



# Human rights and the parliament

## The role of 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 under the dialogue model courts cannot overrule legislation because it is not compatible with human rights. Parliament therefore has a crucial role to ensure that legislation is compatible with human rights before it passes into law. Once a law is passed, any future human rights compatibility assessment will generally only arise if raised in litigation.

Parliament's obligation is to consider whether limitations on human rights are justified. This occurs through the tabling of Statements of Compatibility and Human Rights Certificates, the Committee process, and Parliamentary debate.

## Override Declarations

The parliament may override the Act by declaring that new legislation has effect despite being incompatible with human rights. This provision is intended to be used only in exceptional circumstances including war, a state of emergency, or an exceptional crisis situation constituting a threat to public safety, health, or order.

As with the first year of operation of the Act, parliament has not relied on Override Declarations when passing legislation in this reporting period.

## Statements of Compatibility

Queensland Parliament must scrutinise all proposed laws for compatibility with human rights. From 1 January 2020, a member who introduces a Bill must table a Statement of Compatibility when introducing the Bill, and the responsible portfolio Committees must consider the Bill and report to the Legislative Assembly about any incompatibility with human rights.

There were a total of 38 bills introduced during the 2020–21 financial year that were accompanied by Statements of Compatibility. Several of these lapsed due to the dissolution of parliament following the end of a term of government. Twenty-four relevant Bills were passed during the reporting period. This excludes appropriation Bills and Bills introduced prior to the commencement of the Act (1 January 2020).<sup>11</sup> Portfolio Committees completed 32 inquiries into Bills that were introduced in the parliament and then referred to Committees for examination.

Statements of Compatibility must explain why any limitation of rights is demonstrably justifiable. *The Queensland Legislation Handbook*<sup>12</sup> 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.

## Human Rights Certificates

Human Rights Certificates must accompany new subordinate legislation and are drafted by the Minister responsible for the subordinate legislation. There were 214 new pieces of subordinate legislation tabled in the 2020-21 financial year accompanied by Human Rights Certificates.

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

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<sup>11</sup> See *Transport Legislation (Disability Parking and Other Matters) Amendment Act 2020* passed on 14 July 2020; *Ministerial and Other Office Holder Staff and Other Legislation Amendment Act 2020* passed on 16 July 2020; *Biodiscovery and Other Legislation Amendment Act 2020* passed on 13 August 2020; *Health Legislation Amendment Act 2020* passed on 13 August 2020; and *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020* passed on 9 September 2020.

<sup>12</sup> Queensland Government Department of the Premier and Cabinet, '3.5 Role of drafter', *Queensland Legislation Handbook* (Web Page, 17 June 2021).  
*Human Rights Act 2019 Annual Report 2020-2021*

## Portfolio Committees

Parliamentary Committees play an important role in Queensland's Parliament by monitoring or investigating issues and scrutinising proposed laws. Compared to other Parliaments with human rights scrutiny functions, the Queensland Parliament does not have a dedicated scrutiny Committee. For example, in the ACT, Victoria, Commonwealth, and United Kingdom parliaments, a dedicated Committee is responsible for scrutinising all legislation against specific human rights.

Instead in Queensland, similar to the model used in the New Zealand Parliament, there are 7 portfolio Committees made up of members of parliament, and it is their job to enquire into proposed laws before they are debated by 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. Further, in an important feature of the Queensland system, Committees must also consider and report to the parliament about the Statement of Compatibility tabled for the Bill.

An advantage of the Queensland Parliamentary committee system is that committees generally invite submissions to aid in their consideration of a Bill, and hold public hearings where evidence is heard. The Committees then report to parliament about the Bill and may make comments about the Statement of Compatibility.

These Committees also consider subordinate legislation, such as regulations, including reporting on any issues identified by the Committee in its consideration of the Human Rights Certificates tabled with the subordinate legislation.

These portfolio Committees may also have a broader remit than traditional technical scrutiny Committees in other parliaments. Under section 93 of the *Parliament of Queensland Act 2001*, these Committees can consider several matters including 'the policy to be given effect by the legislation'.

## Consultation with the Commission

The Commission is encouraged by the fact that some agencies continue to consult with the Commission about the human rights implications of proposed Bills and subordinate legislation during the drafting stage. This consultative approach has been prompted, in part, by the requirement for a Statement of Compatibility or Human Rights Certificate. The Commission is available to discuss human rights implications at an early stage to ensure compliance with the Act is achieved through collaborative engagement.

# Assessing parliament's role in promoting a human rights culture

As the Commission observed in last year's report on the *Human Rights Act 2019*, a 'culture' of human rights signifies more than mere compliance with the Act.

The dialogue model, which prioritises discussion, awareness-raising, and education over an enforcement and compliance model, supports this goal of building gradually towards a human rights culture. Parliament has a key role to play in this process.

The Explanatory Notes to the Human Rights Bill 2018 state that Parliament and Parliamentary Committees play an important role in to facilitating broader public debate about proposed laws, and that Committees can assist parliament in assessing the human rights implications of new laws.<sup>13</sup> This includes providing effective scrutiny independent from the government and to allow for public participation in human rights dialogue and debate.

With respect to the progress of human rights culture in the public service, the Commission has adopted the cascading culture change model, where human rights culture starts with legislation and flows down through regulations, policies, procedures and services through to the individual (see page 75). This emphasises that unless the legislation and regulations are human rights compatible, there will be limited benefit in changing policies and procedures.

With this in mind, the Commission has developed a further set of indicators to discuss how a human rights culture is developing 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.

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<sup>13</sup> Explanatory Notes, Human Rights Bill 2018, 29.

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. Nonetheless, assessing the efficacy of parliamentary human rights scrutiny is not necessarily a straightforward exercise. It involves complex weighing of different public interests and the impact on society of a proposed law. Perhaps reflecting this, unlike for public entities involved in the dialogue model of human rights protection, there are no internationally agreed principles about parliament's role.<sup>14</sup>

Similar examinations have taken place in other jurisdictions, including discussion of the role of parliamentary scrutiny introduced by the *Human Rights Act 2004 (ACT)*,<sup>15</sup> *Charter of Rights and Responsibilities Act 2006 (Vic)*<sup>16</sup>, *Bill of Rights Act 1990 (NZ)*,<sup>17</sup> and *Human Rights Act 1998 (UK)*.<sup>18</sup> In analysing the work of the Commonwealth Parliament's Joint Committee on Human Rights (PJCHR), academics have suggested that several aspects of the 'deliberative impact' of the parliamentary scrutiny regime are ascertainable:

- The first is the extent to which the human rights scrutiny regime has caused proponents of legislation, typically ministers, to more fully justify their policies and Bills from a human rights perspective.
- The second is the extent to which it has caused the broader cohort of parliamentarians to discuss and debate human rights issues on a more regular basis.

