



Parliamentary Joint Committee
on Human Rights

Annual report 2022

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Membership of the committee

Current members

Mr Josh Burns MP, Chair	Macnamara, Victoria, ALP
Mr Russell Broadbent MP, Deputy Chair	Monash, Victoria, LP
Senator Karen Grogan	South Australia, ALP
Ms Peta Murphy MP	Dunkley, Victoria, ALP
Senator Matthew O'Sullivan	Western Australia, LP
Mr Graham Perrett MP	Moreton, Queensland, ALP
Senator Gerard Rennick	Queensland, LNP
Senator Jana Stewart	Victoria, ALP
Senator Lidia Thorpe	Victoria, IND
Ms Kylea Tink MP	North Sydney, New South Wales, IND

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Mr Graham Perrett MP, Deputy Chair	Moreton, Queensland, ALP
Mr Josh Burns MP	Macnamara, Victoria, ALP
Mr Ian Goodenough MP	Moore, Western Australia, LP
Ms Celia Hammond MP	Curtin, Western Australia, LP
Senator Andrew McLachlan CSC	South Australia, LP
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Senator Louise Pratt	Western Australia, LP
Senator Janet Rice	Victoria, AG
Senator Benjamin Small	Western Australia, LP
Senator Lidia Thorpe	Victoria, AG

Members in the 47th Parliament

Mr Josh Burns MP, Chair	Macnamara, Victoria, ALP
Mr David Coleman MP, Deputy Chair	Banks, New South Wales
Senator Karen Grogan	South Australia, ALP
Mr Peter Khalil MP	Wills, Victoria, ALP
Senator Jacinta Nampijinpa Price	Northern Territory, CLP
Senator Matthew O'Sullivan	Western Australia, LP
Mr Graham Perrett MP	Moreton, Queensland, ALP
Senator Jana Stewart	Victoria, ALP
Senator Lidia Thorpe	Victoria, AG
Ms Kylea Tink MP	North Sydney, New South Wales, IND

Secretariat in 2022

Anita Coles, Committee Secretary
Charlotte Fletcher, Principal Research Officer
Rebecca Preston, Principal Research Officer
Stephanie Lum, Senior Research Officer
Charlotte Lim, Legislative Research Officer
Ingrid Zappe, Legislative Research Officer

External Legal Adviser

Associate Professor Jacqueline Mowbray

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Chapter 1

Introduction

Establishment of the committee

1.1 The committee was established under the *Human Rights (Parliamentary Scrutiny) Act 2011* (the Act) in March 2012. The establishment of the committee was a key element of Australia's Human Rights Framework, which was launched on 21 April 2010, and which was intended to enhance the understanding of, and respect for, human rights in Australia.¹

Role of the committee

1.2 The establishment of the committee builds on the Parliament's established traditions of legislative scrutiny. Accordingly, the committee undertakes its scrutiny function as a technical inquiry relating to Australia's international human rights obligations. The committee does not consider the broader policy merits of legislation when performing its technical scrutiny function.

1.3 The committee's purpose is to enhance understanding of, and respect for, human rights in Australia; and to ensure appropriate recognition of human rights issues in legislative and policy development.

Functions and powers of the committee

1.4 The committee has the following functions under the Act:

- to examine bills for Acts, and legislative instruments, that come before either House of the Parliament for compatibility with human rights, and to report to both Houses of the Parliament on that issue;
- to examine Acts for compatibility with human rights, and to report to both Houses of the Parliament on that issue; and
- to inquire into any matter relating to human rights which is referred to it by the Attorney-General, and to report to both Houses of the Parliament on that matter.

1.5 The powers and proceedings of the committee are set out in the committee's resolution of appointment and the Act.²

1 See, the then Attorney-General's second reading speech on the Human Rights (Parliamentary Scrutiny) Bill 2010: The Hon. Robert McClelland MP, Attorney-General, [House of Representatives Hansard, 30 September 2010, p. 271](#).

2 The committee's resolution of appointment is available on its [webpage](#).

Definition of human rights and the Act

1.6 Human rights are defined in the Act as those contained in the following seven human rights treaties to which Australia is a party:

- International Covenant on Civil and Political Rights (ICCPR);
- International Covenant on Economic, Social and Cultural Rights (ICESCR);
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- Convention on the Elimination of Discrimination against Women (CEDAW);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- Convention on the Rights of the Child (CRC); and
- Convention on the Rights of Persons with Disabilities (CRPD).

1.7 The committee's analysis of legislation is against the standards set out in these seven human rights treaties. The ICCPR and the ICESCR cover all the key civil and political and economic, social and cultural rights. For the most part, the five other treaties expand or elaborate on these rights in a more detailed way. This understanding is consistent with the approach the Attorney-General's Department has adopted in providing support to executive departments and agencies.

Committee membership

1.8 The resolution of appointment governing the committee's operation provides that the committee consists of 10 members: three members of the House of Representatives drawn from the government party; two members of the House of Representatives drawn from the opposition or any other non-aligned member; two senators drawn from the government party; two senators drawn from the opposition; and one senator from a minority party or an independent Senator.

1.9 The committee elects as its Chair a government member from either the House of Representatives or the Senate. The Deputy Chair is elected from one of the non-government members of the committee.

Acknowledgements

1.10 The committee wishes to acknowledge the work and assistance of its external legal adviser during the reporting period, Associate Professor Jacqueline Mowbray.

1.11 The committee also wishes to acknowledge the assistance of ministers and associated departments and agencies during the reporting period. The responsiveness of ministers, departments and agencies to the committee's inquiries is critical to ensuring that the committee can perform its scrutiny function effectively.

Structure of the annual report

1.12 This report covers the period 1 January 2022 to 31 December 2022 (the reporting period). Dr Anne Webster MP was Chair of the committee until 11 April 2022, at which point the Parliament was dissolved for the federal election (and the committee ceased to exist). Mr Josh Burns MP was elected as Chair on 3 August 2022 following the reappointment of the committee in the 47th Parliament.

1.13 Chapter 2 sets out the committee's mode of operation, its analytical framework and the scrutiny dialogue model. Chapter 3 reports on the work of the committee during the reporting period.

Chapter 2

The committee's mode of operation

Overview

2.1 The committee examines and reports on the human rights compatibility of all bills and legislative instruments that come before the Parliament. In keeping with the longstanding conventions of the Parliament's other scrutiny committees,¹ the committee adopts a technical approach to its scrutiny of legislation, and does not consider the policy merits of the legislation.

