



Human rights and the parliament



The role of Queensland Parliament

The Human Rights Act requires parliament, the courts, and the executive to act compatibly with human rights.

Parliament is responsible for making and passing laws and must consider whether any limitations on human rights in legislation are justified. This occurs through the tabling of statements of compatibility with Bills and human rights certificates for subordinate legislation, scrutiny through the committee process, and parliamentary debate. Once a law is passed, any future human rights compatibility assessment will generally only arise if raised in litigation.

The Supreme Court or Court of Appeal cannot invalidate legislation under the Human Rights Act. Instead, it may make a declaration of incompatibility where the court is of the opinion that a statutory provision cannot be interpreted in a way compatible with human rights. The court must then give notice to the Attorney-General and the Commission of the incompatibility, but this does not affect the validity of the law.

Portfolio committees

Parliamentary committees enhance the democratic process by monitoring or investigating issues, reporting to parliament, and scrutinising proposed laws.

The Queensland Parliament has 7 portfolio committees made up of government and non-government members of parliament, and it is their job to inquire into proposed laws before they are debated in parliament. Under the Human Rights Act, the portfolio committee responsible for examining a Bill must consider and report to the parliament about whether the Bill is compatible with human rights and consider and report to parliament about the statement of compatibility tabled with the Bill.

A strength of the Queensland parliamentary committee system is that committees generally invite submissions to aid their consideration of a Bill and hold public hearings at which evidence is heard. This provides an opportunity for broader public debate about proposed laws. Committees may assist parliament to assess the human rights implications of new laws, expose legislation to effective scrutiny independent of the executive, and allow for public participation in the human rights dialogue and debate.¹¹ The committees then report to parliament about the Bill and may make comments about the statement of compatibility.

The portfolio committees also consider subordinate legislation, such as regulations, and report on any issues they identify through their consideration of the human rights certificates tabled with the subordinate legislation.

¹¹ Explanatory Notes, Human Rights Bill 2018 (Qld) 29.

Override declarations

Parliament may override the Human Rights Act by including an override declaration with a Bill expressly declaring that the Act, or a provision of the Act, has effect despite being incompatible with one or more human rights. This power is intended to be used only in exceptional circumstances and the Human Rights Act gives the examples of 'war, a state of emergency, an exceptional crisis situation constituting a threat to public safety, health or order'. A provision of an Act containing an override declaration expires 5 years after the provision commences.

In the reporting period, the override provisions of the Human Rights Act were used for the first time. The government sought override declarations for provisions of the Strengthening Community Safety Bill 2023. Despite submissions to the Economics and Governance Committee questioning whether the override declarations were necessary and appropriate, and noting that any override should occur only after extensive consultation,¹² the Queensland Parliament made the Override declarations.

The situation giving rise to the override declarations, a crisis in the youth justice system, does not appear to fit with the exceptional circumstances examples as set out in the Human Rights Act. During the pandemic, parliament passed several pieces of emergency legislation in response to the COVID-19 pandemic without resorting to an override declaration. The application of the Human Rights Act to such emergency legislation was noted as an important safeguard at the time.

Of further concern to the Commission was the discussion through the parliamentary process that implied a decision to override the Human Rights Act is one made by the government. The Human Rights Act makes clear it is a matter for the parliament, not the government, to make such a significant declaration.

Statements of compatibility

The Queensland Parliament must scrutinise all proposed laws for compatibility with human rights. A member who introduces a Bill must table a statement of compatibility with the Bill, and the responsible portfolio committee must consider the Bill and report to the Legislative Assembly about any incompatibility with human rights.

There were 43 Bills introduced during the 2022–23 financial year that were accompanied by statements of compatibility. Of those, 23 were passed after consideration by portfolio committees (excluding appropriation and related Bills).¹³

¹² Economics and Governance Committee, Queensland Parliament, *Strengthening Community Safety Bill 2023* (Report No. 41, March 2023) 6–7.

¹³ For example, the Revenue Legislation Amendment Bill 2023 was declared urgent, not referred to committee, and debated cognately with related appropriation Bills.

Portfolio committees completed 29 inquiries into Bills that were introduced in the parliament and then referred to committees for examination during the reporting period.¹⁴

These committees completed an additional 6 reports for Bills introduced in previous years.¹⁵ All but 7 of the Bills subject to committee inquiry passed during the reporting period.¹⁶

Statements of compatibility must state whether the Bill is compatible with human rights and how it is compatible. If not compatible, the statement of compatibility must explain the nature and extent of the incompatibility and provide detailed reasons and justification for the impact on human rights. *The Queensland Legislation Handbook*¹⁷ provides guidance and a template for a statement of compatibility to be completed by the relevant department. These statements:

- set out the human rights issues, including which human rights are engaged or are of relevance
- explain how the legislation meets the proportionality test in section 13 of the Human Rights Act, which allows for rights to be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality, and freedom.

¹⁴ See: Major Sports Facilities Amendment Bill 2022; Public Health and Other Legislation (COVID-19 Management) Amendment Bill 2022; Betting Tax and Other Legislation Amendment Bill 2022; Environmental Protection and Other Legislation Amendment Bill 2022; Coal Mining Safety and Health and Other Legislation Amendment Bill 2022; Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022; Integrity and Other Legislation Amendment Bill 2022; Public Sector Bill 2022; Housing Legislation Amendment Bill 2022; Police Service Administration and Other Legislation Amendment Bill (No. 2) 2022; Health and Other Legislation Amendment Bill 2022; Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022; Police Powers and Responsibilities (Jack's Law) Amendment Bill 2022; Police Powers and Responsibilities and Other Legislation Amendment Bill 2022; Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022; Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Bill 2022; Births, Deaths and Marriages Registration Bill 2022; Strengthening Community Safety Bill 2023; Police Powers and Responsibilities and Other Legislation Amendment Bill 2023; Path to Treaty Bill 2023; Waste Reduction and Recycling and Other Legislation Amendment Bill 2023; Tobacco and Other Smoking Products Amendment Bill 2023; Residential Tenancies and Rooming Accommodation (Rent Freeze) Amendment Bill 2022; Water Legislation Amendment Bill 2022; Liquid Fuel Supply (Minimum Biobased Petrol Content) Amendment Bill 2022; Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022; Property Law Bill 2023; Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023; Health Practitioner Regulation National Law (Surgeons) Amendment Bill 2023.

