



**Australian Government**  
**Attorney-General's Department**

## **Policy & Guidelines**

# **Appointments to the Australian Human Rights Commission**

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## Introduction

These guidelines set out the process for the appointment of the President and Commissioners of the Australian Human Rights Commission (the Commission). The guidelines are adapted from the government's Merit and Transparency Guidelines. The guidelines are designed to be read in conjunction with provisions of the *Australian Human Rights Commission Act 1986*, *Age Discrimination Act 2004*, *Disability Discrimination Act 1992*, *Racial Discrimination Act 1975* and the *Sex Discrimination Act 1984*.

The guidelines also ensure that appointments to the Commission are consistent with the 1993 United Nations General Assembly Resolution 48/134 *Principles relating to the Status of National Institutions* (Paris Principles) and support the Commission as an 'A'-status National Human Rights Institution.

These guidelines provide detailed guidance to government to ensure that appointments to the Commission are merit-based and transparent. In addition, these guidelines seek to provide clear information to Commissioners, members of the public and prospective candidates about the appointment process.

# Overview of the Australian Human Rights Commission

The Commission is Australia's National Human Rights Institution. The Commission is an independent statutory authority, established under the Australian Human Rights Commission Act. The Commission has a range of duties, functions and powers with respect to human rights, including undertaking inquiries, intervening in court proceedings, examining enactments and conducting educational programs and public awareness campaigns.

The Commission is made up of the President, and seven Commissioners, each established by statute:

- President (section 8A of the Australian Human Rights Commission Act)
- Aboriginal and Torres Strait Islander Social Justice Commissioner (section 46B of the Australian Human Rights Commission Act)
- Age Discrimination Commissioner (section 53A of the Age Discrimination Act)
- Disability Discrimination Commissioner (section 113 of the Disability Discrimination Act)
- Human Rights Commissioner (section 8B of the Australian Human Rights Commission Act)
- National Children's Commissioner (sections 46MA and 46MC of the Australian Human Rights Commission Act)
- Race Discrimination Commissioner (sections 19 and 29 of the Racial Discrimination Act); and
- Sex Discrimination Commissioner (section 96 of the Sex Discrimination Act).

The functions of each Commissioner are determined by their enabling legislation and the Australian Human Rights Commission Act. Each Act requires that appointments to each of the above Commissioner positions must be merit-based and transparent. The Attorney-General is the relevant Minister for the purposes of these Acts.

Where legislation provides for specific processes for appointments, those provisions will take precedence to the extent of any inconsistency with these guidelines.

# The Paris Principles and the Global Alliance of National Human Rights Institutions

It is essential that the selection process for the President and Commissioners of the Commission complies with relevant human rights and anti-discrimination legislation, Australia's international obligations and principles and supports the Commission's status as Australia's National Human Rights Institution.

Australia strongly supports the 1993 United Nations General Assembly Resolution 48/134 *Principles relating to the Status of National Institutions*, known as the Paris Principles.

The Paris Principles set out the responsibilities, composition and framework of National Human Rights Institutions. These are minimum standards that a National Human Rights Institution, such as the Commission, must meet in order to operate efficiently and be considered credible by its peers and within the United Nations system.

The Global Alliance of National Human Rights Institutions (GANHRI) has a mandate to review and assess whether National Human Rights Institutions comply with the Paris Principles, and accordingly decide whether that Institution should be accredited as an 'A'-status or 'B'-status institution. GANHRI has the mandate to review and analyse the accreditation of National Human Rights Institutions every five years. Following the initial accreditation process, and any subsequent reaccreditation review, 'A'-status or 'B'-status is granted alongside a list of recommendations that outline what improvements could be made to increase compliance with the Paris Principles. A key requirement of the Paris Principles is ensuring that the process for appointment of statutory officers to the Commission, as Australia's National Human Rights Institution, is transparent and merit-based in all circumstances.

The Paris Principles and the GANHRI accreditation process set the Commission apart from other Australian Public Service agencies. It is therefore important that the Attorney-General and all involved in the appointments process are informed of the Paris Principles and the accreditation process. These guidelines are designed to ensure that appointments to the Commission are consistent with the Paris Principles and support the Commission's accreditation as an 'A'-status National Human Rights Institution.<sup>1</sup>

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<sup>1</sup> Refer to [General Observations of the Sub-Committee on Accreditation](https://www.ohchr.org/en/countries/nhri/global-alliance-national-human-rights-institutions-ganhri/sca-rules-procedures-and-general-observations) for further information about the Paris Principles: <https://www.ohchr.org/en/countries/nhri/global-alliance-national-human-rights-institutions-ganhri/sca-rules-procedures-and-general-observations>.

