

1.2 Australian Human Rights Commission (AHRC)

Recommendation: The SCA recommends that the AHRC be re-accredited with **A** status.

The SCA acknowledges the advocacy of the AHRC for changes to its selection and appointment process to strengthen compliance with the Paris Principles. The SCA recognises that the Federal Parliament has passed the Australian Human Rights Commission Legislation Amendment (Selection and Appointment) Act 2022, which amends the AHRC's enabling legislation, to provide that all appointments for commissioners and the President must be publicly advertised and merit-based. The SCA welcomes the supplementary Policy and Guidelines on Appointments to the AHRC which further strengthens the selection process. The SCA notes that these instruments collectively address its previous concerns on the selection and appointment process.

NHRIs that have been accredited A status should take reasonable steps to enhance their effectiveness and independence, in line with the Paris Principles and the recommendations made by the SCA during this review.

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

The SCA notes:

1. Human Rights Mandate

The SCA notes that the recent amendments to the Australian Human Rights Commission Act (AHRC Act) did not address its recommendation to provide for an explicit reference 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) in the mandate of the AHRC.

The SCA notes that despite the lack of explicit reference, the AHRC considers that some rights contained in CAT and ICESCR are covered in the other human rights instruments scheduled to the AHRC Act. The SCA also acknowledges that the AHRC continues to broadly interpret its mandate to encompass all human rights and conducts work directly in relation to instruments that are not scheduled to its legislation.

The SCA notes that the AHRC has conducted research and advocacy on Australia's ratification of OPCAT, conducts immigration detention inspections, handles complaints under the AHRC Act that relate to torture, cruel, inhumane and degrading treatment and reports to Parliament on these matters.

Further, that the AHRC handles discrimination complaints and has conducted advocacy related to economic, social and cultural rights, which has included submissions to the Federal Parliament on welfare reforms, social support for children and Indigenous peoples, exploitation of peoples with disabilities, domestic and sexual violence, and mental health.

The SCA encourages the AHRC to advocate for the CAT, ICESCR and United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) to be scheduled to the AHRC Act to ensure all core international human rights instruments and standards are provided for in the

AHRC's mandate. In this context the SCA acknowledges the AHRC's recent advocacy for a national Human Rights Act.

The SCA also encourages the AHRC to continue to advocate for the Federal Government to implement the recommendations of the Commission's Free and Equal project to modernise federal discrimination laws and introduce new human rights protections. Such implementation will further strengthen the Commission's mandate to promote and protect human rights.

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

2. Adequate funding

The AHRC received an additional A\$38 million (USD 24.08 million) of Federal Government funding in October 2022 over the next 4 years, including A\$16 million (USD 10.14 million) for two new responsibilities, A\$18 million (USD 11.41 million) for core appropriation, and a one-off increase of A\$3.6 million (USD 2.28 million), to address a backlog in complaints. This is in addition to a A\$16.050 million (USD 10.17million) equity injection from Government in 2022 to restore the Commission's financial stability.

While acknowledging the additional funding the Federal Government has provided to the AHRC to address its financial situation, the SCA notes that, to function effectively, an NHRI must be provided with an appropriate level of ongoing funding in order to guarantee its independence and its ability to freely determine its priorities and activities.

The SCA recommends that the AHRC continue to advocate for an appropriate level of funding to carry out the full breadth of its mandate. Such appropriate level of funding shall ensure sufficient ongoing resources to:

- enable statutory commissioners to fulfil their mandates;
- ensure the timely handling of complaints and inquiries;
- undertake its human rights education and awareness raising functions;
- engage with communities nationally, including in regional and remote areas, and with marginalised groups and communities; and
- ensure sufficient corporate support resources, including for updated ICT infrastructure, to support these functions and outreach.

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

From: s 22
To: [All Commission](#)
Subject: Notes on a Friday [SEC=OFFICIAL]
Date: Friday, 18 March 2022 11:00:24 AM
Attachments: s 22
[image002.jpg](#)

Hello everyone,

Today I want to share a note about re-accreditation.

Re-accreditation hearing

A big issue for the Commission, and for me, this week was our appearance before the Sub-Committee on Accreditation of the international network of national human rights institutions (GANHRI – global alliance of NHRIs). You may have heard a number of us talking about this coming up over the past six months especially.

Every five years we are assessed against the set of international guidelines for independent NHRIs, known as the 'Paris Principles' (because they were agreed to at a meeting in Paris – later agreed to at a UN General Assembly meeting in 1993). NHRIs are assessed through a peer review process by a technical committee of GANHRI. 'A status' institutions are those which fully comply with the Paris Principles, and have standing in UN fora. 'B status' indicates non-compliance. Our 'A status' gives us independent standing in the various UN forums, including the treaty reporting cycles. This is a *really* big deal for NHRIs. It is also part of the international leverage used by the Government, particularly in the Asia Pacific region.