¹⁵ Animal Care and Protection Amendment Bill 2022; Trading (Allowable Hours) and Other Legislation Amendment Bill 2022; Transport Legislation (Road Safety and Other Matters) Amendment Bill 2022; Casino Control and Other Legislation Amendment Bill 2022; Building Units and Group Titles and Other Legislation Amendment Bill 2022; Industrial Relations and Other Legislation Amendment Bill 2022.

¹⁶ Residential Tenancies and Rooming Accommodation (Rent Freeze) Amendment Bill 2022; Water Legislation Amendment Bill 2022; Liquid Fuel Supply (Minimum Biobased Petrol Content) Amendment Bill 2022; Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022; Property Law Bill 2023; Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023; Health Practitioner Regulation National Law (Surgeons) Amendment Bill 2023.

¹⁷ Department of the Premier and Cabinet (Qld), '3.5 Role of drafter', *Queensland Legislation Handbook* (Web Page, 17 June 2021).

Human rights indicators

The dialogue model adopted in the Human Rights Act aims to promote a dialogue about human rights between the three arms of government (the legislature, executive, and judiciary) with each arm having a 'legitimate role to play, while parliament maintains sovereignty'.¹⁸ This model prioritises discussion, awareness-raising, and education over an enforcement and compliance model, and supports the goal of gradually building a human rights culture.

The Commission has developed a set of indicators to gauge the development of a human rights culture within the parliament. These indicators are based on the experiences of other human rights jurisdictions and the specific role portfolio committees play in Queensland's unicameral parliament.¹⁹

The Queensland Parliament is uniquely placed to assess the human rights implications of proposed legislation. It is a democratic body, representing the Queensland community, with the power to call on expert evidence and advice. However, assessing the efficacy of parliamentary human rights scrutiny involves complex weighing of a range of public interests and the impact on society of a proposed law.

The Commission is grateful for the opportunity to make submissions and appear before portfolio committees and, in our experience, committees are generally open to hearing about human rights issues arising in Bills and during inquiries. The Commission acknowledges the critical work of committee members, staff, and advisers in building a human rights culture in Queensland.

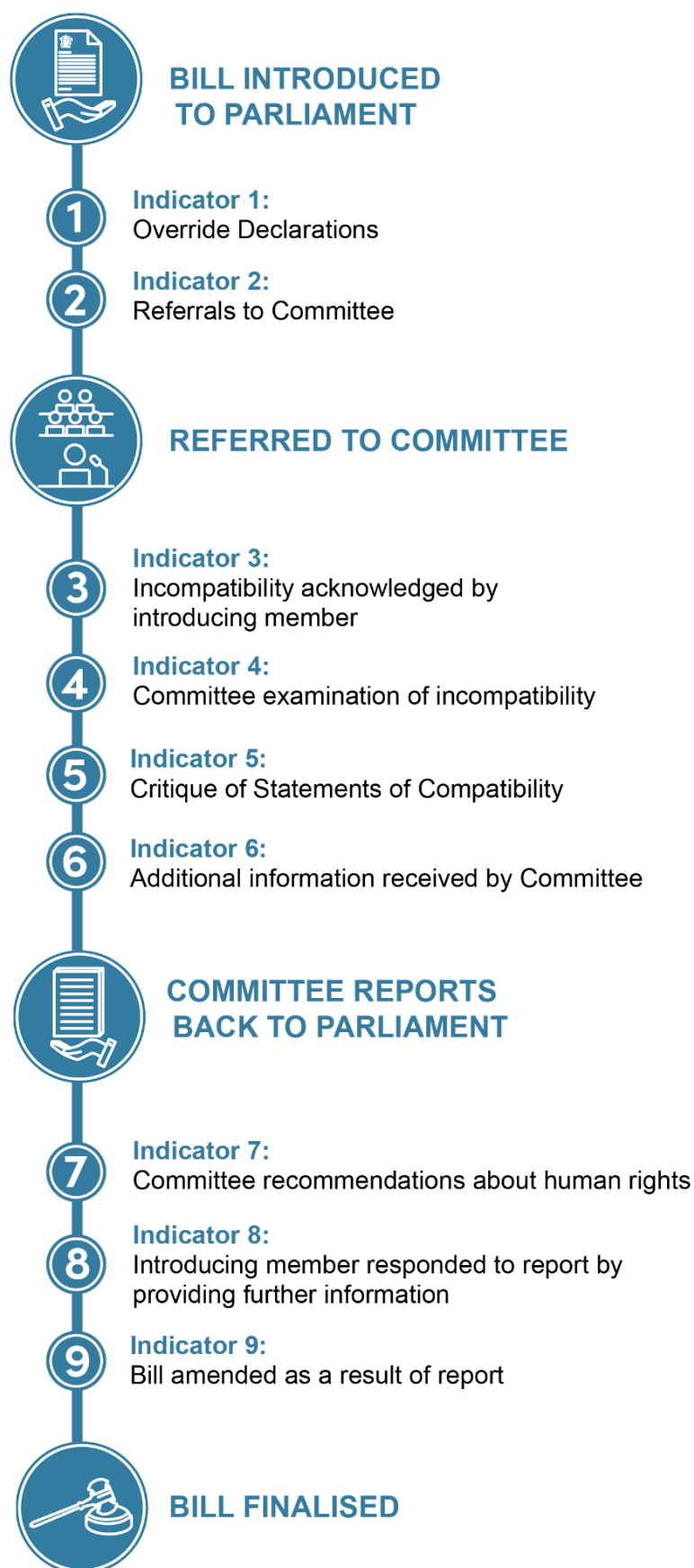
The observations in this report are not based on the Commission's direct experiences of the parliamentary scrutiny system, but are primarily drawn from the portfolio committee reports, submissions made to committees, statements of compatibility, and parliamentary debate.

These indicators explore the extent to which legislation is assessed for human rights compatibility, the adequacy of statements of compatibility, and how this is discussed through the parliamentary process. The indicators do not judge whether a Bill is compatible or not. Rather, they capture how concerns about human rights compatibility are raised through the scrutiny processes used in Queensland, and if such concerns are robustly debated in the parliament.

¹⁸ Explanatory Notes, Human Rights Bill 2018 (Qld) 10.

¹⁹ For more information on how these indicators were developed, see Queensland Human Rights Commission, *Balancing Life and Liberty: The second annual report on the operation of Queensland's Human Rights Act 2019* (Report 2020–21) 30–32.

Figure 2: Indicators of parliamentary human rights culture diagram



Indicator 1: Override declarations

Parliament may, in exceptional circumstances, expressly declare an Act has effect despite being incompatible with one or more human rights.²⁰ This indicator considers whether override declarations were relied upon by parliament in the 2022–23 financial year.