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<sup>14</sup> These issues are discussed in Professor Judy McGregor and Professor Margaret Wilson, *Parliamentary Scrutiny of Human Rights in New Zealand: Glass Half Full?* (December 2019).

<sup>15</sup> ACT Human Rights and Discrimination Commissioner, *Look who's talking: A snapshot of ten years of dialogue under the Human Rights Act 2004* (Report, 2014).

<sup>16</sup> Michael Brett Young, *From Commitment to Culture: The 2015 review of the Victorian Charter of Rights and Responsibilities Act 2006* (Report, 2015); Jeremy Gans, 'Scrutiny of bills under bills of rights: is Victoria's model the way forward?' (Conference Paper, Australia-New Zealand Scrutiny of Legislation Conference, 6-8 July 2009); See also the annual reports made by the Victorian Equal Opportunity and Human Rights Commission on the operation of the *Charter of Rights and Responsibilities*.

<sup>17</sup> Judy McGregor and Margaret Wilson, *Parliamentary Scrutiny of Human Rights in New Zealand: Glass Half Full?* (AUT University and University of Waikato, December 2019).

<sup>18</sup> Joint Committee on Human Rights, United Kingdom Parliament, *The Committee's Future Working Practices*, (Twenty-third report of session 2005-06, July 2006); Daniella Lock, Fiona de Lodras and Pablo Grez Hidalgo, 'Parliamentary Engagement with Human Rights during COVID-19 and the Independent Human Rights Act Review', *UK Constitutional Law Association* (Web Page, 3 March 2021).

- Another — less visible — kind of deliberative impact within the executive can also be identified. This is the ‘feedback loop’ whereby, through correspondence concerning particular Bills and instruments, proponents of legislation and the Committee engage in a human rights dialogue that results in iterative improvements in the quality of later Statements of Compatibility.<sup>19</sup>

Drawing on the work of academics and that of the ACT and Victorian Human Rights Commissions, the Commission has developed indicators to help analyse the extent to which parliament is engaging in a robust debate about human rights, and to what extent human rights is having an impact on the development of legislation.

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. Such indicators do not objectively judge if a Bill is compatible or otherwise. Instead, they capture how concerns are raised through the scrutiny process used in Queensland, and if such concerns are robustly debated in the parliament.

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<sup>19</sup> George Williams and Daniel Reynolds, ‘The Operation and Impact of Australia’s Parliamentary Scrutiny Regime for Human Rights’ (2015) 41(2) *Monash University Law Review* 470; Renuka Thilagaratnam, *Human Rights Scrutiny Blog: New and notes on Australia’s Parliamentary Joint Committee on Human Rights* (Blog Post).; Australian Law Reform Commission, ‘Scrutiny Mechanisms’ in *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws* (Report No 129, December 2015).



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 human rights.<sup>20</sup> This indicator considers whether Override Declarations were relied upon by parliament in the 2020-21 financial year.*

No Bills were introduced or passed with Override Declarations.

## Indicator 2: Referrals to Committee

*This indicator considers whether bills were passed on an urgent basis and therefore were not referred to Committee and subject to the usual parliamentary scrutiny.*

Three Bills during the reporting period were declared urgent and therefore debated without inquiry by the relevant portfolio Committee.<sup>21</sup>

## Indicator 3: Incompatibility acknowledged by introducing member

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

Statements of Compatibility for two Bills discussed potential incompatibility.<sup>22</sup>

## Indicator 4: Committee examination of incompatibility

*This indicator considers whether portfolio Committees discussed statements of partial incompatibility or proposed Override Declarations after these were raised by the introducing member.*

In relation to the Youth Justice and Other Legislation Amendment Bill 2021, the potential incompatibility identified by the introducing minister was also discussed by the Legal Affairs and Safety Committee's report.<sup>23</sup>

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<sup>20</sup> *Human Rights Act 2019* s 43.

<sup>21</sup> Appropriation (Parliament) Bill 2020, Appropriation Bill 2020, and COVID-19 Emergency Response and Other Legislation Amendment Bill 2020.

<sup>22</sup> Youth Justice and Other Legislation Amendment Bill 2021 and the Defamation (Model Provisions) and Other Legislation Amendment Bill 2021

<sup>23</sup> Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into the Youth Justice and Other Legislation Amendment Bill 2021* (Final Report, April 2021) 54.

In contrast, in the statement for the Defamation (Model Provisions) and Other Legislation Amendment Bill 2021, the Attorney-General concluded that:

While I acknowledge the amendments in the Bill limit the right to privacy and reputation and in doing so may be open to conclude that the amendments are incompatible with human rights, it is my view that the limitation is reasonable and justified and appropriately balanced with the right to freedom of expression.<sup>24</sup>

The Committee considered the limitation of several rights in detail but did not appear to comment upon the Attorney-General's statement.

## Indicator 5: Critique of Statements of Compatibility

*This indicator considers whether portfolio Committees determined that Statements of Compatibility were inadequate in reports to parliament.*

Committee reports identified deficiencies in 10 Statements of Compatibility, meaning that of the Bills referred to Committee, approximately half were found to have adequate statements.<sup>25</sup>

Improvements to statements recommended by Committees included:

- providing sufficient evidence to enable a robust analysis of whether the proposed measures will be effective at achieving their stated aims and which less restrictive alternatives had been considered
- including the views of stakeholders and their suggestions about reasonably available alternatives, where targeted consultation was undertaken in developing the Bill<sup>26</sup>
- providing greater detail to assist the Committee's consideration<sup>27</sup>

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<sup>24</sup> Statement of Compatibility, Defamation (Model Provisions) and Other Legislation Amendment Bill 2021, 11.