2.2 During the reporting period, the committee met via a mixture of in-person meetings when both the House of Representatives and the Senate sat, and via tele-conference when Parliament was not sitting. The approach of meeting out of the sitting period initially arose in 2020 in response to the impacts of the COVID-19 pandemic on the parliamentary timetable. The committee continued to adopt this practice in 2022 to improve the timeliness of its reports.

2.3 The committee seeks to conclude and report on its examination of bills while they are still before the Parliament, so that its findings may inform the legislative deliberations of the Parliament. The committee's ability to do so is, however, dependent on Parliament's legislative program and the timeliness of responses to the committee's inquiries. Where a bill is passed before the committee has been able to conclude its examination, the committee nevertheless completes its examination of the legislation and reports its findings to the Parliament.

2.4 The committee also examines all legislative instruments tabled in the Parliament, including legislative instruments that are exempt from the disallowance process.² The committee seeks to conclude and report on its examination of legislative instruments within the timeframe for disallowance prescribed by the *Legislation Act 2003* (generally 15 sitting days after tabling).³

-
- 1 The three scrutiny committees in the Parliament are the Senate Standing Committee for the Scrutiny of Bills; the Senate Standing Committee for the Scrutiny of Delegated Legislation (formerly the Senate Standing Committee on Regulations and Ordinances); and the Parliamentary Joint Committee on Human Rights.
 - 2 Legislative instruments may be exempt from disallowance as a result of exemptions in its enabling legislation, and the *Legislation Act 2003* also provides that certain legislative instruments are exempt from disallowance (see section 44).
 - 3 In the event that the committee's concerns cannot be resolved before the expiry of this period, the committee retains the option to give a 'protective' notice of motion to disallow the instrument, extending the disallowance period by a further 15 sitting days, to ensure that the ability of the Parliament to disallow the instrument is not lost pending the conclusion of the committee's examination.

The committee's analytical framework

2.5 Australia has voluntarily accepted obligations under the seven core United Nations human rights treaties. It is a general principle of international human rights law that the rights protected by the human rights treaties are to be interpreted generously and any limitations on human rights are to be interpreted narrowly. Accordingly, the primary focus of the committee's reports is determining whether any identified limitation of a human right is permissible under international human rights law, and whether legislation could be applied in a way that may risk breaching human rights.

2.6 International human rights law recognises that permissible limits may be placed on most rights and freedoms—there are few absolute rights (that is, rights which cannot be limited in any circumstances).⁴ All other rights may be limited as long as the limitation meets certain standards. In general, any measure that limits a human right must comply with the following criteria (the limitation criteria):

- be prescribed by law;
- be in pursuit of a legitimate objective;
- be rationally connected to (that is, effective to achieve) its stated objective; and
- be a proportionate way to achieve that objective.

2.7 Where a bill or instrument limits a human right, the statement of compatibility should provide a detailed and evidence-based assessment of the measures against these limitation criteria.

2.8 Where relevant, the committee takes into account the views of human rights treaty bodies, as well as international and comparative human rights jurisprudence. These sources are relevant to the interpretation of the human rights against which the committee is required to assess legislation.

Statements of compatibility

2.9 The *Human Rights (Parliamentary Scrutiny) Act 2011* requires that each bill and disallowable legislative instrument be accompanied by a statement of compatibility.⁵ The statement of compatibility serves as the starting point for the application of the committee's analytical framework, and sets out the legislation proponent's assessment of the extent to which the legislation engages human rights.

4 Absolute rights are: the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment (including the prohibition on non-refoulement); the right not to be subjected to slavery; the right not to be imprisoned for inability to fulfil a contract; the right not to be subject to retrospective criminal laws; the right to recognition as a person before the law.

5 See *Human Rights (Parliamentary Scrutiny) Act 2011*, Part 3.

2.10 The committee sets out its guidance in relation to statements of compatibility in its *Guidance Note 1*.⁶

The scrutiny dialogue model

2.11 The committee's main function of scrutinising legislation is pursued through dialogue with ministers. Accordingly, where legislation raises a human rights concern which has not been adequately explained in the relevant statement of compatibility, the committee's usual approach is to publish an initial report setting out the human rights concerns it has in relation to the legislation and advising that it intends to seek further information from the minister. Any response from the minister is subsequently considered and published alongside the committee's concluding report on the matter. As well as making concluding remarks on the human rights compatibility of the relevant legislation, the committee may make recommendations to strengthen the compatibility of the legislation with Australia's human rights obligations.

2.12 In some cases, ministers may undertake to address the committee's concerns in the future (for example, by amending legislation or undertaking to conduct a review of the legislation in due course) or may advise that amendments have been made to address the committee's earlier concerns when introducing a future iteration of a bill.

Structure of the committee's scrutiny reports

2.13 The structure of the committee's scrutiny reports reflects the progress of the dialogue model described above, with matters proceeding from an initial report describing the human rights engaged by the bill, to a concluding report that analyses any information received by the legislation proponent in response to the committee's initial report.

2.14 In 2022 the committee's report structure was amended to include a summary snapshot at the start of the report.⁷ It includes statistics regarding the number of bills and legislative instruments considered and commented on in the report, and a summary of the committee's comments in the report. The summary of the committee's views is intended to make the reports more accessible.

2.15 Chapter 1 of the committee's reports include new and continuing matters. This generally includes all bills introduced during the preceding sitting week and legislative instruments tabled in the preceding period. Where the committee considers that a bill or instrument engages human rights and further information is required in order for the committee to complete its examination, these bills and

6 See *Guidance Note 1, Expectations for statements of compatibility*, available on the committee's [webpage](#).

7 This practice commenced in Parliamentary Joint Committee on Human Rights, [Report 3 of 2022](#) (7 September 2022) pp. 1–9.

instruments are the subject of substantive report entries describing the relevant measures, the human rights engaged and limited by the measure, and the information that is required in order for the committee to complete its assessment. Where the committee considers that legislation does not engage, or only marginally engages, human rights; promotes human rights; and/or permissibly limits human rights, it lists these bills in a 'no comment' section of the report, or in relation to instruments, states it has no comment in relation to the remaining instruments registered in the relevant period.⁸ Where the committee has considered similar issues or where it prefers to draw its concerns or certain issues directly to the Parliament Chapter 1 may also include entries that do not seek a response from the relevant minister. Chapter 1 also considers continuing matters (or further response required matters), where the committee has received a response from the legislation proponent, but requires further information in order to conclude its examination of the matter.