The *Strengthening Community Safety Act 2023* passed with 4 override declarations.

Indicator 2: Referrals to committee

This indicator considers bills that were passed on an urgent basis and therefore not referred to committee and subjected to usual parliamentary scrutiny.

Two Bills were declared urgent and debated without examination by the relevant portfolio committees. One of these Bills was related to appropriation Bills and was debated cognately with them.²¹ The other urgent Bill amended the *Holidays Act 1983* to provide for a public holiday for the National Day of Mourning for Her Majesty the Queen.²² Neither Bill had significant human rights impacts or implications.

Indicator 3: Incompatibility acknowledged by introducing member

This indicator considers Bills that had explanatory materials (including Explanatory Notes and Statement of Compatibility) in which the introducing member raised potential incompatibility.

The Commission identified one Statement of Compatibility that suggested a Bill was potentially incompatible with human rights, that being the *Strengthening Community Safety Bill 2023*, which included proposed override declarations.

Indicator 4: Committee examination of incompatibility

This indicator considers discussion by portfolio committees of statements of partial incompatibility or proposed override declarations after they were raised by the introducing member.

The Economics and Governance Committee's report discussed the proposed Override declarations relating to the *Strengthening Community Safety Bill 2023*, noted the Statement about Exceptional Circumstances accompanying the Bill, and overall, was satisfied that 'the Bill strikes an appropriate balance between the

²⁰ *Human Rights Act 2019* (Qld) s 43.

²¹ Revenue Legislation Amendment Bill 2022.

²² Holidays and Other Legislation Amendment Bill 2022.

protection of the rights of children and young people in Queensland, and strengthening community safety'.²³

Indicator 5: Critique of Statements of Compatibility

This indicator considers determinations by portfolio committees in their reports to parliament that Statements of Compatibility were inadequate.

Committee reports published during 2022–23 identified deficiencies in 5 statements (compared with 6 last financial year).

In relation to the Coal Mining Safety and Health and Other Legislation Amendment Bill 2022, the Transport and Resources Committee formally recommended that the Statement of Compatibility be amended to include a discussion of the engagement of the right to property.²⁴

In 3 other reports, portfolio committees found that statements failed to discuss a relevant right.²⁵ This included a Bill that did not discuss the human rights issues arising from provisions proposing to place an onus on a person charged with a criminal offence to prove it was reasonable for them to have not complied with the relevant section.²⁶

One committee helpfully provided guidance on rights that refer to unlawful and/or arbitrary interference, which includes the right to privacy and reputation, the right to property, and the right to liberty and security of person. The committee suggested that it is insufficient, and incompatible with international human rights standards that inform the interpretation of the Human Rights Act, to say that a limitation or restriction on a right occurs only when an interference is clearly unlawful or arbitrary, and go no further to consider the compatibility of the provisions. The committee suggested that, in the spirit of the Human Rights Act's overarching objectives, statements should more fully consider compatibility under section 13 for any arguable limitations on these rights.²⁷

Indicator 6: Additional information received by committee

This indicator considers further information received by portfolio committees and whether this resolved concerns about lack of justification for limitations on human rights.

This indicator reveals the effectiveness of Queensland's scrutiny process, as the ongoing dialogue between government departments, committees, and stakeholders through the inquiry process allows further information to be obtained

²³ Economics and Governance Committee, Queensland Parliament, *Strengthening Community Safety Bill 2023* (Report No. 41, March 2023) 7.

²⁴ Coal Mining Safety and Health and Other Legislation Amendment Bill 2022.

²⁵ Industrial Relations and Other Legislation Amendment Bill 2022; Land and Other Legislation Amendment Bill 2022; and Environmental Protection and Other Legislation Amendment Bill 2022.

²⁶ Environmental Protection and Other Legislation Amendment Bill 2022.

²⁷ Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022.

from the government about human rights compatibility and published in committee reports.

In those reports that discussed human rights limitations, the Commission identified that on 11 occasions committees sought additional information from the government.²⁸

Indicator 7: Committee recommendations about human rights

This indicator considers recommendations made by portfolio committees about human rights compatibility in reports to parliament.

This indicator was satisfied by 7 committee reports in which the Act was a factor in the committee making a formal recommendation to government. However, not all recommendations by committees required the government to consider amendments to legislation or Statements of Compatibility.

This contrasts with last year's annual report in which the Commission did not identify any formal recommendations about human rights made by committees.

The Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022 proposed amendments to ensure the safety and security of the custodial environment. The Education, Employment and Training Committee made 3 recommendations asking the Minister to clarify aspects of the Bill, including its compatibility with human rights. In its response, the government noted these recommendations and provided further justification.

The Health and Other Legislation Amendment Bill 2022 proposed changes to the *Recording of Evidence Act 1962* to facilitate the electronic recording of evidence before the Mental Health Review Tribunal (MHRT). In its submission, the Commission suggested further amendments to this Act were needed to ensure that the MHRT is legislatively obliged to accurately record its proceedings, for example, by way of electronic audio recording. This would ensure its practices were compatible with obligations under the right to fair hearing and right to equality before the law. While the Committee did not recommend amendments to the Bill, it did recommend that resources for technical and/or administrative support be provided to the MHRT to make recordings and/or transcriptions of proceedings. In its response, the government indicated support for this recommendation.

The primary purpose of the Police Powers and Responsibilities (Jack's Law) Amendment Bill 2022 was to expand the areas covered by the trial of hand held scanners to detect knives carried in public to locations beyond existing prescribed areas of Surfers Paradise and Broadbeach. The Community Support and Services Committee found that while the use of wands is not inherently inhuman or degrading, there is a potential that the manner of wand use could be an

²⁸ This occurred in relation to the: Animal Care and Protection Amendment Bill 2022; Public Health and Other Legislation (COVID-19 Management) Amendment Bill 2022; Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022; Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022; Police Powers and Responsibilities (Jack's Law) Amendment Bill 2022; Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022; Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Bill 2022; Births, Deaths and Marriages Registration Bill 2022; Police Powers and Responsibilities and Other Legislation Amendment Bill 2023; Path to Treaty Bill 2023; Tobacco and Other Smoking Products Amendment Bill 2023.

unreasonable limitation on human rights, particularly if the choice to want a person was due to stereotyping or unconscious bias. The Committee recommended that the trial be independently evaluated and the Queensland Government supported this recommendation.