<sup>25</sup> Transport and Other Legislation (Road Safety, Technology and Other Matters) Amendment Bill 2020; Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2020; Forest Wind Farm Development Bill 2020; Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Bill 2020; Public Service and Other Legislation Amendment Bill 2020; Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020; Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020; Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020; COVID-19 Emergency Response and Other Legislation Amendment Bill 2021; Youth Justice and Other Legislation Amendment Bill 2021.

<sup>26</sup> Legal Affairs and Safety Committee, Queensland Parliament, *Youth Justice and Other Legislation Amendment Bill* (Report, April 2021) 122-123.

<sup>27</sup> Economics and Governance Committee, Queensland Parliament, *COVID-19 Emergency Response and Other Legislation Amendment Bill 2021* (Report No 6, April 2021) 46.

- providing more detailed descriptions of the positive rights impacts of the Bill, including more detailed reference to the relevant provisions of United Nations instruments
- engaging more directly with international law and comparative law sources by drafters of Statements of Compatibility, particularly when describing the nature of the rights protected under the Act<sup>28</sup>
- identifying the particular clauses of a Bill being addressed by Statements of Compatibility and applying the limitations analysis to each human right being addressed.<sup>29</sup>

## Indicator 6: Additional information received by Committee

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

This indicator is particularly relevant to the Queensland scrutiny process, as the ongoing dialogue between departments, the Committees and stakeholders through the inquiry process allows further justification information to be elicited from the government and published in the Committee reports.

Of those 10 Statements of Compatibility in which Committees identified deficiencies, on 4 occasions the Committee received further information through the inquiry process to address some or all issues.<sup>30</sup>

## Indicator 7: Committee recommendations about human rights

*This indicator considers whether portfolio Committees made recommendations about human rights compatibility in reports to parliament.*

<sup>28</sup> Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, Queensland Parliament, *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Bill 2020 – for our children’s children* (Report No 40, August 2020) 108, 5.2.

<sup>29</sup> Legal Affairs and Safety Committee, Queensland Parliament, *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2000* (Report No 3, February 2021) 84, 4.2.3.

<sup>30</sup> Transport and Other Legislation (Road Safety, Technology and Other Matters) Amendment Bill 2020; Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2020; Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020; COVID-19 Emergency Response and Other Legislation Amendment Bill 2021.

It appears no formal recommendations about human rights were made during the reporting period, however in relation to one Bill, the Committee did make a specific comment encouraging the minister to respond to its concerns in her second reading speech.<sup>31</sup>

## 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.*

This indicator is relevant to only one Bill in 2020-21, the COVID-19 Emergency Response and Other Legislation Amendment Bill 2021. In a comment, the Economics and Governance Committee encouraged the Attorney-General to make clear during her second reading speech the expectation on local councils as to how extended temporary meeting provisions would be used. While not explicitly cited, some of these concerns were relevant to human rights and the Committee noted it would have welcomed further detail in the statement. The Attorney-General responded to the Committee's concerns about local council meetings in her speech, and also took the opportunity to address other issues identified in the Committee report.

In relation to other legislation, while not formally required to do so, the minister did table further information to justify limitations on rights.<sup>32</sup>

## Indicator 9: Bill amended as a result of report

*This indicator considers whether parliament responded to human rights issues raised in the Committee process by amending the Bill.*

While not formally recommended by a Committee, the government did move amendments to the Youth Justice and Other Legislation Amendment Bill 2021 arising from concerns raised during the inquiry about the use of the term 'tracker' in the Bill. The Bill passed with these amendments.

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<sup>31</sup> Economics and Governance Committee, Queensland Parliament, *Inquiry into the Covid-19 Emergency Response and Other Legislation Amendment Bill 2021* (Report, April 2021), 42.

<sup>32</sup> See, for example, information tabled by the Attorney-General in relation to the *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2021*.  
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# Significant legislation 2020-21

A summary follows of legislation introduced in the 2020–21 financial year that raised significant human rights issues. In last year’s annual report, the Commission noted the discussion of cultural rights in the portfolio Committee report regarding the Forest Wind Farm Development Bill 2020, which was introduced last reporting period and passed on 12 August 2020.

## *Youth Justice and Other Legislation Amendment Act 2021*

The Youth Justice and Other Legislation Amendment Act contains significant limitations on human rights. While the scrutiny process demonstrates some positive developments in the implementation of a culture of human rights, it is concerning that it passed unamended despite the human rights limitations identified by many stakeholders and the Committee.

The Act introduced changes to bail laws, including a trial of electronic monitoring of children on bail, and created a presumption against bail for children charged with certain offences. It also created a trial of increased police powers to stop a person and scan for knives and enhanced obligations on owners of vehicles in relation to hooning offences.

The Commission made a submission to the Legal Affairs and Safety Committee’s inquiry, stating concerns that the measures significantly limit human rights, and may not achieve, or be proportionate to achieving, the stated purposes of enhancing community safety. The submission noted the lack of evidence to support the effectiveness of the measures, and that they will likely result in an increase to the number of children and young people in detention.

In its report, the Committee noted several significant human rights limitations but ultimately concluded adequate justification had been provided to demonstrate these limitations were reasonable.

For example, the Committee noted ‘that the effectiveness of electronic monitoring at reducing the rate of reoffending on bail is far less clear than the position reflected in the Statement of Compatibility’.<sup>33</sup> Nonetheless, the safeguards contained in the Bill, and the fact that the changes only applied in certain locations and were subject to evaluation, provided ‘some limitations on the rights-intrusive impacts of the proposed changes’.<sup>34</sup>

The Committee was also concerned about the presumption against bail, noting the Commission’s concerns that the Statement of Compatibility failed to justify why the reverse onus would apply to specific offences which pose varying risks to the community. The Committee noted the previous Declaration of Incompatibility issued by the ACT Supreme Court under that jurisdiction’s human rights legislation, finding a presumption against bail for an adult could not be interpreted compatibility with human rights.<sup>35</sup> The Committee further noted that:

...reversing the onus for bail means that more children will be likely to be detained regardless of whether they present an unacceptable risk to the community, because the provisions burden the accused child with the task of ‘showing cause’ as to why they should not be detained on bail. This burden will be particularly difficult for certain children to discharge, including those from dysfunctional family backgrounds or children with a complex range of psychological, social and health-related needs. Aboriginal and Torres Strait Islander children, who are already disproportionately overrepresented in the youth justice system, may face particular barriers to discharging the burden imposed by clause 24, further increasing the likelihood that they will be refused release on bail. This constitutes a significant infringement on the child’s right to liberty, and to be presumed innocent and contravenes many of the standards set out in the United Nations Convention on the Rights of the Child. The prospect of pre-trial custodial detention also impacts the child’s rights in a range of other ways, including limiting their capacity to prepare a defence against the charge, and removing access to the child’s support networks or educational or health care service providers...