2.16 Where bills introduced by private members and senators appear to engage and potentially limit human rights and this has not been adequately explained in the statement of compatibility, these bills are listed in Chapter 1 (now in the report snapshot) without being analysed in detail, with a note that should they proceed to further stages of debate, the committee may request further information from the legislation proponent as to the human rights compatibility of the bill. This assists in enabling the committee to manage its high workload and prioritise those bills which are more likely to move to further stages of debate.

2.17 Chapter 2 of the committee's reports examine responses received in relation to the committee's requests for information, on the basis of which the committee has concluded its examination of the legislation in question. Ministerial responses are published in full alongside the report on the committee's website.⁹ These responses are also extracted and analysed in Chapter 2 of the report. As noted above at paragraph [2.11], the committee's concluding remarks on legislation may include findings as to the human rights compatibility of the legislation, and recommendations to address any human rights concerns.

Legal advice

2.18 The committee is assisted by an external legal adviser on a part-time basis, who is appointed by the Presiding Officers of the Parliament. The committee's legal

8 Each report states that the committee examines the legislative instruments registered on the Federal Register of Legislation during a specified period. Due to the very high volume of legislative instruments examined by the committee, instruments on which no substantive comment is made are not listed in the report itself. All legislative instruments scrutinised by the committee during the stated period can be viewed on the Federal Register of Legislation using its [advanced search function](#).

9 Ministerial responses are available on the committee's [webpage](#).

adviser during the reporting period was Associate Professor Jacqueline Mowbray. Associate Professor Mowbray has extensive research and teaching experience in international law and human rights. Associate Professor Mowbray has also published widely on related matters, including, as co-author, a leading work on the International Covenant on Economic, Social and Cultural Rights. Associate Professor Mowbray previously served as co-director of the Sydney Centre for International Law and as editor of the *Australian International Law Journal*. During her time as legal adviser to the committee she remained employed by the University of Sydney.

2.19 In addition to the external legal adviser, the human rights committee secretariat also includes staff with expertise in international human rights law.

Committee publications and resources

2.20 In addition to its regular reports on the human rights compatibility of legislation, the committee has produced a number of publications and resources to assist ministers, departments and interested parties more generally in engaging with the committee and its work.

Committee guidance notes

2.21 The committee has produced two guidance notes, which are available on the committee's [webpage](#).

[Guidance Note 1](#)—Expectations for statements of compatibility

2.22 This note sets out the committee's approach to human rights assessments and provides guidance as to statements of compatibility. It is primarily designed to assist in the preparation of statements of compatibility.

[Guidance Note 2](#)—Offence provisions, civil penalties and human rights

2.23 This guidance note sets out some of the key human rights compatibility issues in relation to provisions that create offences and civil penalties. It is not intended to be exhaustive but to provide guidance on the approach in relation to assessing the human rights compatibility of such provisions.

Guide to human rights

2.24 The committee's [Guide to human rights](#) (the guide) provides an introduction to the key human rights protected by the human rights treaties relevant to the committee's assessments of legislation.

2.25 The guide is intended to provide a brief and accessible overview of Australia's human rights obligations, the key human rights considered by the committee, and the manner in which human rights may be permissibly limited. Case studies are provided to illustrate how human rights may be engaged and limited in practice. The guide also includes a references section for those seeking more comprehensive information about the rights listed in the guide. The guide is available on the committee's [webpage](#).

Scrutiny Update

2.26 Following the tabling of a scrutiny report, the committee secretariat sends a *Scrutiny Update* publication to all parliamentarians, Senate committee office staff and individuals and organisations that have subscribed to receive the publication. The *Scrutiny Update* provides a summary of the legislation commented on by the committee as set out in full in its scrutiny report. It includes information that may be useful to parliamentarians when debating legislation and also serves to raise awareness about the role and functions of the committee.

Index of bills and legislative instruments

2.27 The [Index of bills and legislative instruments](#) lists all the bills examined by the committee, and those legislative instruments in relation to which the committee has substantively commented on. The index contains a shorthand description of any rights engaged by the legislation and the action taken by the committee (that is, whether the committee made no comment, an advice-only comment, or a comment requiring a response from the minister); and the relevant report(s) in which the committee's full comments may be found.

Scrutiny reports and databases

2.28 The committee's scrutiny reports themselves are also a key resource. These are available on the committee's [webpage](#). They can be downloaded as single PDF documents or separate chapters. The scrutiny reports are also available on the Australasian Legal Information Institute (AustLII) [website](#) where each report entry for legislation is available separately and is individually searchable.

Interaction with other committees

2.29 The committee also assists the work of the Senate's eight legislative standing committees or relevant joint committees,¹⁰ or relevant joint committees,¹¹ by drawing attention to comments it has made in its scrutiny reports to the relevant committee secretariat about a bill in which the other committee is currently inquiring into.

10 Such as the Senate Standing Committees on Community Affairs, Economics, Education and Employment, Legal and Constitutional Affairs; the Select Committee on Workforce Australia Employment Services; and the Joint Committee on Electoral Matters.

11 For example, the Parliamentary Joint Committee on Intelligence and Security.

Chapter 3

Work of the committee in 2022

3.1 This chapter provides information about the work of the committee during 2022,¹ including statistics, major themes arising from the legislation examined, and information as to the committee's impact during the reporting period.

Legislation considered

3.2 During the reporting period, the committee assessed legislation for its compatibility with Australia's international human rights obligations including:

