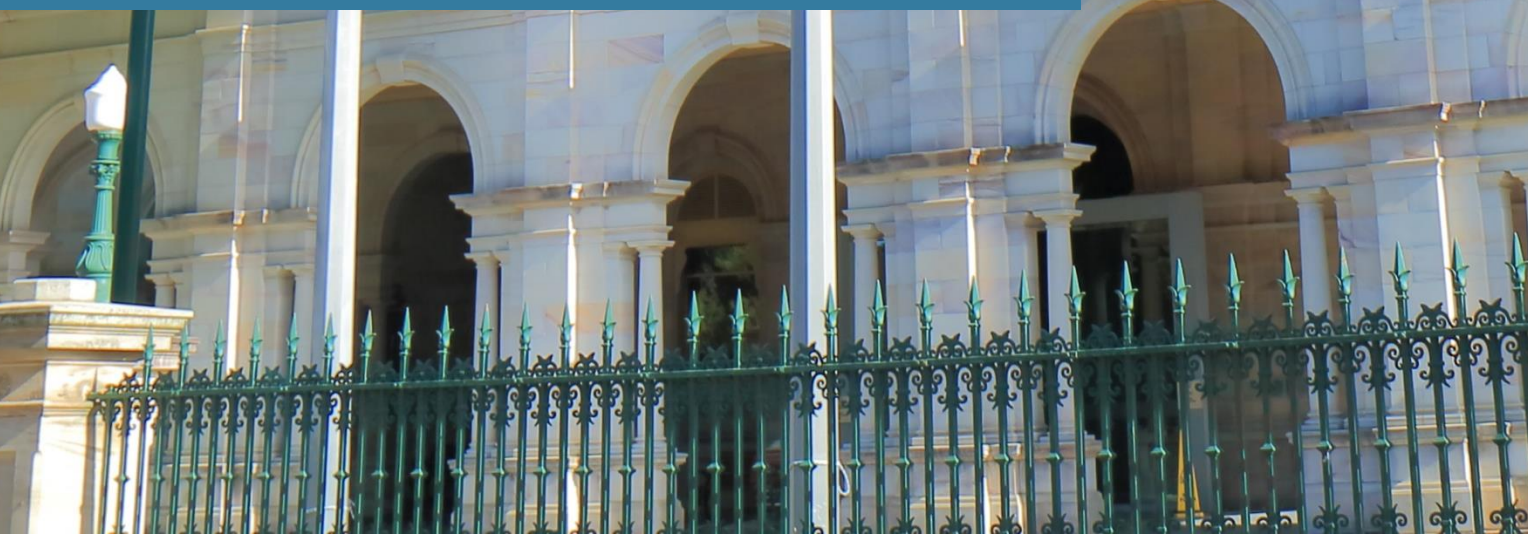




Human rights and the parliament



The role of Queensland Parliament

The 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 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 compatibly with human rights. This starts a procedure whereby the incompatibility is brought to the attention of the Attorney-General and parliament, but does not affect the validity of the law.

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 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 five years after the provision commences.

Parliament has not relied on any Override Declarations when passing legislation in this reporting period, although as discussed below an Override Declaration was proposed in a report by a portfolio committee regarding the Police Powers and Responsibilities and Other Legislation Amendment Bill 2021.

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 committees must consider the Bill and report to the Legislative Assembly about any incompatibility with human rights.

A total of 36 Bills (accompanied by Statements of Compatibility) were introduced during the 2021–22 financial year. Portfolio committees completed 21 relevant inquiries into Bills that were introduced in the parliament and referred to committees for examination during the reporting period.¹ These committees also completed an additional 6 reports, for Bills introduced in the 2020–21 financial year.² All but one of these Bills passed during the reporting period.³

Statements of Compatibility must explain why any limitation of human rights is demonstrably justifiable. *The Queensland Legislation Handbook*⁴ provides guidance and a template for completion of the Statement of Compatibility by the relevant department. The statements set out the human rights issues, including which human rights are engaged or are of relevance. The Statements then explain how the legislation meets the proportionality test in section 13 of the 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.