# Policy

## 1.1 Summary

This policy applies to all statutory appointments to the Commission. The policy is summarised as follows:

1. The Attorney-General will advise incumbents, in writing, at least six months before the expiry of their appointment, whether the Government intends to reappoint them, not reappoint them, or to advertise the position to test the field. (The President and Commissioners' total term, including reappointment to the position, is a maximum of 7 years).
2. A merit-based and transparent process will apply for filling vacancies, with the following features:
  - a. oversight of the advertising process is to be undertaken by the Secretary of the Attorney-General's Department (the Secretary), in consultation with the Commission
  - b. assessment of the applicants' claims is to be undertaken by the Secretary (or their representative), Australian Public Service Commissioner (APS Commissioner) (or their representative), and the President of the Commission (for Commissioner appointments). The Secretary will consider whether to invite additional individuals with relevant expertise to participate on the assessment panel.
  - c. vacancies will be advertised on the Attorney-General Department's website, the Commission's website, the APSjobs website, in major daily newspapers (subject to the Recruitment Advertising Policy), through civil society stakeholder channels and targeted online recruitment platforms<sup>2</sup>
  - d. selections will be made against a core set of selection criteria, supplemented by additional criteria developed in consultation with the Commission
  - e. a report endorsed by the APS Commissioner will be provided by the Secretary to the Attorney-General recommending shortlisted candidates.
3. All initial appointments are to be made for a standard term of five years unless special circumstances justify a different length. Consistent with the Paris Principles, if an appointment is made for less than five years, the minimum term of appointment is three years. If an appointment is made for more than five years, the maximum term of appointment is seven years.
4. All costs associated with filling the vacancy, such as advertising, will be borne by the Commission, unless otherwise determined by the Secretary. The Attorney-General's Department will consult the Commission about the estimated costs of filling the vacancy.

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<sup>2</sup> Refer to Clause 2.7.2 for further detail on advertising and Recruitment Advertising Policy

# Guidelines

## 2.1 Expiry of existing appointments

The Secretary is responsible for keeping a record of all statutory appointments in the Commission. The record will be maintained publicly on the Attorney-General's Department website. The Secretary will notify the Attorney-General, in writing, of an upcoming expiry of an appointment at least eight months before the expiry date. The Secretary must also notify the APS Commissioner of an upcoming expiry of appointment.

The Secretary will seek the Attorney-General's advice on whether:

- the incumbent is to be offered reappointment (if allowed by legislation)<sup>3</sup>, or
- the incumbent is not to be reappointed, or
- the Attorney-General wishes to test the field through advertising the position (which may or may not result in the incumbent being reappointed).

Where the Attorney-General decides to advertise the position, an open and merit-based selection process must apply. The Secretary will consult with the Attorney-General on details such as the scope of advertising and selection criteria. However, there are minimum requirements detailed in sections 2.7.1 and 2.7.2 below that must be met.

The Attorney-General is responsible for advising the incumbent in writing at least six months before the expiry of their appointment that they will:

- be reappointed, or
- not be reappointed, or
- not be reappointed because the Attorney-General wishes to test the field of potential candidates but the incumbent is able to apply (if reappointment is allowed by the legislation).

The Secretary must advise the APS Commissioner of the Attorney-General's decision.

The selection process should be commenced no less than six months prior to the conclusion of the term of the incumbent Commissioner.

## 2.2 Reappointments

The term of appointment of the President and Commissioners cannot exceed 7 years, pursuant to the legislation. An incumbent can only be reappointed where the total term they have been appointed for, inclusive of any reappointment, is no more than 7 years.

The President and Commissioners may be reappointed under their enabling legislation and/or the Australian Human Rights Commission Act to their position after their initial term has expired, extending their term to a maximum total of 7 years. This recognises that the incumbents appointed

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<sup>3</sup> The total term of appointment, including any reappointment, cannot exceed 7 years.

under these guidelines have already been assessed as meeting the merit-based criteria during their initial appointment process. When considering whether to recommend an incumbent for reappointment, the Attorney-General should consider the individual's suitability for the role, including their ability to continue to carry out their statutory functions. This may involve consulting relevant stakeholders, civil society representatives and other Commissioners. The Attorney-General should also have regard to the Paris Principles and the importance of diversity and plurality within the Commission.