... While the Statement of Compatibility claims that the increased prospect of pre-trial detention for recidivist child offenders will inevitably improve community safety, this assumption has been challenged in numerous studies and reports.<sup>36</sup>

Nonetheless, the Committee was satisfied that the provisions were reasonable and demonstrably justified in the circumstances.

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<sup>33</sup> Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into the Youth Justice and Other Legislation Amendment Bill 2021* (Final Report, April 2021) 101.

<sup>34</sup> Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into the Youth Justice and Other Legislation Amendment Bill 2021* (Final Report, April 2021) 102.

<sup>35</sup> *Re application for bail by Islam* (2010) 175 ACTR 30.

<sup>36</sup> Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into the Youth Justice and Other Legislation Amendment Bill 2021* (Final Report, April 2021), 109.

Similarly, the Committee also discussed the potential compatibility issues with shifting the legal burden of proof on to the defendant in relation to ‘hooning offences’. Despite its conclusion that the limitations were reasonable, the Committee encouraged:

continued reliance on the existing range of reasonably available alternatives (including the Queensland Government’s existing traffic camera monitoring system) to improve the investigation and prosecution of ‘hooning offences’ that have far less rights-intrusive impacts and may be equally or more effective at deterring this type of activity, particularly among young offenders.<sup>37</sup>

The Committee discussed several other aspects of the Bill’s compatibility with human rights in detail, including:

- creating a new aggravating factor in sentencing that the child committed the offence while released into the custody of a parent or at large for another offence
- amending the Charter of Youth Justice Principles, and
- providing powers for police to stop a person and use a handheld scanner to scan for knives.

The Committee noted how significant many of those limitations were, and in some cases questioned whether those provisions were potentially incompatible. In conclusion, the Committee cautioned that:

...insufficient evidence was provided to enable a robust analysis of the extent to which the measures proposed in the Bill would be effective at achieving their stated aims, and the extent to which alternative (less rights restrictive) options had been fully explored. The analysis above also details the areas where information in the Statement of Compatibility was insufficient or absent.<sup>38</sup>

The Commission remains concerned that the Bill passed with such significant limitations on human rights. In particular it is apparent the changes have led to many more young people being detained in the youth justice system. The pressure on detention centre capacity means there is significant risk of children (as young as 10) being held for unacceptably prolonged periods in police watch houses.

The government did not formally respond to the Committee’s concerns, however the Act is subject to an evaluation.

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<sup>37</sup> Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into the Youth Justice and Other Legislation Amendment Bill 2021* (Final Report, April 2021), 122.

<sup>38</sup> Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into the Youth Justice and Other Legislation Amendment Bill 2021* (Final Report, April 2021), 122-123.



While the extensive human rights dialogue did not result in substantive change to the Bill, it did result in a change to wording. In submissions made to the Committee, stakeholders raised concerns with the term ‘tracking device’ and ‘tracker’ in the Bill. The government amended this term to be ‘monitoring device’, and noted that this change promoted several human rights including the right to equality and cultural rights in the Act.<sup>39</sup>

## COVID-19 related legislation

On 29 January 2020, a public health emergency was declared under section 319 of the *Public Health Act 2005* due to the outbreak of COVID-19 in China. Early in the COVID-19 pandemic, restrictions introduced via legislation were declared urgent and passed through parliament with limited scrutiny. This trend continued into late 2020 with the *COVID-19 Emergency Response and Other Legislation Amendment Act 2020* introduced on the 26 November 2020 and debated and passed without amendment on 2 December 2020.

COVID-19 related amendments were also made during the debate stage of the *Corrective Services and Other Legislation Amendment Bill 2020* and therefore not subject to Committee scrutiny. Given the significant limitation on rights arising from the extraordinary measures introduced in response to COVID, it is imperative that they are subject to proper parliamentary scrutiny.

### *COVID-19 Emergency Response and Other Legislation Amendment Act 2020*

In 2020 new powers were created for the Chief Health Officer and others to respond to the pandemic. In addition, temporary and, in some cases, extraordinary legislative measures were introduced to allow for flexible and rapid responses to a range of things disrupted, caused or affected by the pandemic. The majority of these measures were initially to expire on 31 December 2020.

This Act extended the operation of all COVID-19 related legislation deemed necessary to respond to the emergency until 30 April 2021 or an earlier date to be prescribed by regulation. New changes were also proposed, including the power to make regulations to facilitate transitional arrangements.

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<sup>39</sup> Statement of Compatibility, Youth Justice and Other Legislation Amendment Bill 2021, Amendment during consideration in detail to be moved by the Honourable Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services, 22 April 2021.  
*Human Rights Act 2019 Annual Report 2020-2021*

Changes unrelated to COVID-19 were also proposed to amend the *Local Government Act 2009* to retrospectively change the way mayoral and local councillor vacancies are filled. The Statement of Compatibility acknowledged that these amendments limited the right to take part in public life (s 23 of the Human Rights Act), and that this limitation could be lessened if the amendments did not apply retrospectively. This would result in a runner-up being appointed to fill any vacancies prior to commencement. The statement stated that this measure was not adopted because this would not provide individuals in these local government areas with the same further opportunity to vote or be elected to fill the vacancy in the office of a mayor as other local governments. In relation to a vacancy in the office of a councillor, it would not enable the local government to balance the cost of holding a by-election with the availability of a runner-up, as would apply for other local governments. The minister therefore considered that this approach would not achieve the identified purpose as effectively as the amendments proposed in the Bill.

The Bill was declared urgent, not referred to Committee and passed without amendment in December 2020.

Retrospectively changing how local government elections are determined is a significant limitation on rights, and coupled with the other COVID-19 related measures, it was unfortunate this Bill did not have the benefit of Committee scrutiny.