¹ Portfolio committees completed a total of 32 inquiries into Bills introduced into parliament including appropriation Bills, which are not considered in detail in this report. Bills introduced during the reporting period included: Small Business Commissioner Bill 2021; Justice Legislation (COVID-19 Emergency Response — Permanency) Amendment Bill 2021; Police Powers and Responsibilities and Other Legislation Amendment Bill 2021; Police Legislation (Efficiencies and Effectiveness) Amendment Bill 2021; Inspector of Detention Services Bill 2021; Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021; Child Protection Reform and Other Legislation Amendment Bill 2021; Queensland University of Technology Amendment Bill 2021; Superannuation (State Public Sector) (Scheme Administration) Amendment Bill 2021; Brisbane Olympic and Paralympic Games Arrangements Bill 2021; Police Service Administration and Other Legislation Amendment Bill 2021; Evidence and Other Legislation Amendment Bill 2021; Food (Labelling of Seafood) Amendment Bill 2021; Health and Other Legislation Amendment Bill 2021; Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022; Racing Integrity Amendment Bill 2022; Nature Conservation and Other Legislation Amendment Bill 2022; Land and Other Legislation Amendment Bill 2022; State Penalties Enforcement (Modernisation) Amendment Bill 2022; Building and Other Legislation Amendment Bill 2022; Personal Injuries Proceedings and Other Legislation Amendment Bill 2022.

² See Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill 2021; Housing Legislation Amendment Bill 2021; Resources and Other Legislation Amendment Bill 2021; Queensland Veterans' Council Bill 2021; Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Act 2021; Voluntary Assisted Dying Bill 2021.

³ The Private Members Bill: Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill 2021 was discharged on 14/10/2021.

⁴ Department of the Premier and Cabinet (Qld), '3.5 Role of drafter', *Queensland Legislation Handbook* (Web Page, 17 June 2021).

Human Rights Certificates

Human Rights Certificates must accompany new subordinate legislation and are drafted by the minister responsible for the subordinate legislation. Based on the Commission's review of the Queensland legislation website, there were approximately 198 new pieces of subordinate legislation accompanied by Human Rights Certificates, tabled in the 2021–22 financial year.

The format and content of the Human Rights Certificates is similar to Statements of Compatibility, described above.

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 Act, the portfolio committee responsible for examining a Bill must consider and report to the parliament about whether or not 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 in 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. In the context of human rights legislation, they can assist parliament in assessing 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.⁵ 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.

⁵ Explanatory Notes, Human Rights Bill 2018 (Qld) 29.

Human rights indicators

The dialogue model adopted in the 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’.⁶ This model which prioritises discussion, awareness-raising, and education over an enforcement and compliance model, supporting the goal of building gradually towards a human rights culture.

The Commission has developed a set of indicators regarding 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.⁷

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 different 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 under Bills and during inquiries. The Commission acknowledges the critical work of committee members, staff, and advisers in building a human rights culture in Queensland.

