



*Queensland Parliamentary Service*

Does legislative scrutiny by  
parliamentary committees  
improve human rights  
compatibility of legislation?

**PRESENTED BY LYNDA PRETTY**

# Human rights and parliamentary scrutiny

**Human rights legislation sets out a process of parliamentary scrutiny, for compatibility with rights prescribed in international treaties.**

**Australasian jurisdictions with human rights legislation:**

- **New Zealand**
- **Australian Capital Territory**
- **Victoria and**
- **Queensland (from 2018)**

**Other parliamentary models of rights protection:**

- **Australian Parliament**
- **New South Wales**
- **Queensland**



# Legislative scrutiny for rights in Queensland

**Prior to the mid-1980s**

- **executive government made the laws**
- **passage through parliament was considered a formality**







**1987 - 1989**

**Fitzgerald Report on committees:**

*“There is a need to consider introducing a comprehensive system of Parliamentary Committees to enhance the ability of Parliament to monitor the efficiency of Government. ...*

*This would increase the chance that misconduct, incompetence or inefficiency will be exposed.”*

# 1990s Post-Fitzgerald reforms

**Two reviews by the Queensland Electoral and Administrative Review Commission**

**1991**

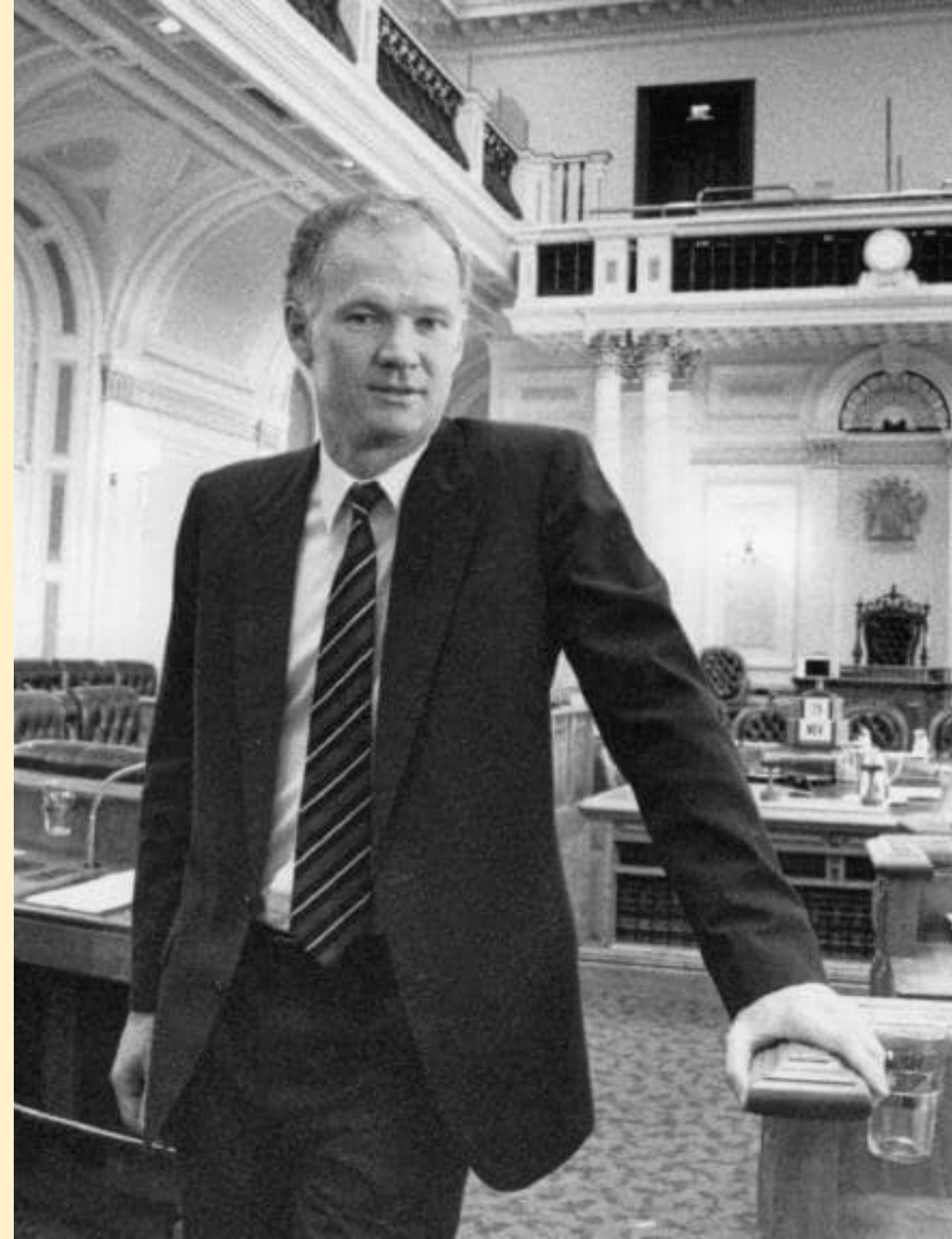
**Scrutiny of Legislation Committee replaced the Committee of Subordinate Legislation**

