

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:

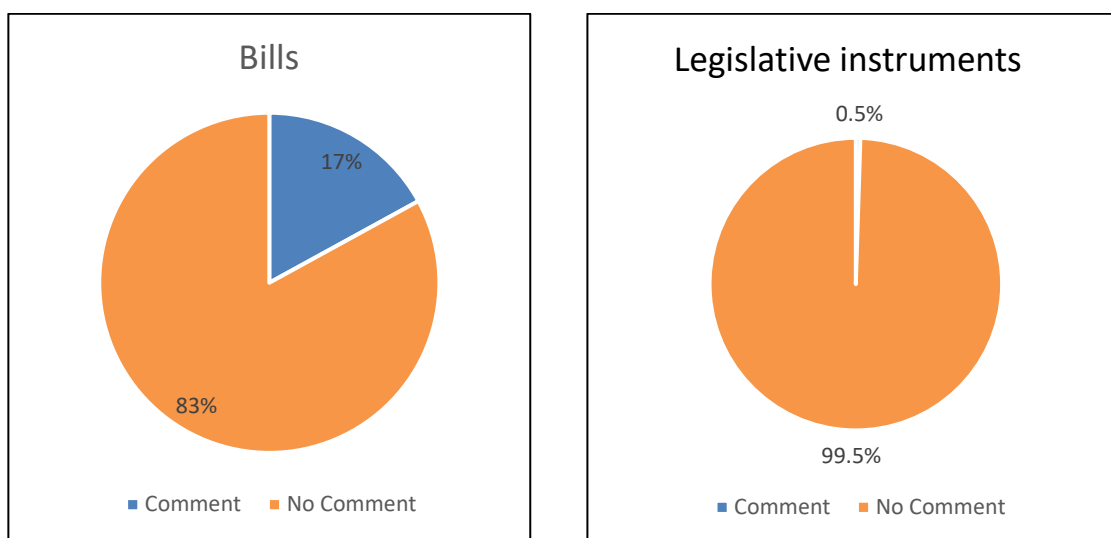
- a total of 141 bills. Of these bills, the committee did not comment on 83 per cent (117); commented on 11 per cent (16) to draw Parliament's attention to the bill but did not require a response;² sought ministerial advice on 4 per cent (5) of the bills;³ conducted an inquiry in relation to 2 per cent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

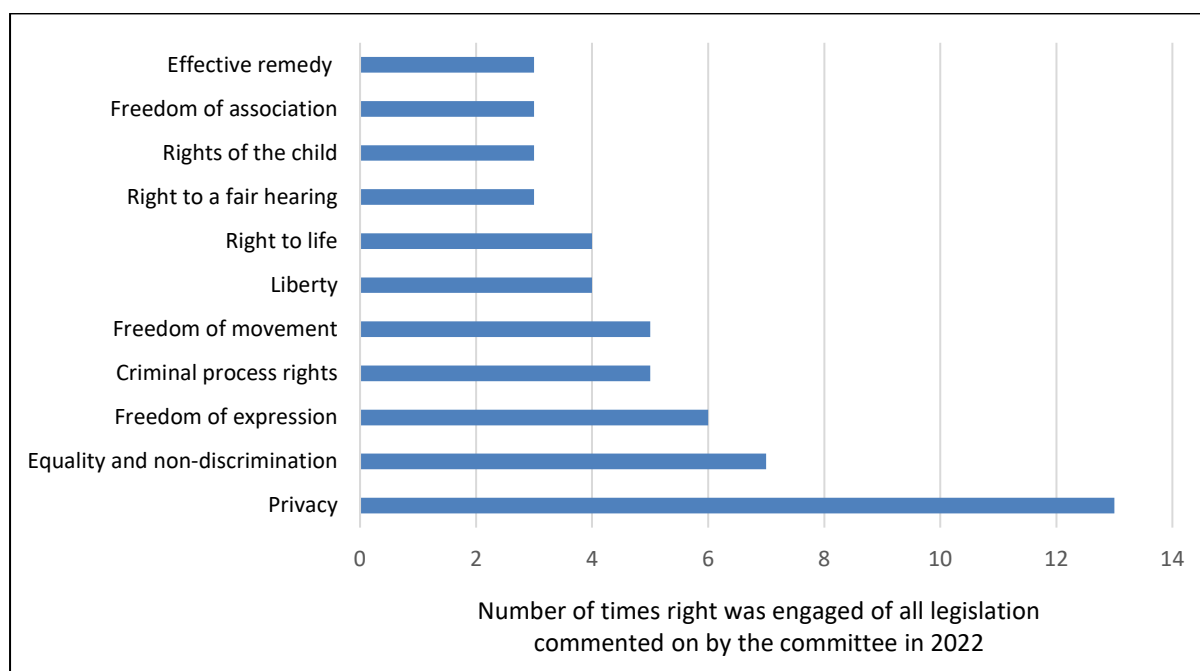
12 International Covenant on Civil and Political Rights, article 6.

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