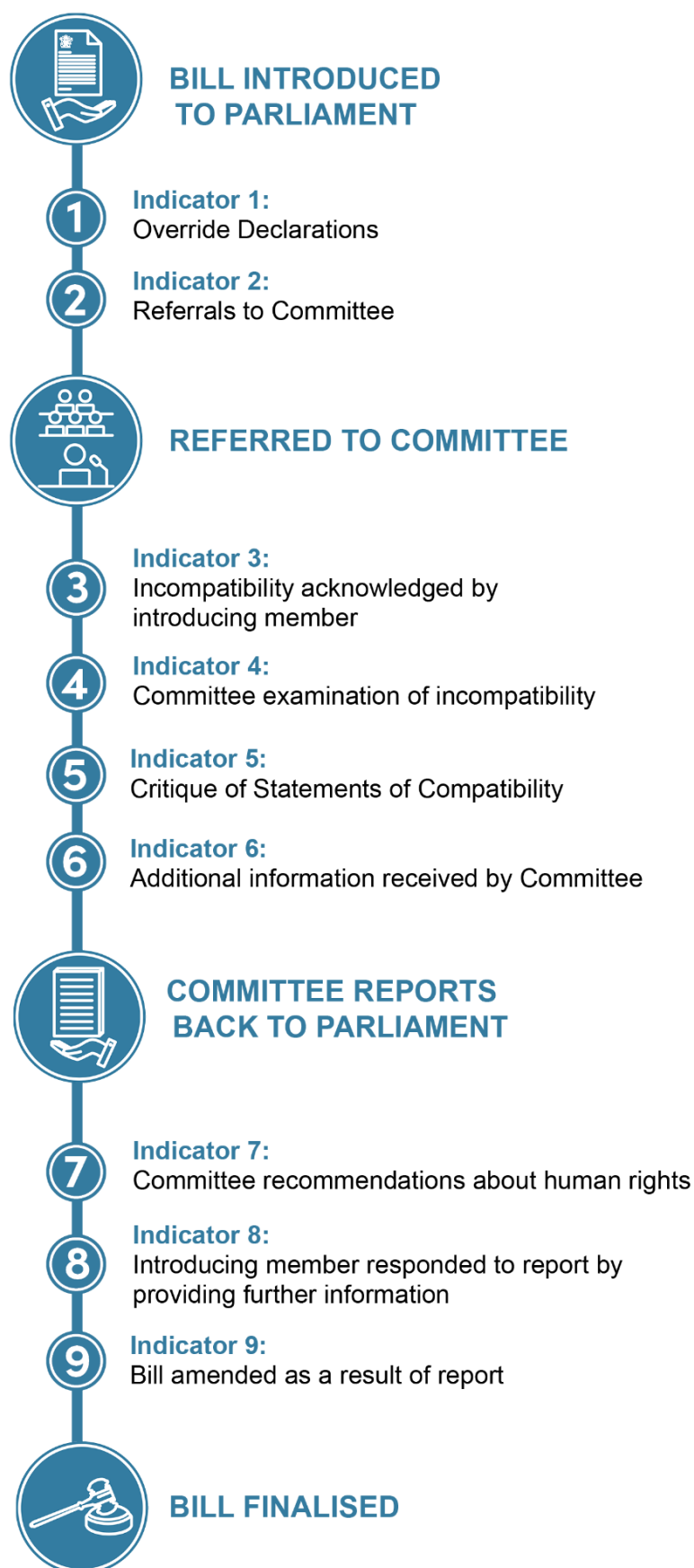
The observations in this report are not based on the Commission’s direct experiences of the parliamentary scrutiny system, but are primarily drawn from the portfolio committee reports, submissions made to committees, statements of compatibility, and parliamentary debate.

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.

⁶ Explanatory Notes, Human Rights Bill 2018 (Qld) 10.

⁷ 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.⁸ This indicator considers whether Override Declarations were relied upon by parliament in the 2021–22 financial year.

No Bills were introduced or passed with 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.

Only one non-appropriation Bill during the reporting period was declared urgent and therefore debated without inquiry by the relevant portfolio committee. However, this Bill was related to appropriation Bills and debated cognately with them.⁹

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 was unable to identify any Statements of Compatibility that stated a Bill was potentially incompatible with rights.

Indicator 4: Committee examination of incompatibility

This indicator considers discussion by portfolio committees of statements of partial incompatibility or proposed Override Declarations after these were raised by the introducing member.

As above, for Bills introduced during the reporting period, no portfolio committee was required to consider statements of partial incompatibility.

⁸ *Human Rights Act 2019* s 43.

⁹ Revenue Legislation Amendment Bill 2022.

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 2021–22 identified deficiencies in 6 Statements of Compatibility compared with 10 last year.

Issues identified in Statements of Compatibility included:

- failure to consider *all* relevant human rights limited by the Bill.¹⁰
- failure to particularise justifications for limiting individual human rights.¹¹
- insufficient justification for limitations to satisfy the justification criteria set out in section 13 of the Act,¹² such as less restrictive alternatives to achieve the stated purpose or more information about proposed safeguards.¹³ In one case, this lack of justification led the committee to question if provisions of the Bill may be incompatible.¹⁴
- further consideration necessary on how the approach in the Bill differs from approaches taken to similar issues in other human rights jurisdictions.¹⁵

Nearly three-quarters of committee reports published this year found the Bills they were examining had adequate statements.

¹⁰ Legal Affairs and Safety Committee, Queensland Parliament, *Police Powers and Responsibilities and Other Legislation Amendment Bill 2021* (Report No 15, November 2021) 41.

¹¹ Community Support and Services Committee, Queensland Parliament, *Inquiry into Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022* (Report No 17, March 2022) 38.

¹² Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into Police Powers and Responsibilities and Other Legislation Amendment Bill 2021* (Report No 15, November 2021) 41; Economics and Governance Committee, *Inquiry into Brisbane Olympic and Paralympic Games Arrangements Bill 2021* (Report No 20, November 2021) 57; State Development and Regional Industries Committee, *Inquiry into Health and Other Legislation Amendment Bill 2021* (Report No 17, February 2022) 49.