The key objectives of the Births, Deaths and Marriages Registration Bill 2022 included strengthening the legal recognition of trans and gender diverse people, and better recognising contemporary family and parenting structures. A number of submissions, including one from the Commission, expressed concern that the statute book contains examples of older legislation passed before the community had a more nuanced understanding of sex and gender. In response, the Legal Affairs and Safety Committee recommended that Queensland Government agencies undertake an audit of Queensland legislation within their remit to identify amendments that would be required as a result of the passing of the Bill. The government supported this recommendation.

The main objective of the Police Powers and Responsibilities and Other Legislation Amendment Bill 2023 was to improve the efficiency and effectiveness of the Queensland Police Service (QPS), and the Queensland Fire and Emergency Services (QFES) by making a range of amendments to improve the administration and operation of these agencies. The Legal Affairs and Safety Committee considered additional information from the department and concluded any limitation on rights was reasonable. However, with regard to the proposed amendments to the Police Drug Diversion Program, the Committee recommended that the Queensland Police Service review their training to assess whether any change to current training is required to ensure that the greater discretion afforded to police when dealing with children suspected of minor drug offences does not result in them being treated more harshly than if they were adults. The government supported this recommendation.

The Path to Treaty Bill 2023 proposed the creation of legislative framework to progress truth and treaty in Queensland. The Community Support and Services Committee recommended the Bill be amended to change how criminal history was considered in making appointments to the Treaty Institute and senior executives. The government accepted this recommendation and amended the Bill to remove the automatic disqualification of people with convictions for indictable offences from holding positions on the First Nations Treaty Institute. The government also made amendments to enable the Queensland Police Commissioner to be compelled to provide information, and to require the Minister to provide a report on the operation and efficiency of the Institute within one year of its establishment.

During the reporting period, a committee recommended amendments to the Statement of Compatibility for the Coal Mining Safety and Health and Other Legislation Amendment Bill 2022.²⁹

²⁹ Coal Mining Safety and Health and Other Legislation Amendment Bill 2022.

While not counted for the purposes of this indicator (as it does not appear the Human Rights Act was central to a recommendation being made), a member of parliament noted the relevance of the Human Rights Act to a committee recommendation during debate of the Racing Integrity Amendment Bill 2022.³⁰

Indicator 8: Introducing member responded to report by providing further information

This indicator considers whether the member of parliament introducing the bill responded to committee recommendations and/or provided further justification for limitations on human rights.

On 4 occasions an introducing member provided more information to parliament about human rights compatibility issues raised through the scrutiny process.

The Education, Employment and Training Committee made 3 recommendations seeking further information about the Corrective Services (Emerging Technologies and Security) and Other Legislation Amendment Bill 2022. In its response, the government noted these recommendations and provided further justification for human rights compatibility.

During the debate stage, the Minister tabled amendments to the Statement of Compatibility for the Coal Mining Safety and Health and Other Legislation Amendment Bill 2022 in response to the recommendation by the Transport and Resources Committee.³¹

The Economics and Governance Committee concluded that the Integrity and Other Legislation Amendment Bill 2022 did not limit any human rights protected by the Human Rights Act, but noted that the right to freedom of thought, conscience, religion and belief³² is stated in language wide enough to encompass more than religious belief and also protects atheistic, agnostic, cultural, philosophical, academic, social, or personal beliefs. To further promote this right, the Committee suggested the Bill further amend the Auditor-General Act to include the words 'or affirmation', in addition to oath, for those provisions concerning the Auditor-General's commitment to acting faithfully and impartially in the role. The Minister referred to this issue in her second reading speech, advising the House that the *Acts Interpretation Act 1954* defines 'oath' to include affirmation. As such, she considered amendments to the Bill unnecessary.³³

A report of the Education, Employment and Training Committee discussed concerns that provisions of the Industrial Relations and Other Legislation Amendment Bill 2022, which would prevent unregistered organisations from representing employees in the Queensland Industrial Relations Commission, may unreasonably limit the right to freedom of association. The Committee's primary report concluded any limitation was reasonable and proportionate. However, in a

³⁰ Racing Integrity Amendment Bill 2022. The member stated: 'Recommendation 4 was again clarifying the publication of stewards' reports. We heard from a number of people around the use of stewards' reports and what they can be used for. There are multiple uses of those reports, but there is an impact in terms of the Human Rights Act, so I think a really good balance has been struck in terms of what we publish when it comes to those stewards' reports and being able to access information and sharing arrangements that have been put in place.'

³¹ Queensland Parliament, *Parliamentary Debates*, Legislative Assembly, 8 November 2022, 3343 (SJ Stewart, Minister for Resources).

³² *Human Rights Act 2019* (Qld) s 20.

³³ Queensland, *Parliamentary Debates*, Legislative Assembly, 29 November 2022, 3658 (G Grace).

dissenting report, some members of the Committee questioned this conclusion. The Minister provided further justification for the limitation on rights during the debate stage of the Bill.³⁴

Indicator 9: Bill amended as a result of report

This indicator considers amendments to Bills as a result of human rights issues raised in the committee process.

Through the parliamentary process 2 Bills were amended to improve compatibility with the Human Rights Act.

The Path to Treaty Bill 2023 was amended in response to recommendations made by the Community Support and Services committee. See also commentary under Indicator 8 above.

While not formally recommended by the Legal Affairs and Safety Committee, the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022 was amended based on human rights issues raised through the committee process including to:

- remove the limitations on when and where a United Nations subcommittee could conduct an interview with a person in detention (essentially to remove the requirement to visit a place of detention to be able to interview a person)
- remove the requirement for a 'legal guardian' to consent on a detainee's behalf to avoid inadvertently limiting the ability of a person to provide consent
- expand the examples of 'detriment' to include other forms of reprisal that may be more relevant to a person in detention.

By way of contrast, last year no bills were amended as a result of human rights issues raised in portfolio committee.

³⁴ Queensland, *Parliamentary Debates*, Legislative Assembly, 26 October 2022, 3092 (G Grace).

