Indigenous people

(4.5%), people with disabilities (3.1%), aged below 25 (5.5%), of median age (33.0%) and non-English speaking background (12.0%).

#### *Adequate resources*

Of the Commission's total funding, 94% comes from the Australian Government. The funding is secure, sufficient to allow for independent staff and separate premises, is not subject to financial control which might affect independence and is separate from the Attorney-General's Department budget.

#### *Autonomy and independence*

The Commission is an independent statutory authority and can decide what issues to cover and how they are addressed, as long as the issues and methodologies fall within the Commission's legislative jurisdiction and functions.

The Commission is answerable to the Parliament of Australia. The Attorney-General is the Commission's representative in Parliament but he or she has no choice about whether to table the Commission's reports in Parliament and also cannot change the content of the reports to be tabled in Parliament.

Formal appointment processes for the President and each Commissioner are specified under the AHRC Act and the four discrimination Acts (as applicable). Appointments are for specific duration (up to seven years, usually five years) and may be renewed. A member's mandate and terms and conditions are specified in the instrument of appointment. Grounds for dismissal are clearly defined in the founding law and an independent procedure for dismissal is specified in the founding law.

A member's independence is specified in the founding law. Members are protected against legal liability for actions taken in good faith in their official capacity.

Members of the Commission meet formally every 6-8 weeks and informally every fortnight.

#### *Adequate powers of investigation*

Under the AHRC Act, the Commission can:

- receive and investigate complaints
- conduct human rights inquiries on its own initiative
- in some circumstances compel the provision of information from any person necessary for assessing situations falling within its competence
- obtain any information and any document necessary for assessing situations falling within its competence
- visit and enter places of detention
- make recommendations to the competent authorities

- receive and investigate complaints alleging victimisation, including complaints from witnesses who have provided information to the Commission
- recommend compensation, and
- intervene or assist in court proceedings relation to human rights (with leave of the court).

**2a. Please provide details outlining the mandate adopted by the Institution in relation to the protection and promotion of human rights in accordance with the range of competencies and responsibilities specified in the Paris Principles.**

The Commission's mandate is to protect and promote human rights. This is evident from the Commission's statutory responsibilities under the AHRC Act:

- education and public awareness
- discrimination and human rights complaints
- human rights compliance
- policy and legislative development.

The Commission's mandate is based on international human rights standards as outlined in 1b.

The Commission can make recommendations to the Government, Parliament and any other competent body on matters concerning proposed legislative or administrative provisions and amendment of existing legislation.

The Commission can report without restriction on the national human rights situation or on more specific matters, either directly (to the Government, Parliament and concerned authorities) or through annual or thematic reports. The Commission can also report without restriction on any violation of human rights it decides to take up. The Commission can publicise its opinions, recommendations and reports. Under section 46 of the AHRC Act, the Attorney must table in Parliament all reports from the Commission in relation to inquiries under the Act. The Commission is also required to prepare an annual report under the AHRC Act.

The Commission can promote and advocate for:

- the harmonisation of national laws and practices with the international instruments to which Australia is a party
- implementation of recommendations of international human rights mechanisms to which Australia is a party, and
- ratification of international human rights instruments.

The Commission can engage with the international human rights system by:

- contributing to Australia's periodic treaty body reports
- expressing an opinion on Australia's reports to the UN treaty bodies, and

- cooperating with the UN and any other organisation in the UN systems, regional institutions and NHRIs of other countries.

The Commission can be involved in education and awareness-raising by:

- assisting in the formulation and implementation of programs for teaching and researching human rights, and
- carrying out public awareness activities (especially through education initiatives and by making use of the press).

As per section 15 of the AHRC Act, the Commission may work with and consult appropriate persons, governmental organisations and non-governmental organisations.

**2b. Please indicate whether the Institution is mandated to consider and/or adjudicate individual complaints of human rights violations.**

Under the current AHRC Act, the Commission can investigate and resolve complaints of discrimination, harassment and bullying based on a person's:

- sex, including pregnancy, marital status, breastfeeding, family responsibilities and sexual harassment
- disability, including temporary and permanent disabilities; physical, intellectual, sensory, psychiatric disabilities, diseases or illnesses; medical conditions; work related injuries; past, present and future disabilities; and association with a person with a disability
- race, including colour, descent, national or ethnic origin, immigrant status and racial hatred
- age, covering young people and older people
- sexual preference, criminal record, trade union activity, political opinion, religion or social origin (in employment only)

The Commission can also investigate and resolve complaints about alleged breaches of human rights against the Australian Government and its agencies. The definition of human rights is discussed in 1b.

**2c. If relevant, please indicate whether the mandate is limited to specific rights or whether complaints against the Government, the police and/or the military are permitted and how they are dealt with.**

The Commission can only investigate and resolve complaints of unlawful discrimination regarding the attributes listed in 2b.

People can make complaints to the Commission about breaches of human rights by the Australian Government or one of its agencies (including the Australian Federal Police

and the Australian Defence Force but not the Australian intelligence agencies). The definition of human rights is discussed in 1b.

Complaints to the Commission can be resolved through conciliation. Complaint outcomes can include an apology, reinstatement to a job, compensation for lost wages or injury to feelings, changes to a policy or developing and promoting anti-discrimination policies or training.

Complaints against State and Territory Governments and State and Territory police forces are not within the Commission's jurisdiction but are available under legislation in the relevant State or Territory.