¹³ State Penalties Enforcement (Modernisation) Amendment Bill 2022.

¹⁴ Legal Affairs and Safety Committee, Queensland Parliament, *Police Powers and Responsibilities and Other Legislation Amendment Bill 2021* (Report No 15, November 2021) 40-41.

¹⁵ Economics and Governance Committee, *Inquiry into Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021* (Report No 11, August 2021) 72.

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

In those reports that discussed human rights limitations, on 8 occasions the committee published additional information regarding the limitations provided by the government.¹⁶

Indicator 7: Committee recommendations about human rights

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

The Commission was unable to identify any formal recommendations about human rights' compatibility made in reports during the reporting period; however, committees did make specific comments in relation to three Bills seeking further information from the government regarding concerns about human rights compatibility.¹⁷

¹⁶ Economics and Governance Committee, Queensland Parliament, *Inquiry into Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021* (Report No 11, August 2021); Health and Environment Committee, Queensland Parliament, *Inquiry into Voluntary Assisted Dying Bill 2021* (Report No 10, August 2021); State Development and Regional Industries Committee, *Inquiry into Health and Other Legislation Amendment Bill 2021* (Report No 17, February 2022); Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into Evidence and Other Legislation Amendment Bill 2021* (Report No 23, February 2022); Economics and Governance Committee, Queensland Parliament, *Inquiry into Police Service Administration and Other Legislation Amendment Bill 2021* (Report No 21, February 2022); Community Support and Services Committee, Queensland Parliament, *Inquiry into Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022* (Report No 17, March 2022); Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into Police Legislation (Efficiencies and Effectiveness) Amendment Bill 2021* (Report No 16, November 2021); Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into Police Powers and Responsibilities and Other Legislation Amendment Bill 2021* (Report No 15, November 2021).

¹⁷ Economics and Governance Committee, Queensland Parliament, *Inquiry into State Penalties Enforcement (Modernisation) Amendment Bill 2022* (Report No 24, May 2022) 39-40; State

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.

As discussed further below, on one occasion further information regarding human rights compatibility was provided through the government response to the committee report and in the debate stage, although the committee's recommendation on this issue did not specifically identify the human rights computability issues. These were however discussed in the committee's report.¹⁸

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.

It appears no Bills were amended during the reporting period arising from human rights issues raised in portfolio committee reports.

Development and Regional Industries Committee, Queensland Parliament, *Inquiry into the Health and Other Legislation Amendment Bill 2021* (Report No 17, February 2022) 49; Economics and Governance Committee, *Inquiry into Brisbane Olympic and Paralympic Games Arrangements Bill 2021* (Report No 20, November 2021) 57.

¹⁸ State Development and Regional Industries Committee, Queensland Parliament, *Inquiry into the Health and Other Legislation Amendment Bill 2021* (Report No 17, February 2022) 49.

Significant legislation 2022-22

A summary follows of legislation introduced in the 2020–21 financial year that raised significant human rights issues.

Voluntary Assisted Dying Bill 2021

This Bill was developed after extensive community consultation conducted by independent and parliamentary bodies, including a comprehensive review by the Queensland Law Reform Commission.¹⁹ The parliamentary process for consideration of this Bill provided a positive example of the dialogue model of human rights.

The Bill and Statement of Compatibility were discussed at length throughout the Health and Environment Committee's report, not just in the formal technical 'compliance' analysis at the end of the report. In response to concerns about limitations on human rights raised by stakeholders, additional information was provided to the committee by the Department of Health. After a detailed human rights compatibility analysis, the committee concluded that any limitations on rights were reasonable and justifiable. However, the committee was of the view that careful consideration should be given to the practical operation of the provisions concerning entities that refuse to provide direct access to the voluntary assisted dying scheme. Protection of human rights was also discussed at length during debate on the Bill, which passed without amendment.

Housing Legislation Amendment Bill 2021

This Bill implemented key objectives of the Queensland Housing Strategy, including changes to grounds for eviction. The Community Support and Services Committee's report not only considered rights specifically protected in the Human Rights Act, but also the right to housing.²⁰

The committee noted the severity of penalties in the Bill and queried whether a less restrictive option might be to apply lesser penalties or

¹⁹ Queensland Law Reform Commission, *A legal framework for voluntary assisted dying* (Report 79, May 2021).