Where an incumbent is to be reappointed, the Attorney-General will need to follow the appointments process outlined in the Cabinet Handbook.

## **2.3 Acting appointments**

Where there is a temporary vacancy or where an incumbent is unable to carry out the functions of their role, the Attorney-General may appoint an acting Commissioner or President, from among the existing group of Commissioners or President.

In the event the substantive position has become vacant and an acting appointment has been made, a merit-based and transparent selection process in line with these guidelines should be commenced in order to fill the substantive vacancy as soon as practicable.

## **2.4 Secretary's role**

The Secretary is responsible for overseeing the selection process for the President and Commissioners of the Commission. This involves:

- keeping a record of all statutory appointments to the Commission and ensuring the record is available publicly on the Attorney-General's Department website
- eight months before the expiry of each appointment, seeking the Attorney-General's advice, in writing, of their decision whether to reappoint the incumbent (if applicable) or advertise the position
- consulting with the Attorney-General on details such as selection criteria
- chairing the assessment panel, or delegating this role if appropriate
- selecting panel members (other than the APS Commissioner and President of the Commission (where applicable))
- together with the panel, assessing applicants' claims against selection criteria
- providing a selection report for endorsement by the APS Commissioner prior to it being submitted to the Attorney-General
- providing a report to the Attorney-General with a merit-based assessment of shortlisted candidates.



Any costs associated with the role of the Secretary or their representative, such as travel and accommodation, will generally be borne by the Commission.

The Secretary should advise the APS Commissioner of the following information relating to the appointment or reappointment:

- upcoming expiry date
- decisions to reappoint the incumbent or advertise upcoming or vacant positions
- (if applicable) date finalised through Cabinet (or approved by the Prime Minister if Cabinet approval not required), date Governor-General made the appointment, expected commencement date, or term of any reappointment.

## **2.5 Australian Public Service Commissioner's role**

The primary role of the APS Commissioner is to ensure that assessment of candidates is based on merit. The APS Commissioner (or their representative) is a full member of the assessment panel and therefore plays an active role in the process. The APS Commissioner or their representative must be involved in all aspects of the selection process, with sufficient time allowed for this to occur.

Any costs associated with the role of the APS Commissioner or their representative, such as travel and accommodation, will generally be borne by the Commission.

The APS Commissioner will be involved during the following steps of the process:

- participating in the assessment panel or nominating a representative to participate in their place
- where the APS Commissioner did not participate as an assessment panel member, the APS Commissioner's endorsement of the report must be obtained prior to the Secretary reporting to the Attorney-General
- where the APS Commissioner did participate as an assessment panel member, the APS Commissioner's signing of the report serves as the endorsement.

The APS Commissioner may update the core selection criteria, from time to time, in consultation with the Secretary—see section 2.7.1 below.

## **2.6 Attorney-General's role**

The Attorney-General is responsible for making the final recommendation for an appointment to the Prime Minister. The Attorney-General is responsible for:

- advising the Secretary of whether it is intended to reappoint the incumbent or advertise the position
- advising the incumbent, in writing, at least six months before the expiry of their appointment whether it is intended to reappoint them, not reappoint them, or to advertise the position
- advising the Secretary of their views on the scope of advertising and any additional selection criteria
- considering the recommendations of the Secretary following the completion of a selection process
- meeting with one or more of the recommended candidates, or consulting more widely with colleagues, the assessment panel or others, prior to making a final decision, if they wish.

Once the Attorney-General has made a decision, they may be required to follow standard appointment processes, for example those outlined in the Cabinet Handbook.

## **2.7 Civil Society engagement**

Engagement with representatives of civil society on the selection and appointment of the President and Commissioners will take place through:

- consultation on the guidelines to ensure a range of views are considered in the selection and appointment process, consistent with the Paris Principles.
- consultation on the selection criteria and other aspects of the selection process, for example, through the Non-Government Organisations Forum (NGO Forum) organised by the Attorney-General's Department on a regular basis.
- consideration by the Secretary of civil society participation as additional members of the assessment panel for the selection of the President and Commissioners.