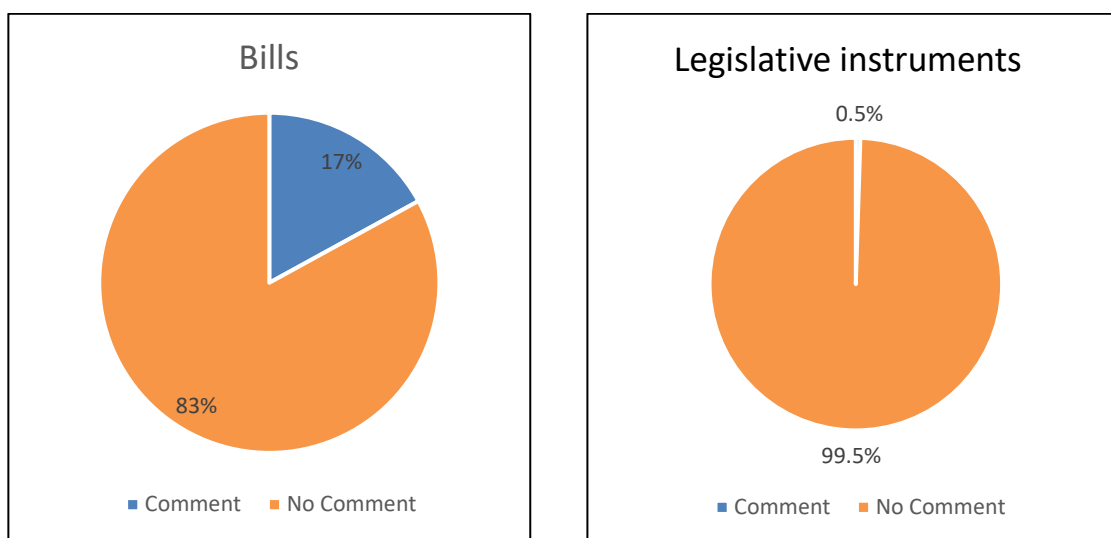
- a total of 141 bills. Of these bills, the committee did not comment on 83 per cent (117); commented on 11 per cent (16) to draw Parliament's attention to the bill but did not require a response;² sought ministerial advice on 4 per cent (5) of the bills;³ conducted an inquiry in relation to 2 per cent (3) and
- a total of 1803 legislative instruments.⁴ Of these legislative instruments, the committee did not comment on 99.5 per cent (1794); commented on 0.3 per cent per cent (5) to draw Parliament's attention to the legislative instruments but did not require a response; and sought ministerial advice on 0.2 per cent (4) of the legislative instruments.

1 The reporting period covers 1 January 2022 to 31 December 2022. The committee's first scrutiny report of the reporting period, [Report 1 of 2022](#), was tabled on 9 February 2022 and its final scrutiny report of 2022, [Report 6 of 2022](#), was tabled on 25 November 2022.

2 Bills included in the list 'Advice Only Private Bills' were treated as bill with no committee comment for statistical purposes.

3 Note - the committee determined that the Religious Discrimination Bill 2021, Religious Discrimination (Consequential Amendments) Bill 2021 and Human Rights Legislation Amendment Bill 2021 referred by the Attorney-General would be considered as part of its inquiry into the Religious Discrimination Bill 2021 and related bills to report by 4 March 2022. As such these 3 bills

4 Note: [Report 1 of 2022](#) reported on legislative instruments registered between 14 November to 19 December 2021, and [Report 6 of 2022](#) reported on legislative instruments registered up to 10 November 2022. This is because legislative instruments are continuously being registered on the Federal Register of Legislation and are not reported on immediately.

Table 3.1: Legislation considered during the reporting period

Reports tabled during the period

3.3 The committee tabled six scrutiny reports during the reporting period.⁵ This number was lower than usual for a twelve-month period, noting that no scrutiny reports were tabled after the dissolution of Parliament on 11 April 2022 for the federal election, until after the reestablishment of the committee (first report in the 47th Parliament on 7 September 2022).

3.4 The committee also tabled its inquiry report [Religious Discrimination Bill 2021 and related bills](#) on 4 February 2022 and its [Annual Report 2021](#) on 28 September 2022.

Commonly engaged rights

3.5 The most commonly engaged human rights identified in legislation substantively commented on during the reporting period included both civil and political rights and economic, social and cultural rights. These were, in order of most commonly engaged, the:

1. right to privacy;⁶
2. right to equality and non-discrimination;⁷

5 From *Report 1 of 2022* to *Report 6 of 2022*. The committee's scrutiny reports are available on its [webpage](#).

6 International Covenant on Civil and Political Rights, article 17.

7 International Covenant on Civil and Political Rights, articles 2 and 26; International Covenant on Economic, Social and Cultural Rights, article 2(2).

3. right to freedom of expression or opinion;⁸
4. criminal process rights;⁹
5. right to freedom of movement;¹⁰
6. right to liberty;¹¹
7. right to life;¹²
8. right to a fair hearing;¹³
9. rights of the child;¹⁴
10. freedom of association;¹⁵ and
11. effective remedy¹⁶.

3.6 During the reporting period, the rights listed above accounted for 83 per cent of rights which the committee reported on substantively within both primary and delegated legislation. The right to privacy continued to be the most frequently considered issue on which the committee comments.

8 International Covenant on Civil and Political Rights, articles 19 and 20.

9 International Covenant on Civil and Political Rights, article 14.

10 International Covenant on Civil and Political Rights, article 12.

11 International Covenant on Civil and Political Rights, article 9.

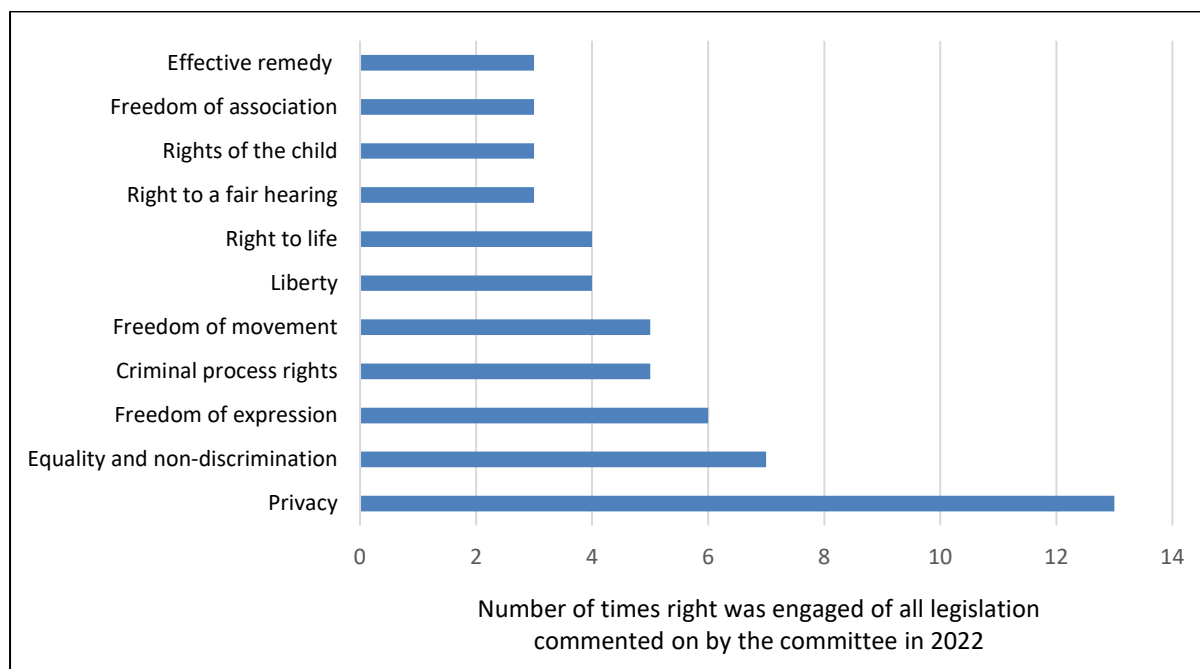
12 International Covenant on Civil and Political Rights, article 6.