Guidance on statements of compatibility

Since the commencement of the Human Rights Act, portfolio committees have provided the following general guidance on requirements for statements of compatibility:

Issue	Committee	Inquiry	Requirement
Rights that refer to arbitrary and/or unlawful interference	Health and Environment Committee	Report No. 21, 57th Parliament: Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022	Statements of compatibility should still undertake an analysis under section 13 (to determine if a limitation of a human right is reasonable and justifiable) even if the Minister suggests that there is not an unlawful or arbitrary interference with the right.
Where a Bill primarily concerns acts or decisions of corporations and/or associations	Legal Affairs and Safety Committee	Report No. 28, 57th Parliament: Casino Control and Other Legislation Amendment Bill 2022	While provisions aimed at corporations or associations do not engage human rights, per se, this does not remove the need to consider whether human rights may be adversely affected when corporate officers are directly implicated by provisions affecting corporations.
Existing Acts amended by Bills	Economics and Governance Committee	Report No. 24, 57th Parliament: State Penalties Enforcement (Modernisation) Amendment Bill 2022	The statement of compatibility should consider the entirety of the Act as amended, including existing provisions not amended by the Bill.
Surveillance and cameras	Health and Environment Committee	Report No. 27, 57th Parliament: Environmental Protection and Other Legislation Amendment Bill 2022	Statements of compatibility should address the limitation on the right to privacy arising from the use of cameras and storage of footage (body-worn, CCTV, etc).
	Economics and Governance Committee	Report No. 24, 57th Parliament: State Penalties Enforcement (Modernisation) Amendment Bill 2022	

Onus of proof in criminal matters	Health and Environment Committee	Report No. 27, 57th Parliament: Environmental Protection and Other Legislation Amendment Bill 2022	Limitations on the rights in criminal proceedings ³⁵ should be justified whenever a reverse onus provision requires a person charged to demonstrate it was reasonable for them to not comply with a provision.
Justification for limitations on multiple rights.	Community Support and Services Committee	Report No. 17, 57th Parliament: Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022	Ensure that justification for limits on human rights are specifically discussed in relation to individual rights rather than a general discussion across multiple rights.
Approach in other human rights jurisdictions	Economics and Governance Committee	Report No. 11, 57th Parliament: Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021	It is helpful for statements of compatibility to discuss how the approach in a Bill differs from approaches taken to similar issues in other human rights jurisdictions.
Reasonably available alternatives	Legal Affairs and Safety Committee	Report No. 7, 57 th Parliament: Youth Justice and Other Legislation Amendment Bill 2021	Statements of compatibility should incorporate the views of stakeholders and their suggestions about reasonably available alternatives where targeted consultation has been undertaken in developing the Bill.

³⁵ *Human Rights Act 2019* (Qld) s 32.

Significant legislation 2022-23

A summary follows of legislation introduced in the 2022–23 financial year that raised significant human rights issues.

Strengthening Community Safety Bill 2023

Youth crime in Queensland has raised serious community concerns in recent years. Some victims have lost their lives during tragic and highly-publicised events involving young offenders. The Queensland Government undoubtedly has a duty to protect its citizens, and people should be able to live safely. The best outcomes for victims, young offenders, and the broader community are achieved through initiatives that reduce reoffending and incarceration – that is, by tackling the causes and consequences of youth crime.

The Strengthening Community Safety Bill 2023 proposed amendments to various laws with the stated aim of strengthening community safety and is the first instance of a law in Queensland passing with an override declaration. Parliament may, only in exceptional circumstances, declare that a provision of an Act has effect despite being incompatible with human rights (override declaration).³⁶ If parliament makes an override declaration, the Human Rights Act does not apply to the Human Rights Act or provision while the declaration is in force. An override declaration must expire after 5 years but could be re-enacted by parliament. The Bill was the first to propose such an override and concerned certain provisions to change the granting of bail and the detention of children.³⁷ The Minister agreed that these provisions were incompatible with several rights including the rights of children to protection in their best interest³⁸ and the right to liberty.³⁹

The Commission recommended the Bill not be passed because of the significant and disproportionate limitations it placed on the rights of children. In the Commission's view, the override was not justifiable because the circumstances did not meet the test of an 'emergency' as set out in the Human Rights Act. Examples provided in the Human Rights Act are: 'war, a state of emergency, an exceptional crisis situation constituting a threat to public safety, health or order'.⁴⁰

In considering the Bill, the Economics and Governance Committee report concluded that the incompatibilities with human rights were justified and that other limitations on human rights struck an appropriate balance between the protection of the rights of children and strengthening community safety. The Committee determined that the Bill's impact on human rights was justified in the circumstances and recommended that parliament pass the Bill. The Committee's report noted concerns raised in submissions about the proposed override of the Human Rights Act, and concluded:

³⁶ *Human Rights Act 2019* (Qld) s 43.

³⁷ These were amendments to introduce a breach of bail offence for children, a new Serious Repeat Offender Declaration Scheme, and the requirement for a child convicted of a prescribed indictable offence to serve a period of detention when they breached certain conditional release orders.

³⁸ *Human Rights Act 2019* (Qld) s 26(2).

³⁹ *Human Rights Act 2019* (Qld) s 29.

⁴⁰ *Human Rights Act 2019* (Qld) s 43(4).

*In response to these concerns, the department emphasised that the decision to override human rights and the justification for that decision are both matters for the government.*⁴¹

The footnote to this statement cited the joint departmental response provided to the Committee by the Queensland Police Service (QPS), Department of Children, Youth Justice and Multicultural Affairs (DCYJMA), and Department of Justice and Attorney-General (DJAG). The briefing stated:

*The decision to override human rights and its justification are both matters for Government.*⁴²

The Commission is concerned that this briefing material demonstrates a misunderstanding of the operation of the override declaration. It is a matter for an introducing member, in this case the relevant minister, to justify a proposed override. However, the Human Rights Act is clear that it is a decision of *parliament*, not the government, as to whether such a declaration should be made.⁴³

The Bill passed with 4 override declarations in place. The Human Rights Act was discussed throughout the debate stage, including submissions made by the Commission.⁴⁴

In the Commission's view, the experience of the Human Rights Act's first override declarations provides weight to the argument that the provision should be removed from the Human Rights Act. Instead, potential incompatibility should be assessed using the Statements of Compatibility and parliamentary scrutiny process. That process would permit parliament to consider whether sufficient justification for incompatible Bills to be passed has been made by introducing members, rather than removing the application of the Human Rights Act entirely.

Monitoring of Places of Detention (OPCAT) Bill 2022

The purpose of the Bill was to facilitate visits by the United Nations Subcommittee on Prevention of Torture (the subcommittee) to places of detention in Queensland. The subcommittee has the authority to conduct visits to Australia under the *Optional Protocol to the Convention Against Torture* (OPCAT). The subcommittee has a mandate to visit places of detention and make recommendations to state parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment.

The subcommittee visited Australia in late 2022 and was refused entry to a place of detention under the control of Queensland Health. As a result, the Bill was introduced to provide the subcommittee with access to places of detention in

⁴¹ Economics and Governance Committee, Queensland Parliament, *Inquiry into the Strengthening Community Safety Bill 2023* (Final Report, March 2023) 6.