## **2.8 Merit-based selection**

For the purpose of these guidelines, merit-based selection means:

- an assessment is made of the relative suitability of the candidates for the duties, using a competitive selection process, and
- the assessment is based on the relationship between the candidates' work-related qualities and the work-related qualities genuinely required for the duties, and
- the assessment focuses on the relative capacity of the candidates to achieve outcomes related to the duties, and
- the assessment is the primary consideration in making the decision.

Examples of work-related qualities that may be considered when making an assessment include:

- skills and abilities
- qualifications, training and competencies
- standard of work performance
- capacity to produce outcomes from effective performance at the level required
- relevant personal qualities
- demonstrated potential for further development
- ability to contribute to team performance.

When advertising for Commissioner positions which require, under legislation, particular lived experience in the subject area, this experience must be specifically considered in the selection process. For example, candidates seeking the role of Aboriginal and Torres Strait Islander Social Justice Commissioner should have significant experience in community life of First Nations peoples and this experience will be considered by the selection panel as part of the candidates' assessment.

### **2.8.1 Selection criteria**

Selection for the President and Commissioners of the Commission should be made against the below set of core selection criteria and any additional selection criteria developed in consultation with the Commission. Additional criteria will be used where a vacancy requires that a candidate be able to demonstrate specific skills.

#### **President selection criteria**

The core selection criteria for the President are as follows:

- Demonstrates high level leadership and vision
  - sets a strategic vision and inspires others to achieve this
  - innovative in dealing with issues
  - articulates a clear direction for their organisation
- Manages large and/or complex operations
  - achieves results within the context of organisational and/or Government policy
  - strong people management skills
  - strong financial management, ensuring efficient, effective and ethical use of resources
  - understanding of and commitment to quality organisational governance
- Works with others to meet objectives
  - operates collaboratively with others to meet organisational objectives
  - cultivates productive relationships
  - listens to people and values different perspectives
- High level of judgement
- Demonstrates a high standard of professional and personal integrity and capacity to promote these in an organisation.

The APS Commissioner may update the core selection criteria, from time to time, in consultation with the Secretary.

## Commissioner selection criteria

The Senior Executive Service core criteria are set out on the Australian Public Service Commission's website and will be used as the core selection commissioners and, in some cases expanded upon, dependent on the role. These criteria are:

- Shapes strategic thinking
- Achieves results
- Exemplifies personal drive and integrity
- Cultivates productive working relationships
- Communicates with influence.

## Additional criteria

Additional criteria will be used to short-list applicants. The below criteria are examples of additional criteria that may be used in the selection process for the President and Commissioners:

- have a detailed knowledge and understanding of Australian human rights and discrimination law, the international human rights framework and government policies relating to all protected attributes under the relevant discrimination legislation, or the ability to acquire such knowledge and understanding quickly
- be a strong leader, with the ability to build coalitions for change within the government, corporate and non-government organisation sectors, while maintaining an independent advocacy role
- be able to communicate with influence, to listen to any audience and to develop measured, considered and evidence-based solutions to public policy challenges
- have a strong presence and be comfortable with a significant media and public profile
- have the ability to operate co-operatively as a member of the Commission, and to provide managerial, strategic and professional leadership of the highest order to Commission staff.

## **2.8.2 Advertising**

Where an open selection process is to be undertaken (i.e. when the incumbent is not being reappointed), the vacancy must be advertised, in the following ways:

- on the Attorney-General Department's website
- on the Commission's website
- on the APSjobs website
- in major daily newspapers (subject to the Recruitment Advertising Policy – see below)
- through civil society stakeholder channels
- through mainstream as well as targeted online recruitment platforms.

Peak bodies for the communities and subject areas the Commissioner represents, as well as other key civil society stakeholders, should be notified of the vacancy as early as practicable after the vacancy has been advertised and encouraged to disseminate the advertisement to potential candidates. For

example, when the position of the Aboriginal and Torres Strait Islander Social Justice Commissioner position is advertised, peak bodies for First Nations people should be notified of the vacancy.

The Secretary will consult with the Attorney-General and the Commission on the advertising pack for President and Commissioner vacancies.

Such advertising must also be made in accordance with the Recruitment Advertising Policy which applies to all officials of all non-corporate Commonwealth Entities (NCEs). The vacancy must be advertised externally, for instance on an appropriate recruitment website or websites. Advice about internet recruitment advertising strategies is available from the Communications Advice Branch at the Department of Finance.

