

**DOCUMENTATION RELEVANT
TO THE
SELECTION OF COMMISSIONERS**

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1. International Standards - Paris Principles requirements relevant to selection of Commissioners and staff of a national human rights commission

(Paris Principles - adopted by Human Rights Commission Resolution 1992/54, 1992 and General Assembly Resolution 48/134, 1993).

(B) Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

(a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

(b) Trends in philosophical or religious thought;

(c) Universities and qualified experts;

(d) Parliament;

(e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

2. Organisational Standards - General Observations

(General Observations of the International Coordinating Committee of National Human Rights Institutions).

2.1 Ensuring pluralism: The Sub-Committee notes there are diverse models of ensuring the requirement of pluralism set out in the Paris Principles. However, the Sub-Committee emphasizes the importance of National Institutions to maintain consistent relationships with civil society and notes that this will be taken into consideration in the assessment of accreditation applications.

The Sub-Committee observes that there are different ways in which pluralism may be achieved through the composition of the National Institution, for example:

- a) members of the governing body represent different segments of society as referred to in the Paris Principles;
- b) Pluralism through the appointment procedures of the governing body of the National Institution, for example, where diverse societal groups suggest or recommend candidates;
- c) Pluralism through procedures enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums; or
- d) Pluralism through diverse staff representing the different societal groups within the society.

The Sub-Committee further emphasizes that the principle of pluralism includes ensuring the meaningful participation of women in the National Institution.

2.2 Selection and appointment of the governing body: The Sub-Committee notes the critical importance of the selection and appointment process of the governing body in ensuring the pluralism and independence of the National Institution. In particular, the Sub-Committee emphasizes the following factors:

- a) A transparent process
- b) Broad consultation throughout the selection and appointment process
- c) Advertising vacancies broadly
- d) Maximizing the number of potential candidates from a wide range of societal groups
- e) Selecting members to serve in their own individual capacity rather than on behalf of the organization they represent.

2.3 Government representatives on National Institutions: The Sub-Committee understands that the Paris Principles require that Government representatives on governing or advisory bodies of National Institutions do not have decision making or voting capacity.

2.4 Staffing by secondment:

In order to guarantee the independence of the NHRI, the Sub-Committee notes, as a matter of good practice, the following:

- a) Senior level posts should not be filled with secondees;
- b) The number of seconded should not exceed 25% and never be more than 50% of the total workforce of the NHRI.

3. Examples of legislative provisions on selection of Commissioners

(Excerpt of 'best practice' provisions compiled by the Asia Pacific Forum of National Human Rights Institutions - includes legislation from Thailand, East Timor, New Zealand and others.)

Article a. Selection of Commission Members by Committee

(1) The Chair of the Selection Committee shall advertise vacancies for positions on the Commission in the national media at least one month prior to the commencement of the selection process.

(2) In determining the suitability of a prospective Commission member, the Selection Committee must apply the individual and collective criteria set out in Article b and c.

In determining the overall membership of the Commission, the Selection Committee will seek to ensure:

- (a) the equal representation of men and women; and
- (c) an appropriate representation of, or the capacity of the Commission to represent, all relevant elements of society.

(3) The Selection Committee will issue a public report on the selection process. The report will include information and documentation that demonstrates how each of the proposed nominees meets the criteria in Articles b and c and why the Selection Committee believes the nominee is suitable to be a member of the National Human Rights Commission.

(4) Recommendations for the appointment of members should be made by consensus. Where consensus cannot be reached, a recommendation may be made by majority vote.

Article b. Skills and Qualifications of individual Applicants

An applicant is not eligible for appointment as a member of the Commission specified in subsection 3(2)(a) – (c) unless he or she meets the following criteria:

- (a) has demonstrated knowledge of the principles of human rights and relevant domestic and international law, or extensive experience in promotion and protection of human rights,
- (b) has knowledge of the principles of good governance and public administration;
- (c) is recognised as being a person of integrity and good character;
- (d) is capable of fulfilling their position with independence and impartiality.

Article c. Collective skills and qualifications of the National Human Rights Committee

In considering each prospective new member, the Selection Committee will consider the overall membership of the Commission and the need for the Commission to have:

- (a) knowledge of, or experience in:
 - (i) diverse matters likely to come before the Commission;
 - (ii) domestic human rights law, or international human rights law;
 - (iv) current economic, employment, or social issues;

(v) cultural issues and the needs and aspirations (including life experiences) of different communities and population groups in society; and

(b) skills in, or experience in:

(i) advocacy or public education;

(ii) law, business, commerce, economics, industry, or financial or personnel management;

(iii) public governance and administration.

