



Law Council
OF AUSTRALIA

Office of the President

21 August 2023

Ms Katherine Jones PSM
Secretary
Attorney-General's Department
4 National Circuit
BARTON ACT 2600

By email: humanrights@ag.gov.au

Dear Ms Jones,

Guidelines for appointments to the Australian Human Rights Commission

The Law Council of Australia thanks the Attorney-General's Department for the opportunity to make a submission to its consultation regarding new **Guidelines** for appointments to the Australian Human Rights Commission (**AHRC**).¹

The new Guidelines are a welcome follow-up to the *Australian Human Rights Commission Legislation Amendment (Selection and Appointments) Act 2022* (Cth).² The Law Council was disappointed that the Global Alliance of National Human Rights Institutions (**GANHRI**) deferred the AHRC's reaccreditation as an 'A-status' National Human Rights Institution in 2022.³ The AHRC is a vital institution for safeguarding individual rights in Australia, and we are of the firm view that it should be independent and adequately funded to fulfil its executive oversight role. This role is especially important in the absence of a federal Human Rights Act.⁴

The Law Council, in consultation with its National Human Rights Committee, has examined the new appointment Guidelines published on 26 July 2023. Although a comprehensive consultation process and analysis has not been possible in the time available, our high-level view is that the Guidelines meet the major relevant requirements of the *Paris Principles*, in particular the guarantees of appropriately pluralist representation and fixed tenure.⁵ We are pleased to see that the Guidelines require consultation with civil society on the selection criteria for the President and Commissioners.⁶

¹ Attorney-General's Department, *Guidelines for appointments to the Australian Human Rights Commission*: <<https://consultations.ag.gov.au/rights-and-protections/guidelines-appointments-to-ahrc>>.

² The Law Council also welcomed the relevant Bill in October 2022 – see *Restoring Australia's human rights status*, Media Release, 28 October 2022: <<https://lawcouncil.au/media/media-releases/restoring-australias-human-rights-status>>.

³ Law Council, *Australia must work to ensure AHRC remains fully compliant with Paris Principles*, Media Release, 8 April 2022: <<https://lawcouncil.au/media/media-releases/australia-must-work-to-ensure-ahrc-remains-fully-compliant-with-paris-principles>>.

⁴ See Law Council, *Federal Human Rights Charter* policy, November 2020: <<https://lawcouncil.au/resources/policies-and-guidelines/federal-human-rights-charter>>.

⁵ *Principles relating to the status of National Human Rights Institutions* (the Paris Principles), Adopted by UNGA Resolution 48/134 of 20 December 1993, 2.

⁶ *Guidelines for appointments to the Australian Human Rights Commission*, 10.

However, the following two suggestions would assist in aligning the Guidelines further with the intent and requirements of the *Paris Principles*:

- ‘Detailed knowledge and understanding of Australian human rights and discrimination law [and] the international human rights framework’ should be a core, rather than an additional, selection criterion.⁷
- The requirement for the Attorney-General’s selected candidate to have been found suitable by the assessment panel is welcome, but there should be verification of an applicant’s merit independent of the Australian Government. Section 2.8.4 ‘Methods of Assessment’ could be strengthened by requiring (rather than providing as an option) consultation with non-government experts.⁸

In terms of the *Paris Principles*’ wider context, the Law Council welcomed additional funding for the AHRC in the 2022–23 Budget. However, in our 2023–24 Pre-Budget submission, we called for careful scrutiny as to whether the AHRC’s increased base funding is now clearly sufficient to ensure that it can carry out its core functions effectively, in light of its recent staffing cuts. The AHRC should be adequately resourced to effectively carry out its investigation, complaint and conciliation functions and its function of enhancing public education and human rights resources.⁹

If you would like to discuss this matter further, please contact [REDACTED], Senior Policy Lawyer, on [REDACTED]

Yours sincerely



Luke Murphy
President

⁷ *Guidelines for appointments to the Australian Human Rights Commission*, 12; *Paris Principles*, ‘Composition and guarantees of independence and pluralism’, [1] (passages relating to relevant expertise and experience).

⁸ *Guidelines for appointments to the Australian Human Rights Commission*, 14.

⁹ Law Council, *2023-24 Pre-Budget Submission* (3 February 2023):

<<https://lawcouncil.au/resources/submissions/2023-24-pre-budget-submissions>>, 22 [75].