The Secretary may wish to engage an executive search firm to ensure the field of applicants is as strong as possible, although the Secretary, APS Commissioner and Attorney-General still retain their responsibilities as outlined in these guidelines. Where search firms are used, all assessment panel members must be kept informed of all aspects of the process.

Vacancies should be advertised alongside a copy of the role description and an overview of the appointments process. The Web Content Accessibility Guidelines 2.0 must be met at the medium conformance level to support access for people with disability.

Vacancies should be advertised for a minimum of three weeks to ensure sufficient time to reach a variety of interested people from different backgrounds and a range of societal groups.

### **2.8.3 Assessment panel**

An assessment panel will consider the claims of all applicants against the selection criteria. At a minimum, the assessment panel will consist of the following:

- the Secretary (or their representative)
- the APS Commissioner (or their representative)
- the President of the Commission (for all Commissioner appointments) or external non-government representative (for the President appointment).

The Secretary will consider whether to invite additional individuals with relevant expertise to participate on the assessment panel.

The panel should reflect a diverse range of views and have knowledge of human rights issues.

For the purposes of the Commission's accreditation with GANHRI, the APS Commissioner and President are panel members outside the Executive Government. The Secretary is responsible for overseeing the selection process and providing the report of the assessment panel to the Attorney-General, even if they delegate their position on the panel to a representative. Similarly, the

APS Commissioner must endorse the process, even if they delegate their position on the panel to a representative.

The Secretary, having regard to any legislative provisions, will decide if one or more additional panel members are required to:

- maintain gender balance
- provide specialist expertise

The panel should be informed of the Paris Principles requirements, the importance of the process for accreditation purposes and the significance of plurality within the Commission. Plurality ensures a wide range of views and perspectives and enhances the effectiveness of National Human Rights Institutions. Plurality can be supported through appointment of Commissioners from diverse cultural, ethnic, gender, sexual orientation, ability and religious backgrounds.

All members of the assessment panel need to participate in the shortlisting of applicants.

#### **2.8.4 Methods of assessment**

The Secretary, in their role overseeing the assessment process, is responsible for establishing the means used to assess applicants. This would typically involve assessing written applications, conducting formal interviews and obtaining referee reports. Reasonable adjustments must be made for candidates with disability in line with the Disability Discrimination Act.

The shortlisting process must be merit-based. Candidates will be assessed against the eligibility and selection criteria, as set out in the candidates' pack.

It may be appropriate to consult other people, for example, colleagues, civil society representatives, board members, state or territory ministers or officials, Secretaries of relevant departments and heads of relevant agencies, on a confidential basis.

Additional or alternative means of assessment may also be used, including assessment centre methodologies, structured application forms, self-selection tools and occupational testing. All assessment processes must be overseen by the assessment panel.

Pre-appointment checks will be undertaken of the preferred candidate and will include a declaration of private interests. The pre-appointment checks will be consistent across all appointments to the Commission.

#### **2.8.5 Assessment panel report**

At the conclusion of the selection process, a report is to be prepared containing an assessment of the relative suitability of candidates. The report should be provided by the Secretary to the APS Commissioner for endorsement as to the integrity of the process.

If the APS Commissioner (or their Deputy Commissioner) did not participate on the assessment panel directly, their representative on the panel will provide separate certification to the APS Commissioner confirming that the selection process has been based on merit, and that advertising and panel composition requirements have been met. The APS Commissioner may then endorse the report.

Regardless of who chairs the assessment panel, the Secretary must provide a final report to the Attorney-General at the conclusion of the assessment recommending a shortlist of suitable candidates for the Attorney-General's consideration. The candidate selected by the Attorney-General must be found suitable by the assessment panel.

## **2.9 Duration of appointment**

All appointments will ordinarily be made for a period of five years, unless:

- individual appointees advise in writing that a shorter or longer period is sought, or
- the relevant legislation stipulates a different period (such as in relation to a reappointment),  
or
- other special circumstances arise justifying a shorter or longer term.

If an appointment is made for less than five years based on one of the above considerations, the minimum term of appointment is three years, consistent with the Paris Principles. If an appointment is made for more than five years, the maximum term of appointment is seven years.