### *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021*

This Act extended the operation of amendments to the *Public Health Act 2005* (Qld), to authorise the Chief Health Officer and emergency officers to restrict the movement of any person or group of persons to limit, or respond, to the spread of COVID-19 in Queensland including requiring people to quarantine in particular places.

In its report, the Health and Environment Committee concluded that all human rights limitations in the bill were reasonable and justifiable. However, while the Committee found that the Statement of Compatibility provided a sufficient level of information to facilitate understanding of most aspects of the Bill, it was lacking in some areas.<sup>40</sup>

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<sup>40</sup> Health and Environment Committee, Queensland Parliament, *Inquiry into the Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020* (February 2021).

For example, the report noted that the statement did not consider whether a person may be precluded from accessing regular health services during restrictions on their movement, limiting the right to equality and right to access health care without discrimination. Similarly, the statement did not discuss how people with disabilities may be disproportionately impacted by directions restricting movement and contact with others. There was also a potential impact on a patient's mental health care treatment should the patient be moved from an authorised mental health service to another place for the purpose of complying with a detention order or direction.

Further, the statement did not consider if a power granted to the Chief Health Officer and emergency officers to publish a notice or direction to business owners and operators to open, close and limit access to the facility, would impact on their right to property under section 24 of the Human Rights Act.<sup>41</sup>

The Committee also found that the statement did not discuss the compatibility of the Chief Health Officer's broad power to give 'any direction the Chief Health Officer considers necessary to protect public health', with rights protected in the Act. The Committee noted that the Chief Health Officer is a public entity under the Human Rights Act, and so, provided the power is exercised compatibly with the obligations imposed on public entities under the Act, the statutory power will not be incompatible with human rights.

The Commission has been concerned about a lack of transparency which has made it difficult to ascertain whether those obligations are being met. With this issue in mind, the Commission has frequently suggested that in making decisions using these powers the Chief Health Officer and other relevant decision makers should provide a statement of reasons including how they have given proper consideration to human rights in making decisions and/or acted compatibly with human rights.

The Bill passed on 24 February 2021.

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<sup>41</sup> Health and Environment Committee, Queensland Parliament, *Inquiry into the Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020* (Report, February 2021), 43-50.  
*Human Rights Act 2019 Annual Report 2020-2021*

## *COVID-19 Emergency Response and Other Legislation Amendment Act 2021*

This Act extends various temporary powers enacted in 2020 to respond to the COVID-19 pandemic, including to allow the modification of legislative requirements by regulation or secondary instruments to:

- reduce physical contact between persons
- change statutory time frames
- ensure the continuation of court and tribunal proceedings.

The Act also made amendments to local government arrangements including various measures to facilitate the holding of local government by-elections and fresh elections in a way that helps minimise serious risks to the health and safety of persons caused by COVID-19.

Extending such extraordinary powers engaged several human rights. Through its inquiry, the Economics and Governance Committee identified several concerns, which were ultimately resolved through further dialogue. In its report, the Committee identified deficiencies in the Statement of Compatibility, but resolved this by reference to additional information provided by Department of State Development, Infrastructure, Local Government and Planning (DSDILGP) and Local Government Association of Queensland (LGAQ):

While the Committee considers that the Statement of Compatibility could have offered greater explanation to justify the provisions, the Committee notes advice provided elsewhere by the DSDILGP and by the LGAQ, which explained the need for the proposed amendments to allow local governments to decide rates and charges for the 2021-22 financial year outside of the annual budget meeting.<sup>42</sup>

The Committee also sought further information from the Attorney-General to support members in their consideration of concerns arising from temporary changes to local government elections and by-elections in response to COVID-19. The Committee encouraged the Attorney-General to provide this information during her second reading debate. The Attorney-General did so and took the opportunity to provide further information in her speech on other matters raised in the Committee process.<sup>43</sup> The Commission notes this is an example of a growing human rights dialogue within the parliament.

The Bill passed on 20 April 2021.

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<sup>42</sup> Economics and Governance Committee, Queensland Parliament, *Inquiry into the Covid-19 Emergency Response and Other Legislation Amendment Bill 2021* (Report, April 2021), 39.

<sup>43</sup> Queensland, *Parliamentary Debates*, Legislative Assembly, 20 April 2021, 927-928 (Shannon Fentiman, Attorney-General).

## *Transport and Other Legislation (Road Safety, Technology and Other Matters) Amendment Act 2020*

This Act introduced and supported the ongoing operation of a digital driver licence app, and included amendments for a trial using cameras to detect seatbelt offences and drivers using mobile phones. The technology initially uses machine-learning algorithms to review the images and identify patterns of behaviour. This is a growing area of regulation and human rights law, with the Australian Human Rights Commission earlier this year releasing its report of the human rights implications of governments using artificial intelligence to aid regulation.<sup>44</sup>

In its report into the Bill, the former Transport and Public Works Committee noted stakeholder concerns with the limitations on the right to privacy arising from both the licence app and the use of cameras to detect offences.<sup>45</sup> Human rights were discussed throughout the report and the Committee included a detailed assessment of compatibility with the Act, as well as a privacy impact assessment provided by the department.

The report also noted the submission of the Office of the Information Commission (OIC) about the potential for inappropriate access to personal information from law enforcement and other authorised officers if a person handed over their device to display their digital licence. While being satisfied that the intent of the legislation was that a person was not required to hand over their phone, the Committee supported the OIC's suggestion that the wording of the legislative provision prohibiting law enforcement and other authorised officers from requiring an individual to hand over their device be reconsidered to ensure the intent is clear.

Rather than recommending a change to the Bill, the Committee urged the department to continue to consult with key stakeholders, including the OIC, in relation to the privacy aspects of the project. The Committee also agreed with OIC's suggestion that the Privacy Impact Assessment be updated throughout the life cycle of the project. The Committee formally recommended that:

- a thorough review be undertaken subsequent to the implementation of the Digital Licence App prior to the expansion of the project to include other authorities, and

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<sup>44</sup> Australian Human Rights Commission, *Human Rights and Technology* (Final Report, 2021).