13 International Covenant on civil and Political Rights, article 14.

14 Convention on the Rights of the Child.

15 International Covenant on civil and Political Rights, article 22.

16 International Covenant on civil and Political Rights, article 2(3).

Figure 3.1: Human rights engaged by legislation in 2022

*Criminal process rights include the right not to incriminate oneself, the right to be presumed innocent, the right to a fair trial, the prohibition against retrospective criminal laws, and the prohibition against double punishment.

Timeliness

Timeliness of committee reports

3.7 The committee seeks to conclude its assessment of bills while they are still before the Parliament, and its assessment of legislative instruments within the timeframe for disallowance (usually 15 sitting days after tabling). In both cases, the committee's approach seeks to ensure that reports on the human rights compatibility of legislation are available to inform parliamentary deliberations.

Bills

3.8 During this reporting period, the committee concluded its consideration on the vast majority of bills prior to their passage. However, on some occasions, bills were passed by the Parliament before the committee could finalise its deliberations.¹⁷ During the reporting period, 8 per cent of bills passed prior to (or on the same day) the

17 In some instances where this occurred, the committee noted with concern that the short timeframe within which a bill was passed did not provide the committee with adequate time to scrutinise the legislation and seek further information in order to provide appropriate advice to Parliament as to the human rights compatibility of the bill. For example, the Electoral Legislation Amendment (Foreign Influences and Offences) Bill 2022 passed both Houses of Parliament five days after its introduction on 16 February 2022, prior to the committee reporting on 25 March 2022. See [Report 2 of 2022](#), Electoral Legislation Amendment (Foreign Influences and Offences) Bill 2022, pp. 13–21.

committee tabled its final report (11 out of 134). However, for ten of the 11 bills that passed before the committee had published a final report, the committee had published an initial comment in advance of its passage. As the committee's initial reports generally contain a detailed human rights analysis, this means that a human rights analysis of 99 per cent of new bills was available to inform members of parliament prior to the passage of legislation.¹⁸

Legislative instruments

3.9 Of the 1806 legislative instruments assessed by the committee during this reporting period, the committee substantively reported on 0.4 per cent of those instruments (8). Of those instruments subject to disallowance, the committee concluded its examination of 100 per cent of these legislative instruments within the disallowance timeframe.

Timeliness of responses

3.10 The responsiveness of ministers to the committee's requests for information regarding human rights concerns is critical to the effectiveness of the scrutiny process.¹⁹ Although the committee requests a response within a specified timeframe (generally within two weeks), this request does not affect the passage of the legislation.²⁰

3.11 During 2022, the committee made 10 requests for additional information from ministers, nine of which were received during the 2022 reporting period. Four of the responses received in 2022 (40 per cent) were received within the requested timeframe. The remaining five responses were received outside after the requested due date, however three of those late responses (30 per cent of all those requested) were received just one day late.²¹

The committee's 10-year anniversary

3.12 On 19 August 2022, the committee celebrated 10 years of its human rights scrutiny (as the committee was first formed in March 2012). As part of the anniversary

18 For further information on the committee's scrutiny process see Chapter 2, 'The scrutiny dialogue model'.

19 For further information on the committee's scrutiny process see above at Chapter 2, 'The Scrutiny Dialogue Model'.

20 In contrast, if bills are referred to a standing or select committee they cannot be considered in a committee of the whole until that committee reports, see Senate standing order 115. This does not apply to the consideration of bills by the scrutiny committees, such as the Parliamentary Joint Committee on Human Rights or the Senate Standing Committee for the Scrutiny of Bills.

21 For an in-depth analysis of the trend of increased timeliness in ministerial responses from 2012 to 2022, see *Reflections on the 10th anniversary of the Parliamentary Joint Committee on Human Rights*, available [online](#).

celebration, a video was produced featuring previous Chairs, Deputy Chairs, members, legal advisers and academics reflecting on the work of the committee.²²

3.13 As part of the Senate Occasional Lecture series, Mr Harry Jenkins AO, the Hon Ken Wyatt AM, Mr Graham Perrett MP were part of a public panel discussion (moderated by Associate Professor Jacqueline Mowbray, the committee's legal adviser) reflecting on the committee's first ten years of operation.²³

3.14 In addition, the secretariat published a paper reflecting on the committee's 10 years of operation.²⁴ This paper sets out the volume of scrutiny undertaken, including breakdowns of how many bills and legislative instruments are reported on each year, the timeliness of the committee's reporting on bills from 2012 to 2022, and the increased timeliness of ministerial responses. It also discusses the way in which the committee worked during the COVID-19 pandemic and examines the ways in which the committee's processes have evolved in that time. The paper also analyses the committee's impact over this period, drawing on a range of case studies to highlight examples of its apparent and less visible impact.

Inquiry into the Religious Discrimination Bill 2021 and related bills

3.15 On 26 November 2021, pursuant to section 7(c) of the *Human Rights (Parliamentary Scrutiny) Act 2001*, the Attorney-General referred to the committee the Religious Discrimination Bill 2021; the Religious Discrimination (Consequential Amendments) Bill 2021 and the Human Rights Legislation Amendment Bill 2021 for inquiry and report by 4 February 2022.²⁵

3.16 In December 2021, the committee developed an online survey to allow members of the public to fully express their views on the religious discrimination package. It held one public hearing in December 2021 and two hearings in January 2022, taking evidence from a range of community organisations, peak bodies, academics and the Attorney-General's Department. The committee received over

22 The video is available on the committee's [webpage](#).

23 A recording of this lecture is available [online on the Parliament's website](#).

24 The paper *Reflections on the 10th anniversary of the Parliamentary Joint Committee on Human Rights*, is available on the committee's [webpage](#).