²⁰ The committee noted that section 12 of the Act clarifies that a 'right or freedom not included, or only partly included in this Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included': Community Support and Services Committee, Queensland Parliament, *Inquiry into Housing Legislation Amendment Bill 2021* (Report No 7, August 2021) 56.

impose civil penalties. However, as this was not included as a formal recommendation, it is unclear if the government or parliament considered this suggestion.²¹

Police Powers and Responsibilities and Other Legislation Amendment Bill 2021

This Bill restricted the ability of certain prisoners to apply for parole. In its report, the Legal Affairs and Safety Committee found the Statement of Compatibility failed to consider and justify limitations on the rights to: equality before the law (section 15), protection from torture and cruel, inhuman or degrading treatment (section 17), and humane treatment when deprived of liberty (section 30).²² The committee was particularly concerned that the changes would be found to be incompatible with the right to protection from being treated or punished in a cruel, inhuman or way contained in section 17(b) of the Human Rights Act.

The particular aspects of the proposed amendments that were potentially incompatible were:

- the possibility for a declaration to be made precluding the prospect of release despite the prisoner achieving rehabilitation during the term of the declaration, and therefore no longer being a person required to be detained for the protection of the community from the risk of reoffending
- the prospect of 'rolling' declarations being made that would deny a life-sentenced prisoner the possibility of ever being released, and removing the hope of release
- the altering of conditions on which prisoners currently serving life sentences may be released is incompatible with the proposition (accepted by the European Court of Human Rights) that a prisoner is entitled to know 'at the outset of [their] sentence' what they must do to be considered for release, and under what conditions, including when a review of their sentence would take place, or could be sought.²³

The committee found it could be argued that the justification provided by the State was insufficient to satisfy various criteria in the proportionality

²¹ Community Support and Services Committee, Queensland Parliament, *Inquiry into Housing Legislation Amendment Bill 2021* (Report No 7, August 2021), 60-61.

²² Legal Affairs and Safety Committee, Queensland Parliament, *Police Powers and Responsibilities and Other Legislation Amendment Bill 2021* (Report No 15, November 2021) 41.

²³ Legal Affairs and Safety Committee, Queensland Parliament, *Police Powers and Responsibilities and Other Legislation Amendment Bill 2021* (Report No 15, November 2021) 36.

test (section 13) in the Act. The primary aim of the restricted prisoner declaration was to protect victims' families, friends, and the broader community from further trauma caused by restricted prisoners being considered for parole at ongoing short intervals. A secondary aim was the protection of the community, given that a declaration will prevent certain people who present an unacceptable risk to the community from applying for parole and being released into the community.

The committee stated:

... no evidence is provided to support the assertion that victims' families, friends and the community experience trauma caused by restricted prisoners being considered for parole under the currently permitted yearly intervals. There is no evidence that restricted prisoners in fact apply for parole each year. It is not apparent how persons other than those required to be notified would find out that a life prisoner has made an application for parole. By contrast, the experiences of the courts in Europe, New Zealand, and Canada show that the harms suffered by prisoners who are denied the opportunity to seek parole are sufficiently concrete as to be the basis for challenges to the highest courts in each of those jurisdictions.²⁴

The committee also noted that it could be argued that the secondary purpose (protection of the community) was not rationally connected to the proposed amendments.

In relation to other amendments in the Bill, the committee identified that the right not to be tried or punished more than once (section 34 of the Act) was limited by the addition of 9 Commonwealth child sexual abuse offences as reportable offences under Queensland law. While the committee concluded the limitation was reasonable, it noted that this was not dealt with in the Statement of Compatibility.²⁵

The Bill also expanded the scope of banning notices to include persons who unlawfully possess a knife. The committee found the Statement of Compatibility failed to consider the right to privacy in relation to the reasonable expectation of privacy that may exist within a person's vehicle in which a knife may be located.²⁶

The committee concluded that the Bill was compatible with the Human Rights Act other than the proposed amendments concerning the

²⁴ Legal Affairs and Safety Committee, Queensland Parliament, *Police Powers and Responsibilities and Other Legislation Amendment Bill 2021* (Report No 15, November 2021) 40.

²⁵ Legal Affairs and Safety Committee, Queensland Parliament, *Police Powers and Responsibilities and Other Legislation Amendment Bill 2021* (Report No 15, November 2021) 41.