4. Role of the Selection Panel - Excerpt from Rules regarding Independent Selection Advisory Committees ('ISAC')

(Taken from Australian Public Service Commission website. Full rules available at: <http://www.apsc.gov.au/merit/isacinstructions.htm>)

2. Responsibilities of ISAC members

A member of an ISAC **must**:

- a. make any decision in accordance with the principles of lawful administrative decision-making;
- b. behave in a way that upholds the APS Values and that is consistent with the APS Code of Conduct in undertaking his or her duties as an ISAC member;
- c. behave with impartiality and without unlawful discrimination towards the candidates who have applied for the employment opportunity;
- d. maintain the confidentiality of personal information provided to the ISAC consistent with the Privacy Act; and
- e. not disclose information about the candidates for the employment opportunity except as necessary for the purposes of undertaking the functions of the ISAC or as otherwise authorised by law.

3. Obligations with respect to impartiality

1. Following receipt of applications for an employment opportunity and before the assessment of candidates commences, each member of an ISAC **must** sign a declaration of impartiality.
2. Where an ISAC member forms a belief that he or she would not be able to undertake his or her duties impartially, or refuses to sign a declaration of impartiality, he or she **must** decline to continue as a member of the Committee.

3. Where an ISAC member declines to continue as a member of an ISAC, he or she **must** advise the Regional Director NSW, and the relevant agency head in writing of the declination and the reasons for his or her withdrawal.
4. Where the ISAC convenor forms a belief that a member of the ISAC would not be able to undertake his or her duties impartially, the convenor **must** consult with the Regional Director NSW. If the Regional Director NSW is not satisfied that the ISAC member would be able to undertake his or her duties impartially, then the relevant agency head must be consulted and asked to nominate a new member in accordance with Regulation 4.3.

Note: A high standard with respect to impartiality is placed on ISAC members in recognition of the provision that there are no promotion review rights available after an ISAC recommendation has been implemented.

4. Obligations with respect to non-disclosure

1. Following nomination to an ISAC, a member of the ISAC **must** acknowledge in writing the obligation not to, directly or indirectly, make a record of, or divulge or communicate to any other person any information that was acquired while he or she was performing the duties as an ISAC member, except:
 - for the purposes of completing the functions of the ISAC; or
 - as otherwise authorised by law.
2. This obligation applies in relation to both personal information about the candidates and information about the assessment materials and methodology used by the ISAC.

5. Selection Process - Excerpt of Staff Selection Guidelines

(Taken from Australian Human Rights Commission Guidelines)

6. Factors determining suitability

Examples of work related qualities that may be taken into account in making an assessment are

- Skills and abilities
- Qualifications and training
- Standard of work performance
- Relevant personal qualities
- Demonstrated potential for further development
- Ability to contribute to team performance

Although there are no specific requirements to use any particular selection method, usual practice involves the use of written application, interview and referee/supervisor reports. Committees may also consider whether other assessment tools such as practical exercises would be useful.

Committees should ensure appropriate consideration of each of the assessment tools used in determining an applicant's suitability against the selection criterion.

7. Selection Checklist

This checklist may serve as a guide to undertaking staff selections

- an initial meeting of the selection committee to discuss assessment methods, timeframes, responsibilities, expectations, other considerations (e.g. late applications, diversity issues)
- shortlist
- confirm the assessment strategy e.g. interviews, referees etc.
- interview/conduct other assessment processes as appropriate
- collect and assess referee reports for the strongest candidates
- establish order of merit
- prepare the report for the delegate
- delegate makes a decision regarding staffing action to be taken
- all interviewed applicants advised of the outcome

8. Shortlisting

The selection committee should make an assessment of each application against the selection criteria for the job.

Only those applicants who are competitive in relation to the field and in relation to the number of vacancies should be shortlisted for interview. It is the responsibility of applicants to supply the information necessary to judge whether they meet the requirements of the job. If an applicant does not specifically address the selection criteria, but a resume suggests experience and suitability, a committee may wish to seek further information from the applicant.

Failure to demonstrate claims against one or more criteria is sufficient to exclude an applicant from the shortlist, as an applicant must satisfy all criteria to be considered suitable. In addition, an applicant may be excluded from the shortlist if they are not as competitive as other applicants on one or more criteria.