## **2.10 Costs**

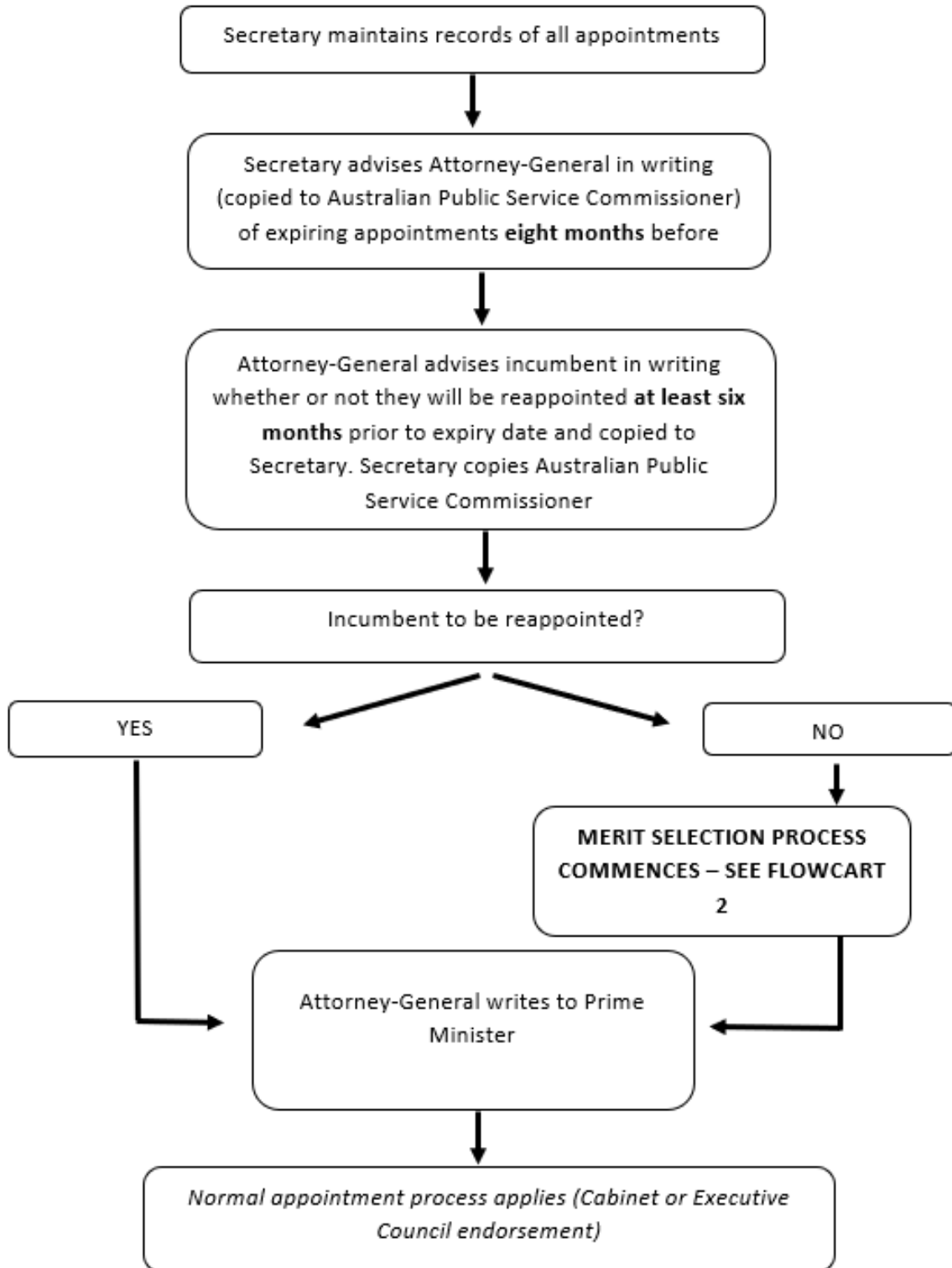
All costs associated with a selection process for President or Commissioner positions, such as advertising and travel costs (including costs for all panel members), will be borne by the Commission, or as otherwise determined by the Secretary. An example of where the Secretary may consider that the Commission should not bear all costs associated with filling a vacancy at the Commission is where several appointments are considered within one financial year.

The Attorney-General's Department will consult the Commission about the estimated costs of filling relevant vacancies.

# Flowcharts

## Australian Human Rights Commission Statutory Appointments

Flowchart 1: Overview of Merit-based and transparent selection process





## Flowchart 2: Merits Selection Process for New Appointment