²⁶ Legal Affairs and Safety Committee, Queensland Parliament, *Police Powers and Responsibilities and Other Legislation Amendment Bill 2021* (Report No 15, November 2021) 30, 41.

introduction of restrictions for certain prisoners to apply for parole. The committee considered that these amendments may be incompatible with the right to be free from cruel, inhuman or degrading treatment or punishment and the right to humane treatment in detention.

However, rather than recommending that the government amend the Bill to ensure compatibility, or to provide further justification, the committee identified that making an Override Declaration under section 43 of the Act would alleviate the risk that these proposed amendments are found to be incompatible with rights protected by the Human Rights Act. The committee suggested that an Override Declaration would remove the application of the Act, if the government considered that there were exceptional circumstances that could justify the parliament making such a declaration.

While the Human Rights Act and these issues were discussed during the debate stage of the Bill,²⁷ no such Override Declaration was made.

Health and Other Legislation Amendment Bill 2021

This Bill proposed amendments to various legislation to improve the operation and provision of health services in Queensland. While the amendments generally strengthened human rights protections, the Commission made submissions regarding unjustified human rights limitations imposed by the current framework for people found unfit for trial under the *Mental Health Act 2016*, as well as recommending clarification and amendment of provisions that restrict publication of reports of proceedings of the Mental Health Court and the Mental Health Review Tribunal.

To ensure the protection of patient privacy, the Commission and others commented on proposed amendments to the *Hospital and Health Boards Act 2011* that expand access to Queensland Health hospital information to external-allied health services.

The State Development and Regional Industries Committee noted their concern about amendments to the Termination of Pregnancy Act that could require students undertaking a clinical placement to assist in termination of pregnancies even if they hold a conscientious objection. In a positive example of the dialogue model, the committee published additional information received from Queensland Health regarding the limitation on rights arising from these concerns. Despite this, the committee noted that the Statement would have benefited from further

²⁷ Queensland, *Parliamentary Debates*, Legislative Assembly, 30 November 2021, 3833.

detail on amendments relating to the Termination of Pregnancy Act. The committee recommended that the Minister provide this detail in the second reading speech, which she did.²⁸

State Penalties Enforcement (Modernisation) Amendment Bill 2022

This Bill included a framework to allow the State Penalties Enforcement Registry (SPER) staff to wear body-worn cameras to promote the integrity of the enforcement process.

In its report, the Economics and Governance Committee concluded it required further information about the use of the body-worn cameras and the storage, sharing, and disposal of recordings to fully assess whether there are less restrictive means available. In the committee's view, it was not clear what principles would govern the timing of cameras being switched on or off, and whether there are circumstances in which SPER officers would be required not to use their body-worn cameras (for example, if children are present).²⁹ While the Statement of Compatibility indicated that SPER currently has guidelines and procedures relating to the use of body-worn cameras and storage and use of footage, no further detail was provided. The committee noted:

*The comment in the explanatory notes and statement of compatibility that 'it is commonplace for body-worn cameras to be used by agencies that have legislative enforcement functions' is not supported by any evidence, but it seems possible that the public is unaware of the use of body-worn cameras by agencies other than police.*³⁰

...

The statement of compatibility says that the number of people impacted by the use of body-worn cameras is unlikely to be significant, since 'body-worn cameras will typically be operated by SPER enforcement officers when exercising functions...against debtors who are subject to escalated enforcement action'. In the committee's view, this is not a relevant consideration. All individuals are equally entitled to the protection of their

²⁸ Health and Environment Committee, Queensland Parliament, *Inquiry into the Health and Other Legislation Amendment Bill 2021* (Report No 17, February 2022) 49. Queensland, *Parliamentary Debates*, Legislative Assembly, 23 Feb 2022, 150.

²⁹ Economics and Governance Committee, Queensland Parliament, *Inquiry into State Penalties Enforcement (Modernisation) Amendment Bill 2022* (Report No 24, May 2022) 26.

³⁰ Economics and Governance Committee, Queensland Parliament, *Inquiry into State Penalties Enforcement (Modernisation) Amendment Bill 2022* (Report No 24, May 2022) 35.

human rights; the fact that only a small number of people may have their rights impinged upon should not affect the assessment of compatibility.