<sup>45</sup> Transport and Public Works Committee, Queensland Parliament, *Inquiry into the Transport and Other Legislation (Road Safety, Technology and Other Matters) Amendment Act 2020* (Report, May 2020).  
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- a review of the provisions relating to the legislative provision prohibiting law enforcement and other authorised officers from requiring an individual to hand over their device be undertaken to ensure the intent is clear.<sup>46</sup>

In relation to the new camera detection provisions, the Committee noted several stakeholder concerns about the privacy implications arising from the collection of images from the inside of every vehicle that passes a camera and the use of artificial intelligence to analyse these images. These concerns were heightened by the lack of certainty about the destruction of images and the potential for them to be used for other offences. The proposed reversal of the onus of proof for drivers charged with relevant offences also limited rights to fair trial and to be presumed innocent (sections 31 and 32 of the Human Rights Act). The report also discussed the risk of infringement notices being issued to people who are exempt from wearing a seatbelt, engaging the right to equality (s 15).

The report included further information from the department responding to these concerns. The Committee suggested that the department take the time to revisit the issues raised by stakeholders in order to consider if and where additional operational improvements can be made to fully address stakeholders' concerns.<sup>47</sup>

Overall, the Committee concluded that the limits on rights were reasonable and justifiable. However, the Committee found it was necessary to seek additional information beyond the Statement of Compatibility to reach this conclusion, and published that information in its report to facilitate understanding of the Bill and its compatibility. While ideally every Statement of Compatibility would be sufficient, it is a positive aspect of the Queensland parliamentary scrutiny process that additional information can be elicited and published prior to a Bill being debated.

The Government tabled a response to the recommendations during the debate stage, indicating its support and committing to an extensive education and training strategy to promote understanding of how the digital licence app will work.<sup>48</sup>

The Bill passed on 14 July 2020.

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<sup>46</sup> Transport and Public Works Committee, Queensland Parliament, *Inquiry into the Transport and Other Legislation (Road Safety, Technology and Other Matters) Amendment Act 2020* (Report, May 2020) 16.

<sup>47</sup> *Ibid* 38.

<sup>48</sup> Queensland Government, *Response to Transport and Public Works Committee Report No 39*, 14 July 2020.

## Corrective Services and Other Legislation Amendment Act 2020

This Act responded to risks identified in the Crime and Corruption Commission's *Taskforce Flaxton: An examination of corruption risks and corruption in Queensland prisons*,<sup>49</sup> and implements recommendations from the Queensland Parole System Review.<sup>50</sup> Amendments included alcohol and drug testing and searching of Corrective Services staff, prohibiting staff from having an intimate relationship with a prisoner, and prohibiting prisoners convicted of certain offences from being accommodated in low custody facilities.

In making a submission to the Legal Affairs and Safety Committee, the Commission recommended that in applying human rights principles, the blanket prohibition relating to low custody was inappropriate for some prisoners, and that the provisions relating to alcohol and drug testing of staff should be amended so that these measures are the least invasive. The Committee concluded the Bill was generally compatible with human rights.<sup>51</sup>

However, further significant amendments were tabled by the government during the debate stage, some unrelated to the original purposes of the Bill. These included amendments to health legislation to support the government's response to COVID-19, including increasing the maximum penalty of breaching public health orders. The Statement of Compatibility acknowledged that the amendments limited several rights, however these were not subject to the usual scrutiny through the Committee process.<sup>52</sup> The urgency of these amendments was not clear. As the Commission discussed in last year's report on the operation of the Act, as the Queensland dialogue model of human rights protection provides parliament with the final say on compatibility of laws, the scrutiny process is critical to human rights protection.

The Bill, as amended, passed on 16 July 2020.

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<sup>49</sup> Queensland Crime and Corruption Commission, *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*, December 2018.

<sup>50</sup> Walter Sofronoff, *Queensland Parole System Review* (Final Report November 2016).

<sup>51</sup> Legal Affairs and Community Safety Committee, Queensland Parliament, *Inquiry into Corrective Services and Other Legislation Amendment Bill 2020* (Final Report, May 2020) 57.

<sup>52</sup> Statement of Compatibility, Corrective Service and Other Legislation, Amendment Bill 2020, Amendments during consideration in detail to be moved by the Honourable Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services, 22 April 2021.

## *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*

This Act creates a new system to legally recognise cultural adoption practices of Torres Strait Islander peoples. Although the Bill restricted the rights of children and families, it is consistent with the cultural rights of Torres Strait Islander peoples, and was supported by the Commission's submission to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee.

While in general the Committee found a sufficient level of information in the Statement of Compatibility to facilitate understanding of the Bill, it also identified that further information would have enabled more robust consideration of rights compatibility. The Committee noted that relevant sources of information were available to the proponents of the Bill that relate directly to the issues, including information obtained through the extensive consultations conducted with Torres Strait Islander people and contained in previous published reports.<sup>53</sup>

Rather than seeking more information from the minister, the Committee suggested improvements to future statements:

Given that one of the purposes of the HRA is to generate a dialogue on human rights within the Queensland Parliament and broader community, the Committee also encourages drafters of statements of compatibility to engage more directly with international law and comparative law sources, particularly when describing the nature of the rights protected under the HRA.<sup>54</sup>

An example of an area for improvement singled out by the Committee was more detailed descriptions of the positive rights impacts of the Bill. In particular, including more detail of the UN *Convention on the Rights of the Child* and *United Nations Declaration on the Rights of Indigenous Peoples*.

The Bill was passed, and commenced on 1 July 2021.

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<sup>53</sup> Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, Queensland Parliament, *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Bill 2020 – for our children's children* (Report No 40, August 2020) 108.

<sup>54</sup> Ibid.



## *Public Service and Other Legislation Amendment Act 2020*

This Act gave effect to stage one reforms arising from the recommendations of the independent review of the public sector employment laws. This included changes to emphasise the government's commitment to employment security, providing for more transparency and consistency in public service appeals, establish positive performance management principles, and clarify thresholds and guidance for taking disciplinary action.

In its report, the Education, Employment and Small Business Committee noted that a clause of the Bill was arguably incompatible with the rights to fair trial and equality under the Act. The provision may prevent a person being legally represented in public service appeals. The Committee stated that the Statement of Compatibility did not provide adequate justification for this limitation.