25 All documents and information associated with this inquiry are available on the inquiry [webpage](#).²⁶ See, for example, 'Religious discrimination bill scratched for now', *The Mandarin* (11 February 2022); 'Time to finalise and pass religious discrimination bill', *The Australian* (8 February 2022); 'The horror, the horror: weakened Morrison faces insurrection as Parliament returns', *Crikey* (7 February 2022); 'Law shift to protect LGBTQI students: Religious schools targeted', *West Australian* (4 February 2022); 'Hasluck candidate Jeanene Williams dismayed at Religious Discrimination report', *Out in Perth* (5 February 2022); 'As parliament returns for 2022, the religious discrimination bill is still an unholy mess', *The Conversation* (7 February 2022); 'Labor offers conditional backing to Coalition's religious discrimination bill', *The Guardian* (4 February 2022).

48,000 responses to its public survey. In addition, the committee received 206 written submissions.

3.17 The committee tabled its report on 4 February 2022, which made 12 recommendations for targeted amendments and considered that, contingent on those amendments being made, the bills be passed.

3.18 Committee members from the Australian Labor Party tabled additional comments expressing concern that the legislation may lead to division in the community should the bills proceed in their current form. The committee member from the Australian Greens tabled a dissenting report, recommending that further consideration of the bills be delayed until amendments to the *Sex Discrimination Act 1984* be made to implement safeguards for LGBTQIA+ students, and that the Australian Government develop a Charter of Rights to protect religious belief amongst other protected attributes.

3.19 While the bill ultimately did not proceed, the revised explanatory memorandum accompanying the bill noted that it had been amended in a way that was informed by the committee's recommendations. Further, in the second reading and consideration in detail of the legislation on 8 and 9 February 2022, the committee's inquiry and report were referenced by numerous members of parliament. The committee's inquiry and report were also referenced extensively in media coverage.²⁶

Major themes

3.20 In 2022, the committee continued to comment on a wide range of legislation, though noting that the parliamentary year included a federal election and the dissolution of both houses of Parliament, meaning a significantly lower amount of legislation in 2022. The federal election, which led to a change in government, contributed to the smaller number of bills considered across the entire year.

3.21 Nevertheless, the legislation considered across this period continued to reflect several of the major themes that the committee has observed since its establishment in 2012. These include legislation relating to national security, migration, and social security payments.

26 See, for example, 'Religious discrimination bill scratched for now', *The Mandarin* (11 February 2022); 'Time to finalise and pass religious discrimination bill', *The Australian* (8 February 2022); 'The horror, the horror: weakened Morrison faces insurrection as Parliament returns', *Crikey* (7 February 2022); 'Law shift to protect LGBTQI students: Religious schools targeted', *West Australian* (4 February 2022); 'Hasluck candidate Jeanene Williams dismayed at Religious Discrimination report', *Out in Perth* (5 February 2022); 'As parliament returns for 2022, the religious discrimination bill is still an unholy mess', *The Conversation* (7 February 2022); 'Labor offers conditional backing to Coalition's religious discrimination bill', *The Guardian* (4 February 2022)

National security

3.22 During the reporting period the committee considered the National Security Legislation Amendment (Comprehensive Review and Other Measures No. 1) Bill 2021.²⁷ This complex bill, now an Act, made several amendments to national security legislation.

3.23 For example, the bill introduced a new counter-terrorism class ministerial authorisation, to permit certain intelligence agencies to amend the *Intelligence Services Act 2001* to produce intelligence on one or more members of a class of Australian persons who are, or are likely to be, involved with a listed terrorist organisation. Previously, these agencies were required to get ministerial authorisation before producing intelligence on an Australian person in a foreign country. A further part of the bill enabled certain agencies to seek ministerial authorisation to undertake activities to produce intelligence on an Australian person or a class of Australian persons where they are assisting the Australian Defence Force (ADF) in support of military operations.

3.24 The committee noted that allowing agencies to produce intelligence on one or more members of a class of Australian persons engages and limits the rights to privacy and equality and non-discrimination, and in relation to Schedule 3, the right to life (if intelligence is used by the ADF to administer lethal force). The committee sought further information from the Minister for Home Affairs in order to assess their compatibility with international human rights law.

3.25 The minister provided the committee with a comprehensive response to its inquiries. However, having considered this additional information, the committee noted that the broad scope of class ministerial authorisations raised questions as to the proportionality of the measures. The committee considered that the ability to designate a class of persons who are likely to be 'involved in terrorism' did not appear to be sufficiently circumscribed, as the list of likely involvement was overly broad and non-exhaustive. As such, while there were some oversight and review mechanisms in the ministerial class authorisation power, the committee considered these did not appear to be sufficient and as such there was a risk that enabling class authorisations for those suspected of involvement with a terrorist organisation would arbitrarily limit the right to privacy, and may impermissibly result in indirect discrimination. Further, the committee considered that questions remained as to the proportionality of expanding class ministerial authorisations when providing assistance to the ADF in support of military operations. The committee recommended some amendments to the bill to assist with the proportionality of these measures, and that the statement of compatibility with human rights be updated to reflect the information provided by the minister.

27 Parliamentary Joint Committee on Human Rights, [Report 1 of 2022](#), (29 February 2022) pp. 2-22; [Report 2 of 2022](#), (25 March 2022) pp. 78-112.

Migration

3.26 The committee considered several legislative instruments dealing with matters relating to migration. For example, the committee considered the Migration (Daily maintenance amount for persons in detention) Determination (LIN 22/031) 2022 [F2022L00877], which increased the determined daily cost of maintaining a person in immigration detention between 1 July 2022 to 30 June 2024.²⁸ Persons convicted of people smuggling and illegal foreign fishing offences are liable to repay the Commonwealth for this cost of their immigration detention.

3.27 Because this legislative instrument was exempt from disallowance, it was not required to include a statement of compatibility with human rights, but the committee was still required to consider its compatibility with international human rights law.²⁹

3.28 The committee noted that making a person liable for the cost of their immigration detention, where that person is being detained in relation to conduct for which they have also been convicted of a criminal offence, may engage the right not to be punished twice, which is a dimension of the right to a fair trial and fair hearing. This is because if the imposition of a cost for mandatory immigration detention may properly be regarded as a penalty, it may be that, as a matter of international human rights law, the imposition of this charge (and consequently an increase in that charge) would constitute a criminal penalty, such that the criminal process rights under articles 14 and 15 of the International Covenant on Civil and Political Rights (relating to the right to a fair trial and fair hearing) would apply. The committee also noted that the imposition of liability for the cost of a person's immigration detention, and increasing that liability, may raise questions of compatibility with the right to humane treatment in detention, noting that the United Nations (UN) Human Rights Committee has found that the combination of subjecting individuals to arbitrary and protracted and/or indefinite detention, the absence of procedural safeguards to challenge that detention, and the difficult detention conditions, cumulatively inflicts serious psychological harm on such individuals that amounts to cruel, inhuman or degrading treatment.