Similarly, the fact that ‘recording of persons other than SPER debtors will be inadvertent or incidental’ does not change the fact that those persons may experience an interference with their right to privacy. Indeed, the recording of personal information of people who are not the subject of SPER proceedings is more likely to be considered arbitrary, as there is no reasonable justification for collecting that information. The limitation would be less restrictive if clear provisions were in place to minimise the interference with the rights of third parties.³¹

The committee also commented on the need for Statements of Compatibility to consider not only the amendments contained in the relevant Bill, but the compatibility of the entire legislation as amended.

Section 38 of the HRA requires that a statement of compatibility address whether the Bill is compatible with human rights.

As the Explanatory Note to the HRA explains, ‘the purpose of the statements of compatibility is to elevate the consideration of human rights in legislative debate and to increase the transparency and accountability of Parliament.’

In the committee’s view, this requires a consideration of the overall impact on human rights of the law following the passage of the Bill, and not just a comparison of the pre- and post-amendment effect of specific changes. Allowing this approach would permit laws which are clearly incompatible with human rights to escape scrutiny when being amended, on the basis that interferences were already occurring prior to the amendment. Instead, compatibility should be assessed substantively, having regard to the full effect of the laws as they will operate post-amendment. This will help to ensure that the objects of the HRA can be genuinely fulfilled.³²

However, because the committee did not make formal recommendations about these issues, it appears that the government has not responded formally or informally and that the Human Rights Act was not discussed in the debate.

COVID-19 related legislation

On 29 January 2020, the Minister for Health made an order under the *Public Health Act 2005* declaring a public health emergency for all of

³¹ Economics and Governance Committee, Queensland Parliament, *Inquiry into State Penalties Enforcement (Modernisation) Amendment Bill 2022* (Report No 24, May 2022) 35.

³² Economics and Governance Committee, Queensland Parliament, *Inquiry into State Penalties Enforcement (Modernisation) Amendment Bill 2022* (Report No 24, May 2022) 40.

Queensland in relation to coronavirus disease (COVID-19). The declared public health emergency for COVID-19 has been extended until 31 October 2022.

Given the ongoing threat of COVID-19, the Commission acknowledges the rationale for continued use of extraordinary powers that were implemented during the reporting period. Nonetheless, throughout the pandemic the Commission has recommended additional safeguards for human rights and that the government consider promulgating these into long-term legislation to cover COVID-19 and any future pandemics or emergencies. Key safeguards the Commission has recommended include: parliamentary oversight, the publication of human rights considerations for all Public Health Directions, a clear process for a person to seek a review of a decision about a Public Health Direction to quarantine, and precise and tailored power for a direction to make vaccination mandatory.

Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022

This Bill extended several temporary amendments – including powers given to the Chief Health Officer and emergency officers – to require physical distancing, restrict movement and gatherings, require people to quarantine or self-isolate, and to implement other containment measures. Several submissions to the portfolio committee argued that a more human rights compatible approach would be to provide greater parliamentary oversight in the making of Public Health Directions and this was reflected in the debate of the Bill.³³ According to the Statement of Compatibility, relevant safeguards included that the Chief Health Officer was a public entity under the Human Rights Act when making a public health direction, and therefore required to give proper consideration to human rights and act compatibly with human rights.³⁴ However, in its submission to the Committee, the Commission noted that this is an unsettled area of law and therefore that safeguard may not apply. The Commission observes that it would have been preferable for the Bill to make the necessary amendments to ensure this protection applied.

³³ Community Support and Services Committee, Queensland Parliament, *Inquiry into Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022* (Report No 17, March 2022) 8-9. See also Queensland, *Parliamentary Debates*, Legislative Assembly, 31 March 2022, 843.

³⁴ Statement of Compatibility, Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022, 14

Justice Legislation (COVID-19 Emergency Response – Permanency) Amendment Bill 2021

This Bill proposed to permanently legislate various temporary changes enacted to respond to the COVID-19 pandemic.

Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021

This Bill extended various provisions enacted in response to the COVID-19 pandemic. One issue raised through submissions and discussed in the portfolio committee's report was the potential for data collected through the Check In Queensland app for COVID-19 contact tracing being used by government agencies for other purposes. This and other limits on human rights were raised in submissions and discussed throughout the report. The government also provided additional justification for human rights limitations to the committee. The committee commented that it would 'welcome' the Minister's consideration of the potential limitation on the right to property arising from the Bill,³⁵ however it does not appear the government formally responded to this comment.