As this issue was raised in the inquiry process after the department had provided its consideration and formal response to issues raised in submissions to the inquiry, the Committee suggested the department consider addressing the issue in of stage 2 of the public sector reforms.<sup>55</sup>

In response to formal recommendations made by the Committee, the government moved other amendments to the Bill, but not in relation to this issue. However, in its response to the Committee report, the government only noted the Committee's suggestion that it consult with the Queensland Law Society and relevant stakeholders about this issue.<sup>56</sup>

The Bill passed on 3 September 2020. The Commission remains concerned a piece of legislation with a potentially incompatible provision was passed by parliament, particularly as it is unclear if the government intends to address this issue.

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<sup>55</sup> Education, Employment and Small Business Committee, Queensland Parliament, Public Service and Other Legislation Amendment Bill 2020 (Report No 34, August 2020) 52.

<sup>56</sup> Queensland Government, *Public Service and Other Legislation Amendment Bill 2020 – Response to Committee Report* (2020).

## *Waste Reduction and Recycling (Plastic Items) Amendment Act 2021*

This Act introduced a ban on some of the most common single-use plastic items in our community. The Act recognises that continued access to a single-use plastic item such as a straw is important for some members of our community with a permanent or temporary disability to meet their healthcare needs. Exempt businesses, including pharmacies, hospitals, schools, and medical and dental clinics, will be able to continue purchasing and providing single-use plastic items to those who need them. The Statement of Compatibility stated that no human rights were engaged or limited by the amendments because straws will remain available (such as by the person purchasing them separately at a pharmacy).

In its report, the Natural Resources, Agricultural Industry Development and Environment Committee found that the Statement of Compatibility provided only limited examination of issues faced by people with who may need a plastic straw. The Committee concluded that the Statement of Compatibility did not contain sufficient information and did not identify substantial human rights issues. The Committee noted that creating an additional exemption for a hospitality business who supplies a plastic straw to a person requiring one due to a disability or health condition, would be a reasonable way of further minimising the risk of humiliating or limiting experiences.<sup>57</sup>

In response to this issue being raised by another member during debate, the minister committed to continuing to work with key stakeholders to clarify where and how people could still access single-use plastic items in their daily lives.<sup>58</sup>

The Bill passed on 10 March 2021.

## *Child Protection and Other Legislation Amendment Act 2021*

A purpose of this Act was to enhance the approach to permanency under the *Child Protection Act 1999*, and to clarify that adoption is an option for achieving permanency for children living in care.

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<sup>57</sup> Natural Resources, Agricultural Industry Development and Environment Committee, Queensland Parliament, *Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020* (Report No 8, August 2020) 42.

<sup>58</sup> Queensland, *Parliamentary Debates*, Legislative Assembly, 10 March 2021, 489 (MAJ Scanlon), 489.

It provides that adoption is the third preference (after being cared for by family, and being cared for by another family member) – except for Aboriginal or Torres Strait Islander children, where the third preference is foster care, and the fourth preference is adoption.

Our submission considered the changes did not sufficiently safeguard the rights of the child and their birth family, and were premature in light of the review of the *Adoption Act 2009* in 2021. The Bill was initially considered by the Legal Affairs and Safety Committee (LASC), but lapsed at the end of the last parliament.

When the Bill was reintroduced after the new parliament was formed, it was considered by the Community Support and Services Committee (CSSC). The Commission joined with other bodies, including the Queensland Family and Child Commission, in a joint submission that recommended that the changes be accompanied by active efforts to implement the Aboriginal and Torres Strait Islander Child Placement Principle and that there is independent oversight of permanency decisions.

The CSSC agreed with the human rights analysis undertaken previously by the LASC, which concluded the bill was compatible with human rights and any limitations were reasonable and demonstrably justified.

The Commission's joint submission was cited during debate of the Bill, which passed on 23 March 2021.

### *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2021*

This Act implemented recommendations of the Queensland Law Reform Commission to clarify that consent to a sexual act is not given simply because the person doesn't say anything, and that if an act is done or continues after consent is withdrawn, the act is done or continued without consent. For a defendant claiming mistaken belief about consent, regard must be had to what the defendant did to ascertain consent, and regard must not be had to the voluntary intoxication of the defendant.

The Commission's submission supported these amendments to the *Criminal Code*, and recommended that the government monitor this area of the law, particularly the impact on the rights of victims.

In its report, the Legal Affairs and Safety Committee noted that these aspects of the Bill engaged several rights of a defendant including to a fair hearing (section 31 of the Human Rights Act) and the presumption of innocence (s 32). However, the Committee concluded that they were not limited because an accused would still have the charge heard by an impartial court and the onus of proof beyond reasonable doubt remained on the prosecution for every element of the offence.

The Committee recommended that in light of the comments of submitters, that relevant ministers undertake consultation with key stakeholders groups as a matter of urgency to address sexual violence in Queensland. The government supported this recommendation and on March 2021 announced a wide-ranging review into the experience of women across the criminal justice system to be undertaken by the Women's Safety and Justice Taskforce, led by the Honourable Margaret McMurdo AC.

The Bill included additional amendments relevant to human rights including changes to the legal fidelity fund under the *Legal Profession Act*, which were found by the Committee to be reasonable. The Bill also included requirements for the Commissioner for Liquor and Gaming to publish information concerning particular decisions. The Committee sought and published additional clarification it received from the department to facilitate understanding of why personal information was not excluded from information required to be published. The Committee was satisfied with this explanation.

The Bill also proposed to extend the period of an initial police banning notice from 10 days to one month. A police banning notice prevents a person from entering or remaining on licenced premises or safe night precincts, or attending or remaining at a public event at which liquor will be sold. The notice may also prevent a person from entering or remaining in a 'stated area' designated by a reasonable distance or location from a particular premises or public event. The Committee found the limitations on the rights to freedom of movement and freedom of assembly were proportionate.

The Committee noted that the Statement of Compatibility did not address whether provisions concerning new ID scanning requirements for regulated premises were compatible with the right to privacy. In considering the safety of patrons, staff and the community in and around licenced venues, the Committee found the requirements were justified.

As well as the failure to consider the right to privacy in this context, the Committee raised several other issues with the Statement of Compatibility:

- It was lengthy because it identified rights that were not limited.
- It set out a proportionality analysis that was of ‘questionable utility’.
- It would have been improved by identifying the particular clause of the Bill being addressed and applying the limitations analysis to each human right being addressed.<sup>59</sup>

In a positive sign for Queensland’s growing human rights dialogue, while the Attorney-General was not formally asked or required to respond to these issues, she tabled additional material in response to the Committee’s concerns.<sup>60</sup>

The Bill was passed, and the amendments to the *Criminal Code* commenced on 7 April 2021.