⁴² Joint departmental response to submissions (Queensland Government), Submission to Economics and Governance Committee, Queensland Parliament, *Inquiry into the Strengthening Community Safety Bill 2023* (8 March 2023) 72.

⁴³ *Human Rights Act 2019* (Qld) s 43(1) states that the *parliament* may expressly declare an Act or provision has effect despite being incompatible with rights (emphasis added).

⁴⁴ See for example: Queensland Parliament, *Parliamentary Debates*, Legislative Assembly, 14 March 2023, 363 (L Power); Queensland Parliament, *Parliamentary Debates*, Legislative Assembly, 15 March 2023, 478 (M Berkman).

Queensland and to ensure the subcommittee could fulfil its mandate under OPCAT.

Human rights issues, such as the privacy rights of detainees, were discussed throughout the Legal Affairs and Safety Committee's report and during debate of the Bill. Additional information was included throughout the report from the department responding to submissions.

While the Committee found any limitations on rights were reasonable and recommended the Bill be passed, the Commission and other stakeholders raised concerns that clauses of the Bill regarding people with impaired capacity who may wish to engage with the subcommittee were too restrictive and may prevent equitable access to participation in interviews by people with a disability or young people.

While no recommendation was made by the Committee about this issue, in response to submissions made by stakeholders during the Committee inquiry process, the government made amendments to the Bill to:

- remove the limitations on when and where the subcommittee conducts an interview (in essence, to remove the requirement to visit a place of detention to be able to interview a person)
- remove the requirement for a 'legal guardian' to consent on a detainee's behalf in order to avoid inadvertently limiting the ability of a person to provide consent
- expand the examples of 'detriment' to include other forms of reprisal that may be more relevant to a person in detention.

Despite the Bill passing into law, the subcommittee decided to terminate its visit to Australia on 20 February 2023 due to obstacles in carrying out its mandate, and so were unable to visit any places of detention in Queensland.⁴⁵

The Commission notes that even with the passage of this Bill, the Queensland Government must still take steps to:

- fully participate in Australia's National Preventive Mechanism (NPM) under the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) which was due to commence in early 2023; and
- clarify the roles and responsibilities of various agencies with oversight functions in Queensland.

Nature Conservation and Other Legislation Amendment Bill 2022

The primary purpose of the Bill was to amend the *Nature Conservation Act 1992* to provide a 20-year extension to enable beekeeping in specified national parks to continue until 31 December 2044. The proposed extension only applies to areas where beekeeping could be lawfully undertaken immediately prior to the transfer of the land as national park.

⁴⁵ United Nations Human Rights Office of the High Commissioner, 'UN torture prevention body terminates visit to Australia, confirms missions to South Africa, Kazakhstan, Madagascar, Croatia, Georgia, Guatemala, Palestine, and the Philippines' (Press release, 20 February 2023).

The Statement of Compatibility noted that aspects of the Bill potentially limited the cultural rights of Aboriginal peoples and Torres Strait Islander peoples.⁴⁶ In its submission to the State Development and Regional Industries Committee, the Commission noted that cultural rights in the Human Rights Act are modelled on articles of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP). A key obligation of UNDRIP is to seek the free, prior and informed consent of First Nations peoples.

The Statement of Compatibility noted that 12 First Nations groups currently have native title determinations or native title claims over national parks with apiary sites located on them. The Department of Environment and Science wrote to each of these groups to seek feedback about the proposed amendments.

The Commission welcomed this consultation but noted that this may not be sufficient to demonstrate a reasonable and proportionate justification of the limitation of rights. Cultural rights under the Human Rights Act are broader than native title, and protect the cultural rights of any First Nations person with a cultural interest in lands or waters, beyond those with an interest under native title legislation.⁴⁷

The State Development and Regional Industries Committee sought more information from the government on these issues. The department acknowledged that cultural and native title rights can be distinct and separate and acknowledged the deep connection that First Nations peoples have with their land. While the department acknowledged cultural rights extend beyond native title rights, its consultation regarding the potential impacts of the Bill on cultural rights involved seeking the views of the representatives of the people who can speak for the land to which the Bill applies.

In the absence of an agreed cross-government framework for broader engagement with First Nations peoples regarding cultural rights under the Human Rights Act, the department considered this approach to be respectful of the practice of letting people on country speak for their country. The department stated that they had provided an opportunity for individuals to advise them if cultural rights are held by other First Nations peoples who are not of that country, or who are not recognised native title holders of that country.

Separate to their assessment of cultural rights, the department noted that the committee's inquiry into the Bill also provided an avenue for the public to raise any human rights matters.

In its submission to the committee the Commission questioned whether new apiary permits should only be granted with the free, prior and informed consent of First Nations peoples with cultural connections to the land, including those people who have not had formal native title recognition. The department advised that new apiary permits will be granted with consideration of the requirements of the Human Rights Act and consistent with the department's obligations as articulated in the Nature Conservation Act.

The department stated that it plans to explore alternative methods to evaluate the effects on the cultural rights of First Nations peoples. This assessment would go beyond considering only those people who hold native title or have filed claims on

⁴⁶ *Human Rights Act 2019* (Qld) s 28.

⁴⁷ *Human Rights Act 2019* (Qld) s 28(2)(d). See discussion of this issue in Queensland Human Rights Commission, *Putting people first: the first annual report on the operation of Queensland's Human Rights Act* (Report, 2019-20) 37-38.

the land where beekeeping activities take place. This investigation would include engaging with the Commission to discuss where such approaches have been used effectively in other circumstances across government. The Commission views this instance as a constructive illustration of human rights dialogue in the committee process.

Births, Deaths and Marriages Registration Bill 2022

The key objectives of the Bill included strengthening the legal recognition of trans and gender diverse people, and better recognising contemporary family and parenting structures. The Commission has long supported law reform to achieve these objectives.

The changes in the Bill included: removing the requirement for a person to undergo sexual reassignment surgery in order to alter the record of their sex; introducing a more accessible framework for people aged 16 years and older to apply to alter the record of their sex; enabling a person to nominate a sex descriptor of their choice (male, female, or any other sex); and allowing each of a child's parents to be registered as mother, father, or parent, which allows combinations that are not confined to 'mother/father'.

