

# **Guidelines on the distinct role of the President and the Commissioners of the Australian Human Rights Commission in relation to complaint handling and public comment**

## **1 Purpose**

The purpose of these guidelines is to provide clarification on the distinct role of the President and the Commissioners of the Australian Human Rights Commission in relation to complaint handling and public comment.

## **2 What is the Commission's legal structure?**

The *Australian Human Rights Commission Act 1986* (AHRC Act) establishes the Commission as a body corporate which is constituted by:<sup>1</sup>

- the President (who is the senior member and the accountable authority)<sup>2</sup>
- the Human Rights Commissioner
- the Race Discrimination Commissioner
- the Aboriginal and Torres Strait Islander Social Justice Commissioner
- the Sex Discrimination Commissioner
- the Disability Discrimination Commissioner
- the Age Discrimination Commissioner
- the National Children's Commissioner.<sup>3</sup>

## **3 Functions of the Australian Human Rights Commission**

The Australian Human Rights Commission is given certain functions under each of the following Acts:

- *Australian Human Rights Commission Act 1986*, ss 11, 46C and 46MB
- *Racial Discrimination Act 1975*, s 20
- *Sex Discrimination Act 1984*, s 48
- *Disability Discrimination Act 1992*, s 67
- *Age Discrimination Act 2004*, s 53.

Broadly speaking, those functions are to:

- undertake a complaint handling role in relation to complaints of unlawful discrimination under the federal discrimination laws;
- inquire into acts or practices that may be inconsistent with human rights or with equal opportunity in employment;

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<sup>1</sup> AHRC Act s 8(1).

<sup>2</sup> AHRC Act s 8A.

<sup>3</sup> AHRC Act s 8. The Human Rights Commissioner, Aboriginal and Torres Strait Islander Social Justice Commissioner and National Children's Commissioner are appointed under the AHRC Act and the Age, Disability, Race and Sex Discrimination Commissioners are appointed under the specific discrimination Acts.

- promote an understanding and acceptance of human rights in Australia and the above federal discrimination laws;
- undertake research and educational programs, and other programs, for the purpose of promoting human rights and the objects of the federal discrimination laws;
- prepare and publish guidelines for the avoidance of human rights breaches and unlawful discrimination;
- intervene in proceedings that involve human rights or unlawful discrimination issues - with the leave of the court;
- examine legislation (and if the Minister requests, proposed legislation) and report to the Minister the results of any such examination;
- report to the Minister as to the laws that should be made by the Parliament, or action that should be taken by the Commonwealth, on matters relating to human rights or unlawful discrimination.

For the main part these functions are to be conducted by the Commission as a whole. In some instances however, these functions are required to be carried out by the President or a specified Commissioner.<sup>4</sup>

### **3.1 Role of individual Commissioners**

Each of the Commissioners is expected to lead the Commission's work in their area of appointment. This work predominantly focuses on the following functions:

- promote an understanding and acceptance of, and compliance with, human rights and the federal discrimination laws;
- undertake research and educational programs, and other programs, for the purpose of promoting human rights and the objects of the federal discrimination laws.

They do this in a number of ways, including by:

- representing the Commission by giving speeches or presentations
- engaging with the media by writing or contributing to press releases and opinion pieces or giving media interviews
- liaising with the Attorney-General, Ministers and other parliamentarians
- working with organisations and leaders in the community and business sectors to provide education on human rights issues and to support them in their efforts to better protect and promote human rights
- participating in external events on behalf of the Commission
- writing, contributing to or overseeing reports, policy submissions and documents for approval by the Commission Executive
- engaging with social media platforms to raise and promote public awareness about human rights issues

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<sup>4</sup> Specific functions given to the individual Commissioners include: the amicus curiae function under s46PV of the AHRC Act, functions concerning the human rights of Aboriginal persons and Torres Strait Islanders under Part IIA of the AHRC Act, functions relating to Native Title under s 209 of the *Native Title Act 1993*, functions relating to the rights of Children under Part IIAA of the AHRC Act and the function of applying to Fair Work Australia for orders to ensure equal remuneration for work of equal value under Part 2-7 Division 1 of the *Fair Work Act 2009*.

- contributing to the Annual Report.

Each of the Commissioners is also part of the Commission and, in this role, participates in Commission decisions.

#### **4 The complaint handling function**

Responsibility for the Commission's complaint handling function is specifically vested in the President.<sup>5</sup> Individual Commissioners have no role in investigating or conciliating complaints, though their function may involve providing information about the Commission's complaint handling function.

To avoid any potential conflict between the complaint handling role of the President and the Commissioners' roles, information regarding individual complaints is not freely available to Commissioners.

General issues or themes arising in complaints received by the Commission may be brought to the attention of the relevant Commissioner if that general information will assist the Commission or the Commissioner to fulfil the other functions of the Commission. Specific details of complaints will only be provided to Commissioners when it is necessary to perform the other functions of the Commission or the Commissioners, such as the amicus and intervention functions.

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<sup>5</sup> AHRC Act, s 8(6).