In contrast, the government did respond to concerns about the use of data from the Check In Qld app. During debate on the Bill, the Minister moved amendments to protect privacy, albeit without specifically referencing the right to privacy under section 25 of the Act.³⁶ The Statement of Compatibility to the amendments noted that submissions to the committee's inquiry had raised concerns about the right to privacy and discussed how the amendments were compatible with this right.³⁷ While they did not pass, other amendments were proposed based on human rights concerns.³⁸

³⁵ Economics and Governance Committee, *Inquiry into Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021* (Report No 11, August 2021) 72.

³⁶ Queensland, *Parliamentary Debates*, Legislative Assembly, 2 September 2021.

³⁷ Statement of Compatibility for Amendments to be moved during consideration in detail by the Honourable Yvette D'Ath MP, Minister for Health and Ambulance Services and Leader of the House, Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021.

³⁸ For example, requiring health advice provided by the Chief Health Officer to be published and the addition of greater parliamentary oversight of the making of Public Health Directions.

Summary of the role of parliament in 2021-22

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 volume of Human Rights Certificates tabled with subordinate legislation means the same detailed analysis cannot be undertaken for these. However, their publication and consideration by portfolio committees remain an important aspect of the human rights dialogue process.

The application of the nine human rights indicators outlined above to legislation considered in the reporting period suggests that human rights compatibility is being addressed both through submissions to committees and in the human rights commentary in committee reports. Comparing last year's analysis of performance against these indicators to this year's suggests that the culture of human rights dialogue continues to develop in the Queensland Parliament. There are positive signs, such as the discussion of human rights compatibility during the third reading debate stage of Bills. It remains a positive feature of the Queensland Parliament's process that committees can collate and consider additional information through the inquiry process and then publish it for the benefit of the community. This approach ensures that limitations on human rights can be considered and potentially resolved by the time the committee delivers its report, prior to the Bill being debated.³⁹

One development that the Commission has observed during the reporting period is that committees have extended their consideration of human rights compatibility to all sections of their reports, rather than confining their analysis to a single section. This includes highlighting human rights concerns raised in submissions⁴⁰ and using this material to inform the formal, technical analysis of human rights compatibility, usually included at the end of committee reports. The Commission

³⁹ See for example: Economics and Governance Committee, Queensland Parliament, *Inquiry into Police Service Administration and Other Legislation Amendment Bill 2021* (Report No 21, February 2022) 14.

⁴⁰ See for example Community Support and Services Committee, Queensland Parliament, *Inquiry into Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021* (Report No 15, January 2022) 10. Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into Evidence and Other Legislation Amendment Bill 2021* (Report No 23, February 2022) 25, 36-37.

hopes this trend continues and becomes the norm for all committee reports to ensure a thorough consideration of all human rights concerns.

During the reporting period, as was observed last year, several committee reports discussed deficiencies in Statements of Compatibility or raised other concerns about limitations on human rights without making a formal request for more information, or making a recommendation that a Bill be amended.⁴¹ This usually meant no further information was provided by the government to justify a limitation, nor were amendments to the Bill forthcoming.

The Commission respectfully suggests that, wherever possible, rather than recommending an Override Declaration for potentially incompatible legislation, portfolio committees could instead consider making recommendations about how Bills could be amended to ensure compatibility, seek further justification for the limitation on rights, or recommend to parliament that the Bill not be passed.⁴²

The Commission also welcomes the approach of the Economics and Governance Committee that a Statement of Compatibility should not merely consider the compatibility of proposed amendments in isolation, but the overall compatibility of legislation as amended. The Commission agrees that this will help to ensure that the objects of the Human Rights Act can be genuinely fulfilled.

⁴¹ See for example Economics and Governance Committee, *Inquiry into Brisbane Olympic and Paralympic Games Arrangements Bill 2021* (Report No 20, November 2021) 57; Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into Police Legislation (Efficiencies and Effectiveness) Amendment Bill 2021* (Report No 16, November 2021) 39; Legal Affairs and Safety Committee, Queensland Parliament, *Police Powers and Responsibilities and Other Legislation Amendment Bill 2021* (Report No 15, November 2021) 41; Community Support and Services Committee, Queensland Parliament, *Inquiry into Child Protection Reform and Other Legislation Amendment Bill 2021* (Report No 12, November 2021) 34.

⁴² While not related to human rights, the Community Support and Services Committee did recommend that the parliament not pass the Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill 2021.