The Bill also proposed amendments to the *Anti-Discrimination Act 1991* to change the meaning of 'gender identity' to provide for a more inclusive definition, to introduce a new protected attribute of 'sex characteristics' to protect the intersex community, and to repeal an exemption that allows discrimination in working with children.

Human rights under the Human Rights Act, as informed by relevant international instruments, were discussed throughout the Legal Affairs and Safety Committee's report on the Bill. This included additional information provided by the department to the committee regarding the *Yogyakarta Principles*, which provide a universal guide to the application of human rights principles and legal standards on sexuality and gender identity.

The Commission and other stakeholders raised concerns about the impact on human rights in relation to provisions about 'restricted persons' (a prisoner or a released prisoner) including the requirement that such persons seek the approval of the Queensland Corrective Services Chief Executive to apply for a change of sex. The Commission considered that this was a significant limitation on the right to equality before the law, the right to privacy, and the right to humane treatment when deprived of liberty.

The committee found the Statement of Compatibility lacked sufficient detail on these issues and sought further information from the government, which was subsequently published in the report. The committee concluded that the approval process was a reasonable limitation on human rights.

Several submissions, including from the Commission, expressed concern that the statute book contains examples of older legislation passed before the community had a more nuanced understanding of sex and gender. Stakeholders suggested that an audit was necessary to ensure all legal rights, entitlements, privileges, and responsibilities are afforded equally to all Queenslanders, regardless of their gender or sex. In response, the committee recommended that Queensland Government agencies undertake an audit of Queensland legislation within their

remit and identify amendments required as a result of the introduction of the Bill. The government supported this recommendation.

Human rights were discussed during the debate, both in relation to the promotion and limitation of rights arising from the Bill. The Bill has been passed and received assent and will commence on a date to be fixed by proclamation.

Path to Treaty Bill 2023

This Bill establishes the legislative framework needed to progress truth and treaty in Queensland. The Commission supported the intent of the Bill as promoting the human rights of Aboriginal peoples and Torres Strait Islander peoples but made several recommendations regarding the details. In particular, the Commission noted that the Truth-telling and Healing Inquiry's powers to compel were insufficient and did not include the power to compel the Queensland Police Service or non-government service providers to give information or attend a hearing. The Commission was concerned that not providing the Inquiry with adequate powers to compel risked compromising the effectiveness and cultural safety of the truth telling and healing process. The Commission, along with other stakeholders, raised concerns about the compatibility of some clauses in the Bill, including the automatic disqualification of people convicted of indictable offences from being members of the Treaty Institute Council, with the rights to equality, taking part in public life, and privacy.

In its report, the Community Support and Services Committee accepted that limiting appointment to the Treaty Institute Council to Aboriginal and Torres Strait Islander peoples was a special measure to redress disadvantage under the 'special measures' provision in the Human Rights Act.⁴⁸ The committee considered the potential impact on an individual's right to privacy and confidentiality in relation to the criminal history provisions may be justifiable. However, the committee suggested that in the context of the over-representation of First Nations people in the criminal justice system, more tailored disqualification provisions would be appropriate. The Committee recommended that the relevant clause be omitted and replaced with a new provision providing that a person's criminal history may be taken into account in making appointments to the Treaty Institute and senior executive positions.

The committee noted concerns about the inability for the inquiry to compel the Commissioner of the Queensland Police Service, but noted with approval that the department has made a commitment to amend the relevant clauses prior to the passage of the Bill in response to the issue being raised by stakeholders during the submission process.

The Bill was amended to remove the automatic disqualification of people with convictions for indictable offences from holding positions in the First Nations Treaty Institute, to enable the Queensland Police Commissioner to be compelled to provide information, and to require the Minister to provide a report on the operation and efficiency of the Inquiry within one year after it is established. Compatibility with the Human Rights Act and the *United Nations Declaration on the Rights of Indigenous Peoples* was discussed during the debate stage. The Bill has been passed and received assent and will commence on a date to be fixed by proclamation.

⁴⁸ *Human Rights Act 2019* (Qld) s 15(5).

Land and Other Legislation Amendment Bill 2022

The purpose of the Bill was to ensure the regulatory frameworks within the resources portfolio remain efficient, effective, and responsive to change. The Transport and Resources Committee identified two significant issues in relation to this Bill:

- The Statement of Compatibility failed to address the limitation on cultural rights of Aboriginal and Torres Strait Islander peoples.⁴⁹
- A potential unintended consequence of the Bill was that it may override the obligations of public entities under the Human Rights Act, or at least make enforcement of those obligations more difficult.

In the body of the Committee's report, but not included as a formal recommendation, the Committee sought further justification about the limitation on First Nations' cultural rights and suggested an amendment to deal with the enforceability issue. The Committee went so far as to suggest that a failure to respond appropriately to these issues may reduce the government's commitment to upholding the human rights of First Nations people to mere 'lip service'.

The department's response to the Committee indicated it did not agree it should address all the identified issues because:

The compatibility of a Bill with the HR Act should only be considered in the context of the amendments being proposed in a Bill. Compatibility should not consider human rights more generally across Acts or its provisions that are not the subject of the proposed amendments.

This interpretation contrasts with the conclusion reached previously by the Economics and Governance Committee, which in a report discussed in last year's annual report on the operation of the Human Rights Act, concluded that statements of compatibility should justify any limitation on human rights arising from existing legislation as amended, including in relation to aspects of legislation not amended by the Bill.⁵⁰ The department provided no justification as to why it reached a different conclusion to the approach set out in the previous Economics and Governance Committee report.

This example illustrates a drawback of the Queensland parliamentary committee system. The formulation of clear and consistent rules and expectations for the preparation of statements of compatibility is frustrated by multiple committees undertaking scrutiny functions.

The Commission supports the conclusions reached by the Economics and Governance Committee that statements of compatibility should consider the compatibility of the entirety of existing legislation, as amended.

⁴⁹ Human Rights Act 2019 (Qld) s 28.

⁵⁰ See discussion of this issue in Queensland Human Rights Commission, *Shifting the focus: The third annual report on the operation of Queensland's Human Rights Act 2019* (Report 2021-22) 41.

Animal Care and Protection Amendment Bill 2022

The objective of the Bill was to modernise Queensland's animal welfare laws to reflect modern scientific knowledge, community attitudes, and expectations.

The State Development Committee noted that proposed section (93T) would require livestock slaughter facilities to install, maintain, and operate closed-circuit television (CCTV) equipment. The Committee noted that CCTV equipment in public places may record employees or visitors and engages the right for a person not to have their privacy unlawfully or arbitrarily interfered with. While noting that the Bill included some protections, the Committee found that no mention was made in the proposed Bill about who may view the recordings and associated records, and no specific requirements about storage were outlined.