## *Nature Conservation and Other Legislation (Indigenous Joint Management—Moreton Island) Amendment Act 2021*

In November 2019, the Federal Court of Australia made a native title consent determination recognising the Quandamooka people's native title rights on Moreton Island. As part of the consent determination process, a number of settlement outcomes were negotiated between the State of Queensland and the Quandamooka people, including an agreement to work towards joint management of protected areas on Moreton Island, or Mulgumpin as it is known to the Quandamooka people. The primary objective of this Act is to provide the legal framework for the joint management of protected areas on Moreton Island by the State and Quandamooka Yoolooburrabee Aboriginal Corporation (QYAC).

The Statement of Compatibility noted that the Bill protected and promoted the right to property (s 24) and the cultural rights of Aboriginal peoples (s 28). This right was referred to by several members during the debate of the Bill.

The Bill passed on 13 May 2021.

<sup>59</sup> Legal Affairs and Safety Committee, Queensland Parliament, *Criminal Code (Consent and Mistake of Fact) and Other Legislation amendment Bill 2020* (Report No 3, February 2021) 84, 4.2.3. <https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2021/5721T64.pdf>

<sup>60</sup> Queensland Government, *Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Bill 2020 – Response to Committee Report* (24 March 2021).  
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## *Disability Services and Other Legislation (Worker Screening) Amendment Act 2020*

This Act implements a nationally consistent framework to screen disability service providers, with the aim of protecting people with disability from violence, abuse, neglect, and exploitation.

In our submission to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, the Commission recommended the government give further consideration of:

- barriers experienced by Aboriginal and Torres Strait Islander applicants and the impact on Aboriginal and Torres Strait Islander people with disability
- making Blue Card (working with children) screening tests consistent with disability worker screening
- whether there are sufficient privacy protections for the collection, use, and sharing of information obtained for worker screening.

In its report, the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee discussed these and similar concerns expressed by other stakeholders.<sup>61</sup> The Committee's report published further information from the department including about additional funding to build the capacity of Aboriginal and Torres Strait Islander organisations to provide services under the NDIS. The department also included information about efforts to improve the cultural capability of the Blue Card system. The Committee discussed the right to privacy in detail, citing information from the department responded to our concerns about protective measures for maintenance of individuals' privacy. The Committee also considered the limitation on rights arising from the reduced ability of people with a criminal record or some other factor from their past to successfully apply for any NDIS-funded disability work, or to have their status cancelled in the event of a charge or new incident. The Committee determined this represented a limit on the right to employment after a spent conviction, and limits the potential to fully rehabilitate and integrate into society (arising under the right to equality and right to privacy and reputation). The Committee noted case law from Victoria that provided support for the argument that consideration of a person's irrelevant criminal record may constitute an arbitrary interference with that person's right to privacy.<sup>62</sup>

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<sup>61</sup> Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, Queensland Parliament, *Inquiry into the Disability Services and Other Legislation (Worker Screening) Amendment Bill 2020* (Report, August 2020) 12.

<sup>62</sup> See *ZZ v Secretary, Department of Justice and Department of Transport* [2013] VSC 267.

The Committee found the limitations on rights had been sufficiently justified, particularly because of the purpose of protecting people living with disabilities. It also found the Statement of Compatibility provided a sufficient level of information to facilitate understanding of the Bill.

A Statement of Reservation was made by two members of the Committee, citing the Commission's concerns about the limitation on the right to privacy arising from the collection, use and sharing of information in the course of the workers screening application.<sup>63</sup>

During the Bill's debate, members of parliament mentioned the Commission's concerns about the impact of the changes on Aboriginal and Torres Strait Islander persons in regional and remote communities. During debate, additional advice from the department as well as concerns expressed in the Statement of Reservation were also referenced.

The Bill was passed without amendment in December 2020.

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<sup>63</sup> Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, Queensland Parliament, *Inquiry into the Disability Services and Other Legislation (Worker Screening) Amendment Bill 2020* (Report, August 2020) 64.  
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# Summary of the role of parliament in 2020-21

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 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 these new indicators 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. These are promising signs early after the passing of the Human Rights Act. Less promising is that legislation introduced in response to the COVID-19 pandemic continues to be declared urgent and not subject to any Committee scrutiny prior to debate.<sup>64</sup>

This analysis of the remaining bills reveals it was rare for Committees to formally make recommendations or comments about human rights compatibility, such as seeking additional information, changes to Statements of Compatibility, or amendments. Nonetheless, in some cases deficiencies in Statements of Compatibility are being resolved through more information being provided to the parliament. It is a positive feature of the Queensland Parliament's process that Committees can collate this information through the inquiry process and then publish it for the benefit of the community. This approach ensures all human rights limitations can be considered and potentially resolved by the time of the Committee's reports, prior to the bill being debated.

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<sup>64</sup> *COVID-19 Emergency Response and Other Legislation Amendment Bill 2020*. Two appropriation Bills were also declared urgent, although by their nature, such Bills are less likely to limit human rights.



However, in several cases Committees discussed deficiencies in the Statement of Compatibility or other concerns with human rights limitations without making a formal request for more information, or making a recommendation that a bill be amended. This usually meant no further information was provided by the government to justify a limitation, nor were amendments to the bill apparently considered. This is despite significant legislation being introduced to the parliament this year including in response to the COVID-19 pandemic. Other notable legislation enacted in the period created a reverse onus for bail for young people charged with certain offences, and introduced the ability for courts to require young people to wear GPS ankle bracelets.<sup>65</sup> The Statement of Compatibility accompanying this Bill noted there may be arguably partial incompatibility but this did not lead to any consequence through the scrutiny process.

Nonetheless, in a positive development for human rights dialogue, on some occasions ministers tabled additional information or tabled amendments addressing human rights issues raised through the scrutiny process, even if these were not formally requested or recommended.

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<sup>65</sup> *Youth Justice and Other Legislation Amendment Act 2021*.  
*Human Rights Act 2019 Annual Report 2020-2021*