**2d. In this regard, please indicate whether the Institution is empowered to carry out protection related functions including providing remedies to victims of human rights violations, witness protection mechanisms and conducting visits to detention facilities.**

The Commission can recommend compensation for victims of human rights violations. Complaint outcomes can include an apology, reinstatement to a job, compensation for lost wages or injury to feelings, changes to a policy or developing and promoting anti-discrimination policies or training.

The Commission has powers in relation to the protection of witnesses from victimisation. Victimisation of complainants or people providing information to the Commission is a criminal offence under the AHRC Act. Under the AHRC Act, the Commission may give directions prohibiting the disclosure of the identity of any person who has made a complaint or provides information to the Commission if the Commission believes it is necessary to protect their security of employment, privacy or human rights.

The Commission is able to visit and enter places of detention including prisons and places of confinement (ie mental health facilities, privately run institutions, facilities for housing children).

**3a. Please indicate what specific activities and programmes the Institution carries out in relation to the protection of human rights defenders.**

Under the AHRC Act the Commission has the authority to investigate and try to resolve through conciliation complaints from people who allege that they have been victimised because they have made a complaint to the Commission; asserted rights they may have under the law administered by the Commission; provided information or documents to the Commission; or otherwise participated in the Commission's complaint handling process.

Also as outlined above, under the AHRC Act the Commission may give directions prohibiting the disclosure of the identity of any person who has made a complaint or

provides information to the Commission if the Commission believes it is necessary to protect their security of employment, privacy or human rights.

**3b. Please indicate what mechanisms, if any, are in place within the Institution to ensure that human rights defenders at risk are protected (e.g. through protection programmes, early warning systems or by submitting complaints to regional/international bodies on specific cases).**

As outlined above, under the AHRC Act the Commission has the authority to investigate and try to resolve through conciliation complaints from people who allege that they have been victimised because they have made a complaint or provided information to the Commission. Complaints alleging victimisation are taken seriously by the Commission. Where it is considered appropriate, officers of the Commission actively try to work with the parties to the complaint to resolve the situation.

In circumstances where a person is alleging that their personal safety may be at risk, staff of the Commission encourage the person to contact criminal law enforcement officers to inform them of their situation and find out what protection may be available to them under the criminal law.

As referred to above, the Commission can also give directions prohibiting the disclosure of the identity of a person if the Commission believes it is necessary to protect their security of employment, privacy or human rights.

**4a. Please indicate whether any member of the Institution's staff has ever been the victim of threats or harassment as a result of work carried out on behalf of the organisation.**

In recent years the Commission's staff have not been the victim of significant threats or harassment as a result of work carried out on behalf of the organisation.

**4b. Please specify what mechanisms, if any, are in place to protect Institution members investigating human rights violations. If applicable, please specify what mechanisms at the institutional, national, regional and international level have been employed to protect Institution members.**

It is a criminal offence under the AHRC Act for a person to hinder, obstruct, molest or interfere with a Commission member participating in an inquiry or examination under the Act. It is also an offence to hinder, obstruct, molest or interfere with a person acting for or on behalf of the Commission, while that person is holding an inquiry or carrying out an investigation under the Act.

**5a. Please indicate the main sources of funding for the Institution.**

The Commission's main source of funding is the Australian Government. For the 2012-13 financial year, the Commission received \$18.2 million from the Australian Government.

**5b. In this regard, please indicate whether any challenges exist, particularly in relation to the functional autonomy of the organisation and how this impacts on the work of the Institution.**

The ICC Sub-Committee on Accreditation made the following comment when re-accrediting the AHRC as an 'A status' national human rights institution:

'The SCA notes the Australian Government policy to apply an annual efficiency dividend to all government agencies. It expresses concern that the regular application of an efficiency dividend to the AHRC has the potential to gradually erode its base level of funding and therefore reduce its capacity to fulfil its mandate. The SCA notes that to function effectively, a national human rights commission must be provided with an appropriate level of funding and staffing in order to allow it to fulfil its mandated activities. It refers to Paris Principles B.2 and to General Observation 2.6 on "Adequate funding".'

**6a. Please describe the procedures in place relating to the selection and appointment of members of the governing body.**

As per the AHRC Act and the four discrimination Acts, Commission members are appointed by the Australia's Head of State, the Governor-General. A person must not be appointed as a specialist Commissioner unless the Attorney-General is satisfied that the person has appropriate qualifications, knowledge or experience.

The selection and appointment of members is also governed by the Australian Public Service Commission's (APSC) policy for merit-based selection of statutory office holders. The policy includes:

- minimum requirements for advertising
- oversight by the Public Service Commissioner to ensure the assessment of candidates is based on merit
- the requirement that selections are made against a core set of selection criteria, and
- the requirement that a report, endorsed by the Public Service Commissioner, be provided to the relevant Minister recommending shortlisted candidates.

**6b. Please indicate what mechanisms are in place to ensure independent scrutiny of candidates and security of tenure for members of the governing body.**

*Independent scrutiny*

As outlined in 6a, the selection and appointment of Commission members is a merit-based and transparent process.

*Security of tenure*

Members of the Commission are appointed initially for a fixed term not exceeding seven years. The APSC recommends appointments are made for five years. Members may be reappointed after the expiry of their initial term for a term up to seven years. On average, members are reappointed for terms between two to five years.