The AHRC has always maintained A status, and a downgrade would be highly embarrassing for the Australian Government and likely to cause problems for its human rights diplomacy globally.

In our 2016 review, a number of recommendations were made and we knew we were going to be assessed against these. We submitted our 'Statement of Compliance' in October last year. In anticipation of the hearing, we were provided the 16 'Issues of Concern' that the Sub-Committee was going to focus on. It felt a bit like an international Senate Estimates hearing — but with advance notice of all the likely issues for questioning.

s 22 and Leanne Smith appeared with me – with excellent Secretariat support from s 22 throughout the process.

We were *extremely* well prepared – both as to the content and as to the presentation. I wanted us to be able to appear in a row, like a Bar table in a court, or our appearances at Estimates. Between s 22 s 22 the stage management side of things was very professional indeed. I still had my large name badge from one of our remote Estimates appearances last year, which came in handy. Leanne had to appear remotely, s 22, using a Commission background. The photo at the bottom of this message shows the inhouse effect, with our pull-up logo banner behind us – in Room 1 on level 3. Two key issues we knew we would be questioned about were the appointments process and our budget. On both matters we were able to give evidence about our strong advocacy for change.

With respect to appointments, we were able to provide a letter that the Attorney-General had sent to the Commission late last week which makes an important commitment. It states:

In light of the concerns raised by GANHRI, I have asked my department for advice on this matter. In the meantime, I advise that future appointments of Commissioners will be openly advertised, including for the proposed Religious Discrimination Commissioner.

This was a big tick for our advocacy for change on this matter!

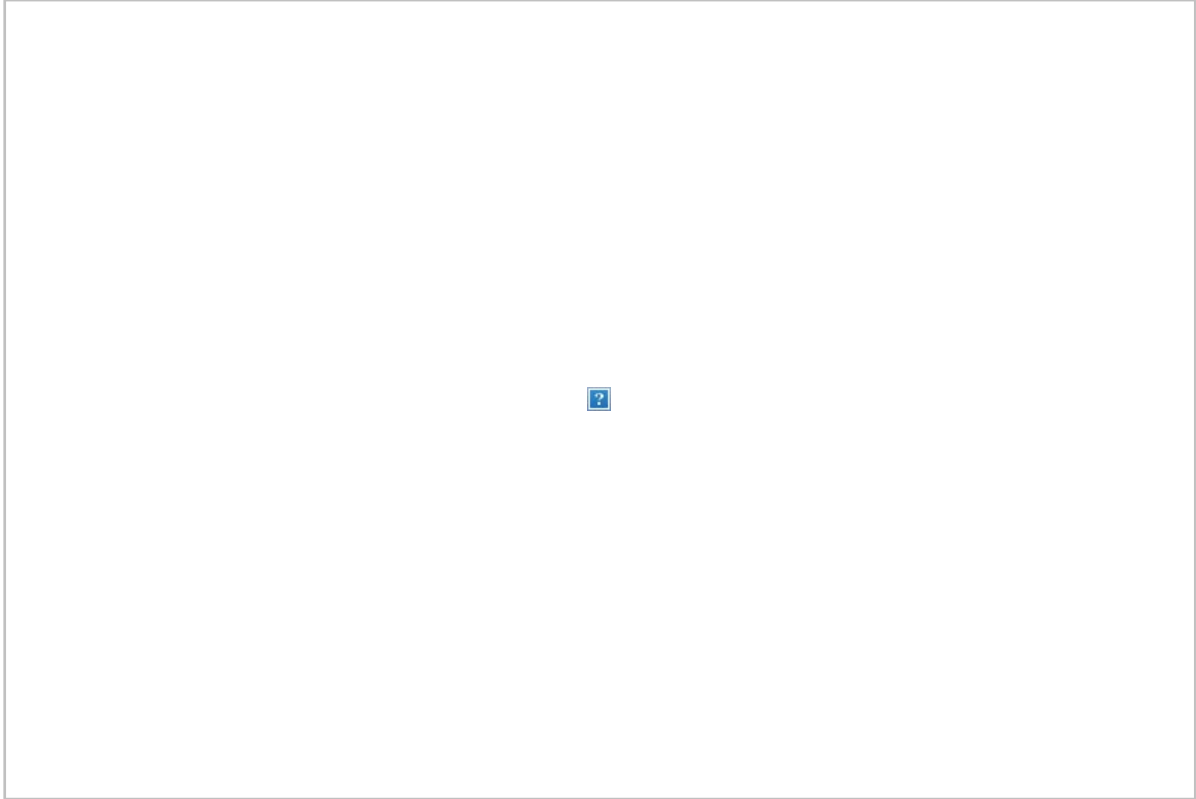
In addition, I was able to point to the demonstration of independence in office of our Human Rights Commissioner, Lorraine Finlay, particularly her advocacy in relation to OPCAT and her criticism of Government in relation to tardiness on the implementation front.