- **expanded remit to review primary legislation (bills) and subordinate legislation**

**1992**

***Legislative Standards Act 1992* (Qld)**

- **Fundamental Legislative Principles (or FLPs) enshrined into law**







# Reforms continued in the 1990s

**1995**

**The *Parliamentary Committees Act 1995* (Qld) established a new Scrutiny of Legislation Committee to examine 'all bills and all items of subordinate legislation in accordance with fundamental legislative principles' (s 22)**

- **the parliament determines whether legislation has 'sufficient regard' to FLPs, and sufficient justification is provided for any departure.**

**1998**

**Legal, Constitutional and Administrative Review Committee held an inquiry on whether to introduce a bill of rights in Queensland and concluded the FLP process of pre-legislative scrutiny successfully ensured new legislation had sufficient regard to individuals' rights and liberties.**

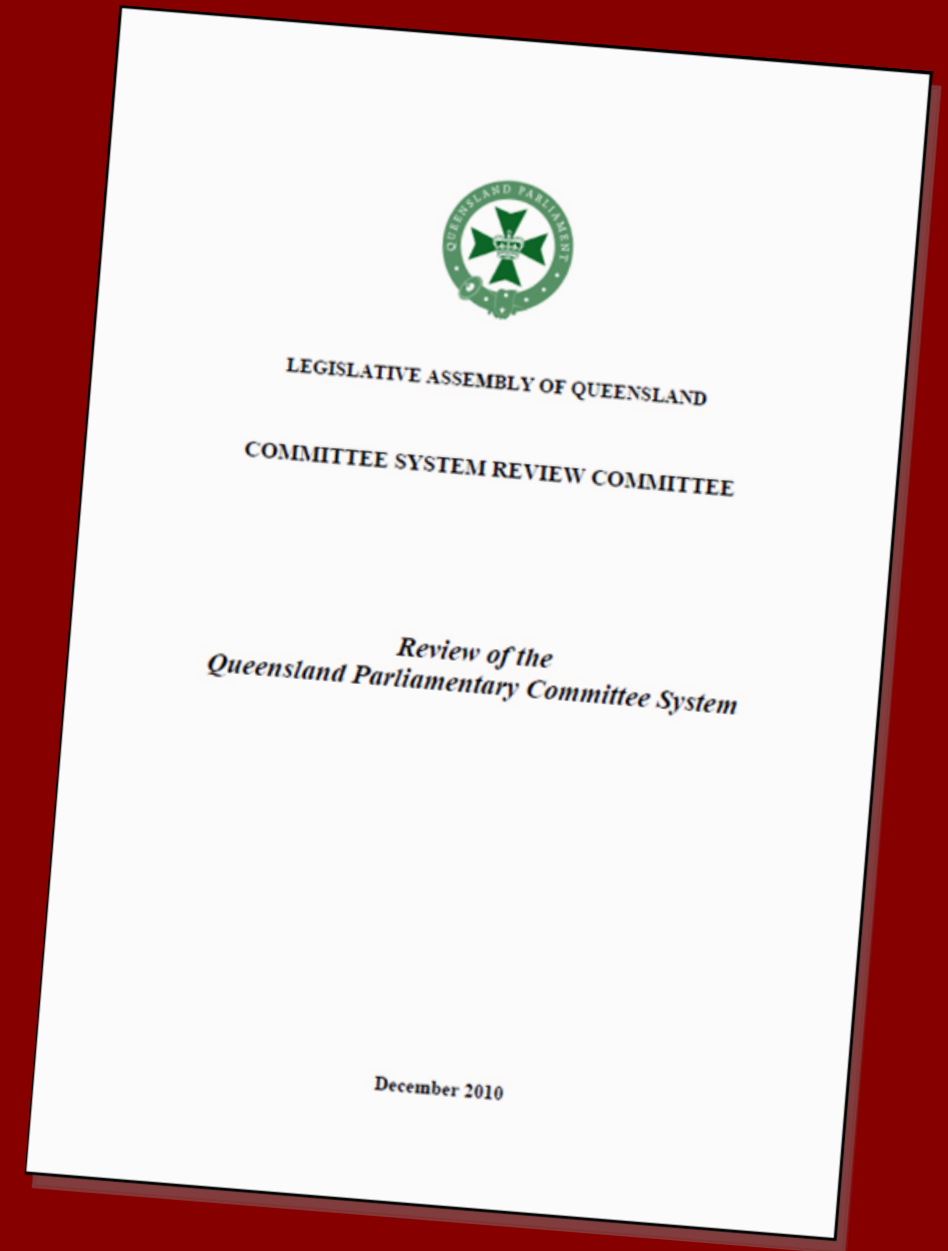
# 2011 reforms to committees

**2010**

**Parliamentary Committee System Review Committee recommends a new committee system for Queensland**

**2011**

- **seven portfolio-based committees**
- **each committee responsible for examining bills and subordinate legislation within its portfolio area**
- **Scrutiny of Legislation Committee abolished**



# Activity since 2011 reforms

**Number of public briefings, public hearings and private hearings of all parliamentary committees:**

2009-10	2010-11	2011-12*	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
42	44	121	195	212	183	307	292	165	490

**\* New committee system commenced in August 2011**



# Timeframes for examination of Bills

***Constitution of Queensland and Other Legislation Amendment Act 2016*** amended the Constitution to provide that:

- every bill introduced into the parliament must be referred to a committee for a minimum review period of six weeks