3.29 The committee sought further information from the Minister for Home Affairs to understand how this operated in practice. This included seeking advice as to the average, and longest, length of time people who have been convicted of people smuggling or illegal foreign fishing offences (and are therefore liable for the cost of their immigration detention) have been held in immigration detention. The minister did not provide this specific information, but they advised that debt notices under these provisions had been raised in relation to less than five people since July 2018. However, the committee noted that statistics relating to all persons in immigration

28 Parliamentary Joint Committee on Human Rights [Report 3 of 2022](#) (7 September 2022) pp. 27-30; and [Report 5 of 2022](#), (20 October 2022) pp. 56-65.

29 See *Human Rights (Parliamentary Scrutiny) Act 2011*, section 9.

detention indicated that the average length of immigration detention at this time was 736 days, and that 138 people have been in detention for more than 1,825 days. The advice calculated that were a person convicted of a foreign fishing or people smuggling offence to be held in immigration detention for the current average length of time and subject to this increased daily rate for that period, they would be liable for a debt of over \$360,000 and that a person held for 1,825 days would accrue a debt of over \$895,000. The committee considered that there was some risk that, in such instances where the accumulated debt for one's detention is so substantial that it may be regarded as a criminal penalty under international human rights law, the imposition of this penalty may constitute double punishment. Were this the case, this would violate the right to a fair trial. The committee also considered that there may also be a risk that increasing the daily fee for certain immigration detainees has the effect of exacerbating detention conditions which have previously been found to amount to cruel, inhuman or degrading treatment, and therefore constitute an impermissible limit on the right to humane treatment in detention.

3.30 The committee drew these human rights concerns to the attention of the minister and the Parliament. As the instrument was exempt from disallowance it was not directly subject to parliamentary control.

Social security

3.31 The committee considered the Social Security (Administration) Amendment (Repeal of Cashless Debit and Other Measures) Bill 2022.³⁰ This bill (now an Act), abolished the Cashless Debit Card (CDC) program and transitioned certain individuals to the income management regime under the *Social Security (Administration) Act 1999* following the closure of the CDC program, subject to some exceptions. Both the CDC program and income management provide that a portion of a person's social security payment is managed or quarantined, and can only be spent on 'priority needs' (which excludes alcohol and gambling).

3.32 The committee noted its previous concerns regarding the compatibility of the CDC program with multiple human rights,³¹ and considered that abolishing that specific program would be a rights-enhancing measure.³² In particular, it considered the bill would address the human rights concerns previously raised by the committee

30 Parliamentary Joint Committee on Human Rights [Report 3 of 2022](#) (7 September 2022) pp. 15-26, and [Report 5 of 2022](#) (20 October 2022) pp. 39-55.

31 See Parliamentary Joint Committee on Human Rights, [Thirty-first report of the 44th Parliament](#) (24 November 2015) pp. 21-36; [Report 7 of 2016](#) (11 October 2016) pp. 58-61; [Report 9 of 2017](#) (5 September 2017) pp. 34-40; [Report 11 of 2017](#) (17 October 2017) pp. 126-137; [Report 8 of 2018](#) (21 August 2018) pp. 37-52; [Report 2 of 2019](#) (2 April 2019) pp. 146-152; [Report 1 of 2020](#) (5 February 2020) pp. 132-142; [Report 1 of 2021](#) (3 February 2021) pp. 83-102; and [Report 14 of 2021](#) (24 November 2021) pp. 14-18.

32 A dissenting comment in respect of this was made by Coalition members of the committee.

in relation to the CDC program and, for those participants removed from any form of welfare restrictions, would alleviate the adverse impact of the program on their rights.

3.33 However, the committee noted that the bill, in transitioning certain CDC participants to mandatory income management, would limit a number of human rights, including the rights to social security, private life, adequate standard of living, equality and non-discrimination and the rights of the child. The committee sought further information from the Minister for Social Services in relation to a range of matters in order to assess the compatibility of this bill with human rights. The minister advised that the government's objective was to implement voluntary income management in the near future, and stated that abolishing the CDC program was a step in achieving this. The committee noted that were the income management regime to be made voluntary, the human rights concerns would be addressed. However, until a further bill is introduced, transitioning certain CDC participants to mandatory income management nevertheless limited a number of human rights.

3.34 This legislation also progressed swiftly through Parliament, which hindered the committee's ability to influence its consideration. The bill was introduced on 27 July 2022, the second sitting day following the 2022 federal election. At this time, the committee was still being established for the new Parliament. Consequently, it could not consider newly introduced legislation until September 2022, at which time it published its initial consideration of the bill (in its scrutiny *Report 3 of 2022* on 7 September 2022). As per its normal practice, the committee provided the minister with two weeks to provide the additional information sought. The response was provided late, on 4 October 2022, by which time the bill had already passed both Houses of Parliament. Consequently, when the committee published its concluding advice in relation to the bill at the next opportunity, on 20 October 2022, the bill had already passed into law.³³ However, the committee's extensive comments on legislation relating to income management since 2013 were highlighted by others in the consideration of this bill.³⁴

Committee impact

3.35 The full extent of the committee's impact can sometimes be difficult to quantify, as it is likely that the committee has an unseen influence in relation to the development of legislation before its introduction into the Parliament and on consideration of future legislation. In addition, it can routinely be challenging to track

33 The bill had passed on 28 September 2022, 12 sitting days after its introduction.

34 The bill was referred for [inquiry](#) to the Senate Standing Community on Community Affairs for inquiry and report. The Parliamentary Joint Committee on Human Rights' historical consideration of Stronger Future legislation (including income management) were raised by a witness in the course of this senate inquiry, and were also referred to in the Greens' Additional Comments to the committee's report. The committee's comments were also cited in a Parliamentary Library Research Paper: 'Unfinished Parliamentary Business: an overview of potential Indigenous Australians portfolio measures' (published 22 August 2022).

the influence of the committee on legislative amendments without very close consideration of the committee's recommendations and consequent changes (particularly where amendments are made that reflect the committee's suggestions but the committee's role is not noted). Nevertheless, during the reporting period there was specific evidence that the committee continues to have an impact in relation to the consideration of human rights in the legislation making process.

National Anti-Corruption Commission legislation

3.36 A particular example of the committee's direct influence on the development of legislation was in relation to legislation introduced to establish a National Anti-Corruption Commission: the National Anti-Corruption Commission Bill 2022 and National Anti-Corruption Commission (Consequential and Transitional Provisions) Bill 2022.