On the advocacy for an increase in our budget, I was able to speak in particular about the tri-partite committee – that Leanne and I have spoken about at staff meetings – and the opening of door we have achieved to provide the Business Case for the funding we need for functional sustainability.

We anticipate that the report of the Sub-Committee will include recommendations on both matters, among others.

Other issues raised relate to the breadth of our mandate (not including ICESCR and CAT in the schedule to our Act, where other treaties that Australia has ratified are listed) and technical matters about the operation of the AHRC Act re how our budget is allocated by government, the tabling of our Annual Report, dismissal processes for Commission Members and the length of term of Commissioner appointments. Some of these

issues were matters for clarification, others were crucial matters going to the assessment of independence. We will receive the preliminary views of the accreditation committee in about a fortnight, which will either lead to our A status being confirmed at the next GANHRI meeting or a deferral of our A status for the next 18–24 months while issues of non-compliance are addressed. Once the report is received we will organise a staff briefing session to talk through the Paris Principles, the accreditation process and the outcome for the Commission.



Best wishes to you all,

Ros

PS If you are curious about the spider brooch that I was wearing, look up 'Lady Hale and spider brooch'. For me it is symbol of institutional independence. Lady Hale wore one when delivering the judgment of the UK Supreme Court that held that PM Johnson's suspension of parliament was unlawful.

Emeritus Professor Rosalind Croucher AM

President

Australian Human Rights Commission

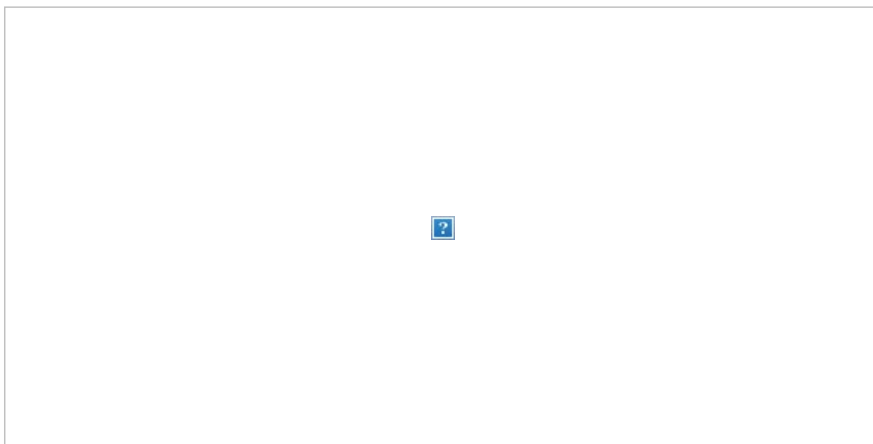
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S 22 | W www.humanrights.gov.au

Human rights: everyone, everywhere, everyday

We acknowledge the traditional custodians of this land, the Gadigal peoples of the Eora Nation, and pay our respects to their Elders, past, present and future.





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1 November 2023

Dear Emeritus Professor Rosalind Croucher,

On behalf of the Secretariat of the Global Alliance of National Human Rights Institutions (GANHRI) Sub-committee on Accreditation (SCA), I am writing to inform you of the recommendations that the SCA has made regarding the re-accreditation of your institution, which was considered at the SCA session held from 25 to 29 September 2023 and 23 to 27 October 2023.

In accordance with article 12.1 of the GANHRI Statute, your institution may challenge the recommendations by submitting a letter to the GANHRI Chairperson, through the OHCHR National Institutions and Regional Mechanisms Section, within twenty-eight (28) days from the date of this letter.

Thereafter, the recommendations will be forwarded to the members of the GANHRI Bureau for approval. If a challenge is received from your institution, the challenge, together with all relevant materials, will also be forwarded to the GANHRI Bureau. The decision of the GANHRI Bureau on accreditation will be considered final. The report will be made public following its adoption by the GANHRI Bureau.