It is necessary to provide to the delegate a brief record of the reasons against the selection criteria that applicants were not shortlisted. This record may simply consist of the completed 'Schedule of Applicants' form. Some examples of reasons may include "The applicant does not meet criteria 3" or "The applicant is not as competitive on criteria 2 and 6 as other applicants".

If the committee feels that the field of applicants is weak, they can recommend to the delegate that the vacancy be re-advertised.

The committee should then provide a list of applicants not shortlisted (or a copy of the Schedule of Applicants) to the Personnel Section.

Internal applicants not shortlisted should be notified in person by the chairperson of the committee before interviews are conducted. Due to the large volume of applications received, the Commission no longer requires the committee to provide feedback to those applicants not shortlisted unless the committee has the capacity to do so.

9. Interviews

If interviews are to be held, the selection committee should

- Give applicants at least two working days notice of their interview date and time
- Advise applicants of the membership of the committee
- Advise applicants of any documentation they are required to bring, including referees reports, a specific example of written work, etc.
- Where appropriate, provide applicants with sources of background material related to the work area
- Advise applicants of the expected length and format of the interview and any other assessment tools to be used (eg. Practical test)
- Where appropriate, advise applicants that interview questions will be given prior to the interview and schedule an arrival time to accommodate this
- Identify any arrangements that might need to be made for applicants with a disability (see Attachment C)

Committees should base their questions on the selection criteria. Committees should also be clear about what answers they require in order to evaluate the performance of the interviewees.

Committees should also keep in mind the provisions of the *Public Service Act 1999* that preclude patronage, favouritism and discrimination. As such, the committee should not make assumptions that might unfairly bias the selection process against members of target groups.

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13. Referees Reports

Referee reports should be sought for competitive applicants. Referee reports should assess the applicant against the job they are applying for rather than their current job, although it would be expected that there may be some cross over.

An applicant's current supervisor is best placed to provide informed comment. Where the applicant does not nominate the current supervisor, the committee should ask for the reason. To ensure that supervisor comment is a useful evaluation tool, comments should be substantiated by examples of work performance, achievements, etc.

If any of the selection committee members is required to provide a referee report for any of the applicants, they should submit them before any interviews are held.

Referee reports should state the jobs of the applicant and referee, and the nature and length of the working relationship with the applicant.

If referee comments are obtained orally, notes should be taken, accurately summarised in writing and read back to or emailed to the referee for confirmation. Referees should be advised that applicants will be made aware of the comments provided. It should be noted that if applicants can supply a referee report at the interview, it may be appropriate to verify the information supplied.

Applicants should be given the opportunity to respond to any adverse referees comments. If there is a significant discrepancy between supervisor comment and other assessment components, further information may be sought to clarify.

14. Selection Reports

As with all public sector processes, recruitment activities should be transparent and documented.

The selection report should be brief but contain sufficient detail for the delegate to be satisfied that the most suitable person has been recommended and that the process is consistent with procedural fairness principles.

All selection committee members must be involved in the decision-making process to discuss and resolve any differences of opinion they may have. If agreement cannot be reached, a minority report can be submitted with the main report.

In addition to the recommended applicant, an order of merit of suitable applicants may be established for use if future identical vacancies are likely to arise within the following 12 months.

A **covering minute and recommendation** should be addressed to the delegate containing

- Job details and reason for the vacancy
- Advertising details
- Name, classification and work unit of all committee members
- Number of applications received and how many were shortlisted/withdrew
- Number interviewed and dates of interview
- Methods of assessment (written application/interview/referees reports/ practical exercise/skills assessments)
- Ranking of suitable applicants (where applicable)
- Recommendation for engagement (ongoing or non-ongoing), promotion or movement (ongoing or non-ongoing)
- Signatures of all committee members

Individual assessments must be written for each shortlisted applicant. These should be brief but contain

- Accurate, objective comments relating to experience, written application, interview, referees report etc in respect of each of the selection criteria
- Ratings (non-numerical) for each criterion that are consistent with these comments (an example of a rating scale is at Attachment A).
- An overall statement of suitability or non-suitability for the job

An applicant who fails to meet any important criterion must be rated overall as unsuitable for the job.

A **Comparative assessment** should also be provided to clearly justify the selection committee's conclusion as to which applicant best meets the selection criteria and is recommended for the job. It must also compare the relative merit of the highest rated suitable applicants who have been ranked on any order of merit. Suitable applicants may be compared against the selection criteria in a table using a rating scale (an example of a rating scale is at Attachment A).

The question of access to documents in the selection report is covered by the privacy principles. Applicants may request a copy of their individual assessment from the Personnel Section.