3.37 These bills, now Acts, established the National Anti-Corruption, vesting it with a range of powers to investigate corrupt conduct that is serious or systemic, and to report on those issues. This includes the power to investigate conduct that took place before the commencement of the Act. The Act empowers the Commission to: require the production of information, summon witnesses, conduct searches, and report on investigations, among a range of other powers. In addition, the National Anti-Corruption Commission (Consequential and Transitional Provisions) Bill 2022 transitioned functions that had belonged to the Australian Commission for Law Enforcement Integrity to the Commission, granting it wide-ranging existing covert investigative powers (with some amendments and exceptions). This thereby conferred on the Commission a wide range of powers, including surveillance device and computer access powers, access to telecommunications interceptions, the power to authorise and conduct controlled operations, and the power to seek information about accounts held by a person of interest to a corruption investigation and to search for, and seize, tainted property (such as the proceeds of an offence).

3.38 These bills were introduced into the House of Representatives on 28 September 2022. On that date, the bills were referred to the Joint Select Committee on National Anti-Corruption Commission Legislation for inquiry and report by 10 November 2022 (seven sitting days after introduction). The committee determined that it would not be possible for it to seek a response from the Attorney-General in relation to these bills as per normal practice given this timeframe. Instead, the committee reviewed the bills and explanatory materials, and offered recommendations to improve the human rights compatibility of specified provisions, in order that these recommendations would be available to the Attorney-General and the Parliament for timely consideration.

3.39 Pleasingly, the committee noted that the National Anti-Corruption Commission Bill 2022 was accompanied by a lengthy and detailed statement of compatibility with human rights that identified that the bill engaged and limited human rights. The committee noted that (aside from a minor issue raised in relation to the right to an effective remedy) the statement set out in helpful detail how each

of the identified rights were engaged, and where the bill limited a right, the statement explained the objective being sought, how the measure would be effective to achieve that objective, and how such a limitation may be seen to be proportionate to that objective. The committee noted that this comprehensive and well-reasoned statement of compatibility had greatly assisted it in undertaking its scrutiny role, and considered that, in general (aside from some specific issues), the limitations on human rights in the bill had been adequately explained. The committee made targeted recommendations to improve the human rights compatibility of specified provisions.

3.40 The committee's advice to Parliament was published on 20 October 2022, and on 24 November 2022 the committee published a response received from the Attorney-General in relation to its advice and recommendations. In this response, the Attorney-General indicated agreement with the majority of the recommendations the committee had made to amend the bill, and outlined the way in which the bill would be amended to reflect this advice. For example, the bill provided that a person may receive a summons or notice from the Commission, which is subject to a non-disclosure notation (meaning that the recipient cannot disclose the fact they have received such a notice). The committee noted that if the recipient were a person with disability, this may necessitate additional assistance in order for them to understand the notice and to fairly engage in the Commission's process. The committee noted that it did not appear that a person would be permitted to disclose the notice or summons for the purposes of obtaining that assistance (for example, to a social worker, an intermediary, or other professional). The committee recommended that the bill be amended to establish appropriate safeguards in this respect. The Attorney-General agreed with this recommendation, and outlined the specific amendment which would be put forward to address this concern.

3.41 The committee's findings and recommendations were also extensively referenced in the second reading debate and committee of the whole proceedings in relation to the legislation in both the House of Representatives and the Senate.³⁵

3.42 The Attorney-General subsequently tabled amendments to the bill and a supplementary explanatory memorandum, and noted that these amendments would implement the government's response to the recommendations of committees including this committee. Consequently, when the bill finally passed both houses of Parliament, the human rights concerns of the committee were largely addressed.

Liaison with departments

3.43 The committee resolved on its establishment in the 47th Parliament that its secretariat should, where it considered it appropriate, engage directly with relevant departments immediately after the legal adviser and secretariat have identified minor,

35 The committee's report was referenced by Dr Scamps MP, Dr Garland MP, Mr Burns MP, Mrs Elliot MP, Ms Templeman MP, Mr Violi MP, Mr David Smith, Mr Birrell MP, Mr Tehan, Senator the Hon Henderson, Senator Askew and Senator Watt.

technical human rights concerns with legislation, in an attempt to resolve the matter *before* involving the minister or committee by reporting on the legislation publicly. This is intended to help departmental officials understand the type of information that should be included in a statement of compatibility. Further, where a statement of compatibility is considered to be inadequate (but where it nonetheless does not appear that the legislation raises human rights concerns), the committee authorised the Committee Secretary to write to departmental officials setting out the committee's expectations for future reference.

3.44 In 2022, the secretariat wrote to departments on 10 occasions in relation to 20 legislative instruments to provide feedback on the content of statements of compatibility. Providing feedback in this manner in relation to legislation facilitates the committee's educative function, providing departments with information to inform future legislative drafting. In relation to legislative instruments (and their explanatory materials), this feedback can be incorporated directly by departmental officers, because legislative instruments can often be amended and updated by departmental officers or other delegates directly.

3.45 In addition, the secretariat provided human rights training to over 70 staff from the Department of the Treasury after a request for such training from the department following receipt of such feedback.

Engagement with international bodies

3.46 In October 2022, the committee met with the United Nations Subcommittee on the Prevention of Torture as part of its visit to inspect places of detention in Australia as mandated under the Optional Protocol on the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment . Committee members discussed the committee's role, and noted particular comments that the committee has made in relation to the absolute prohibition against torture in Australia. At the conclusion of its consideration of the sixth periodic report of Australia, the UN Committee Against Torture (CAT) welcomed the work of the committee and sought further information about the committee's operation and practice.³⁶ The Attorney-General's Department responded to the CAT's conclusions and questions, noting the role and function of the committee and its previous consideration of Australia's obligations on the prohibition of torture.

3.47 In November 2022, the committee Chair and secretariat met with a visiting delegation of senior officials from the Public Management and Budgeting Division of the Organisation for Economic Co-operation and Development (OECD) regarding their review of gender mainstreaming and budgeting in Australia. The Chair provided the delegation with an overview of the committee's role, and its consideration of the rights of women.

36 Further detail regarding this report is available [here](#).

Further stakeholder engagement

3.48 The committee also met with the Australian Human Rights Commission in late 2022 in relation to their forthcoming Free and Equal report. In addition, the committee secretariat met with the National Children's Commissioner in relation to the consideration of the rights of the child in law and policy, and with the Office of the Australian Information Commissioner in relation to the Data Availability and Transparency Scheme.

Mr Josh Burns MP
Chair