Please direct any future correspondence on the recommendations to cynthia.radert@un.org and s 22

Yours sincerely,

Cynthia Radert

Secretary, GANHRI Sub-Committee on Accreditation
Deputy Chief, National Institutions and Regional Mechanisms Section

Emeritus Professor Rosalind Croucher
President
Australian Human Rights Commission
GPO Box 5218
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cc: Mr. Phillip Wardle, APF

All policy staff meeting

June 2023



Australian
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Commission



GANHRI re-accreditation

The Australian Human Rights Commission's compliance with Paris Principles



**Australian
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The Paris Principles

- ❖ Principles Relating to the Status of National Human Rights Institutions (Paris Principles)
- ❖ Set out international minimum standards for NHRIs to be credible and operate effectively
- ❖ **1991** - Developed at an NHRIs workshop meeting in Paris
- ❖ **June 1993** - Endorsed by the Vienna World Conference on Human Rights
- ❖ **December 1993** – Adopted by UN General Assembly
- ❖ Australia led this advocacy globally
- ❖ Key pillars: pluralism, independence and effectiveness

GANHRI accreditation

- ❖ International Coordinating Committee of institutions for the promotion and protection of human rights (ICC)
- ❖ Renamed the Global Alliance of National Human Rights Institutions (GANHRI)
- ❖ Two steps in accreditation: written statement of compliance and interview
- ❖ GANHRI, through the Sub-Committee on Accreditation (SCA) accredits NHRIs as:
 - **A status:** Fully compliant with the Paris Principles
 - **B status:** Partially compliant with the Paris Principles
- ❖ GANHRI has 120 members:
 - **88** A status NHRIs
 - **32** B status NHRIs

The Commission's accreditation

- ❖ First accredited A-status in 1993
- ❖ 2021 anticipated issues of concern:
 - 2 additional non-compliant Commissioner appointments
 - financial challenges were significantly different
- ❖ A range of factors considered by the Sub-Committee on Accreditation (SCA)
- ❖ The Commission had recommended legislative change for many years, with no action from either side of politics
- ❖ Re-accreditation process provided opportunity for action.

2021-22 accreditation outcome

- ❖ The Commission underwent accreditation interview **March 2022**
- ❖ The SCA deferred its review for 18 months (three sessions)
- ❖ **GANHRI Statute Article 14.1:** the SCA may decide to defer an application rather than make a decision on status
- ❖ **SCA Practice Note 1 on Deferrals:** deferral for serious concerns of non-compliance, to provide time to address concerns
- ❖ Grounds for deferral: appointment process for Commissioners did not comply with the Paris Principles
- ❖ Additional 3 issues of concerns (not grounds for deferral):
 - Term of office
 - Mandate
 - Adequate funding

Grounds for deferral – appointment process

- ❖ Appointment and selection process – Australian Public Service Commission's *Government's Merit and Transparency Policy* (APSC Guidelines)
- ❖ The APSC Guidelines do not meet the Paris Principles requirements for:
 - a clear, transparent, merit-based and participatory selection and appointment process
 - formalised in relevant legislation, regulations or binding administrative guidelines
- ❖ Appointments can be made *without* a full merit-based process in exceptional circumstances:
 - where there is an urgent requirement to fill a position
 - the availability of an eminent person
 - where there is another office holder that the Prime Minister considers should be appointed

Post-deferral advocacy

- ❖ Value of strategic relationships:
 - ❖ Civil society stakeholders
 - ❖ Department of Foreign Affairs and Trade (DFAT)
 - ❖ Technical advice from Asia Pacific Forum (APF)
- ❖ Recommended two keys actions:
 - ❖ all upcoming appointments be merit-based
 - ❖ lasting reforms should be implemented
- ❖ Recommended **minor legislative amendments** plus details in supporting **policy guidance**
- ❖ Important political landscape – occurred during federal election, with change of government in May 2022.

Government response

- ❖ **27 July 2022** - Australian Human Rights Commission Legislation Amendment (Selection and Appointment) Bill 2022
- ❖ The Bill was passed into legislation on **27 October 2022**
- ❖ Legislative amendments:
 - all appointments to be merit-based, removing possibility of direct appointments
 - maximum term of appointment 7 years (including re-appointments)
- ❖ The Commission worked with the Attorney-General's Department to develop comprehensive policy guidelines
- ❖ Four Commissioner appointment processes currently underway using a merit-based selection process.

Updates to SCA

- ❖ Written submission submitted to SCA **1 June 2023** - providing updates on SCA concerns
- ❖ Interview scheduled **23-27 October 2023**
- ❖ Final decision by SCA **October/November 2023**
- ❖ Commission to provide updates prior to and at the interview
- ❖ We are confident the SCA will be satisfied and the Commission will be re-accredited A status
- ❖ We continue to advocate for sustainable funding.

Any questions?



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