The Committee suggested it could be argued that a more appropriate balance could be struck between the legitimate purpose of protecting animals and the importance of preserving individuals' rights to privacy by further amendments.

As the Committee made no formal recommendations on this point, the government did not respond to these suggestions in its response to the Committee, and no amendments to the Bill were moved.

Casino Control and Other Legislation Amendment Bill 2022

The purpose of this Bill was to ensure casino integrity and to modernise gambling legislation.

Significantly, the Bill proposed to remove an existing detention power under the *Casino Control Act 1982* due to its potential incompatibility with human rights. The power could be used by an inspector, casino operator, or casino operator's employees and agents. The Statement of Compatibility noted that Office of Liquor and Gaming Regulation inspectors do not use the detention power, and so the government concluded it could not justify retaining the detention power for others. The Bill passed and received assent on 21 October 2022.

Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022

The Bill proposed to implement reforms to address coercive control as recommended by the Women's Safety and Justice Taskforce in its report, *Hear her Voice – Report one – Addressing coercive control and domestic and family violence in Queensland*.

The amendments proposed in this Bill included updating the language used to describe sexualised violence, including changing the term 'carnal knowledge' to 'penile intercourse'. Several submissions raised concerns about this change arguing that the language was not gender neutral and the terminology implied certain offences could only be perpetrated by men.

In the human rights compatibility section of its report, the Legal Affairs and Safety Committee noted the proposed change could be seen as discriminatory against potential victims and not compatible with human rights norms and expectations. However, the department provided further advice that the term 'penile intercourse' is not considered to be gendered language and therefore discriminatory because it relates to physical anatomy, including a surgically constructed penis. It further advised that amending the terminology was for the purpose of modernising the language, not to substantively alter the scope or operation of the offence. Finally, the department advised other types of abuse are captured by other offence provisions in the Criminal Code. Based on this additional information, the Committee was satisfied the limits on the human rights were reasonable and demonstrably justifiable.

The potentially discriminatory aspects of this provision were also discussed in the debate stage of the Bill, but the Bill was passed with this definition.

COVID-19 related legislation

The key objective of the Public Health and Other Legislation (COVID-19 Management) Amendment Bill 2022 was to replace the temporary amendments made to the *Public Health Act 2005* in response to COVID-19. These temporary changes provided extraordinary powers to the Chief Health Officer and emergency officers to contain and respond to the spread of COVID-19. Without further extension by parliament, the framework would have expired on 31 October 2022 or earlier, if the Minister for Health and Ambulance Services ended the public health emergency.

The Bill proposed to replace the temporary framework with more targeted powers to manage COVID-19 as a notifiable condition under the Public Health Act. This was intended to provide a 'step-down' approach to managing the pandemic response. The power of the Chief Health Officer to make public health directions would be limited to: masks, isolation and quarantine, and vaccinations for workers in high-risk settings. Directions would undergo a parliamentary process to include a statement explaining the rationale and compatibility with human rights. These directions would expire automatically after 90 days. The Bill contained additional safeguards that require a person to be given an opportunity to voluntarily comply with a direction before compliance is enforced.

The Commission had previously made several submissions to parliament recommending changes to the temporary COVID-19 framework. In introducing the Bill, the Minister suggested the advocacy of several stakeholders, including the Commission, had informed the Bill.

The Human Rights Act was raised in several submissions and discussed extensively throughout the Health and Environment Committee's report. The Human Rights Act was discussed in debate, however the Bill passed unamended and has received assent. The temporary changes to the Public Health Act commenced on 1 November 2022.

Summary of the role of parliament in 2022-23

The Commission's analysis focuses on the passage of primary legislation through the parliament, including the assessment of Bills and statements of compatibility by portfolio committees.

The application of these indicators to legislation considered in the reporting period suggests that human rights compatibility is being addressed both through submissions to Committees and in the discussion in Committee reports. Comparing the progress on the indicators this year with previous years, there are positive signs that a human rights culture is continuing to develop. This is reflected in more amendments being made to Bills to address human rights concerns raised through the scrutiny process. It remains a positive feature of the Queensland Parliament's process that Committees continue to collate and publish additional information about compatibility obtained through the inquiry process.

Committees also continue to refine the format and structure of their reports, often extending their consideration of human rights compatibility to all sections of the report and including graphical analysis of human rights limitations and justifications.⁵¹

During the reporting period, Committees also made more recommendations to improve Bills and statements of compatibility based on human rights considerations. The government generally accepted these recommendations and made some amendments. In one case, in response to issues raised during the inquiry process, the relevant department agreed to amend a Bill after reading stakeholder submissions, even before the committee report was published.⁵²

Some Committee recommendations required only clarification of an issue rather than proposing an amendment, while other committee reports discussed human rights concerns but did not make recommendations, and therefore a formal response was not required from government. This meant that some human rights compatibility issues went unaddressed, and the Bills were passed despite the Committees' concerns.

On several occasions, amendments unrelated to the original subject matter of the Bills were made after committees had reported.⁵³ In past annual reports, the Commission has raised concerns regarding this practice. Even though these amendments were accompanied by statements of compatibility, it is deeply concerning that they were not subject to any scrutiny by a portfolio committee. This raises fundamental questions about the integrity of the legislative process.

⁵¹ See for example, State Development and Regional Industries Committee, Queensland Parliament, *Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Bill 2022* (Report No. 37, February 2023) 25.

⁵² See Community Support and Services Committee, Queensland Parliament, *Path to Treaty Bill 2023* (Report No. 30, April 2023) 42.

⁵³ See Integrity and Other Legislation Amendment Bill 2022; Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022; Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Bill 2022.

The most concerning development of the year was parliament agreeing to the first override declarations under the Human Rights Act. The limited justification for the proposed overrides, coupled with confusion through the parliamentary process as to how the declarations are made should prompt consideration about whether this option should be removed from the Act.

Where an override declaration is made, the relevant legislation or provisions subject to the override do not undergo any scrutiny by committees, and stakeholders have no opportunity for input. A key benefit to removing the Human Rights Act's override provision would be ensuring the continued scrutiny of all legislation including those laws which parliament has conceded are incompatible with human rights.

However, the effect of removing the override provision from the Act would need to be closely evaluated, particularly considering that the benefit of the current framework is that overrides expire automatically after 5 years. This prompts parliament to periodically reassess whether the crisis justifying the override declaration still prevails.