- the parliament can declare a Bill urgent by ordinary majority

**Average duration of committee inquiries on government bills:**

**54<sup>th</sup> Parliament: 8.5 weeks**

**55<sup>th</sup> Parliament: 9.2 weeks**

**56<sup>th</sup> Parliament (to June 2019): 6.3 weeks**



## **54<sup>th</sup> Parliament**

**May 2012 to February 2015**

**Newman LNP Government**

**78 LNP, 7 ALP, 2 Katter Party, 2 Independents**

**Portfolio committees made up of:**

- **7 members, including at least 1 non-government member**
- **Chair had casting vote**

## **Two different parliaments**

## **55<sup>th</sup> Parliament**

**February 2015 to October 2017**

**Palaszczuk ALP Government**

**44 ALP, 42 LNP, 2 Katter Party, 1 Independent**

**Portfolio committees made up of:**

- **6 members, including 3 government and 3 non-government members**
- **Chair *did not* have casting vote**



# An analysis of committee effectiveness

## **A comparison of the 54<sup>th</sup> and 55<sup>th</sup> Parliaments:**

- **qualitative survey of committee recommendations for legislative amendment on matters of FLP, and**
- **whether those recommendations were supported by the government**

## **To adduce:**

- **political influences on, within and by committees**



<b>Parliament</b>	<b>54<sup>th</sup> Parliament</b>	<b>55<sup>th</sup> Parliament</b>
<b>Bills introduced</b>	<b>203</b>	<b>192</b>
<b>Bills referred to committees</b>	<b>185</b>	<b>183</b>
<b>Bills examined by committees</b>	<b>161</b>	<b>143</b>
<b>Legislative amendments recommended</b>	<b>308</b>	<b>139</b>
<b>Legislative amendments accepted</b>	<b>162</b>	<b>118</b>
<b>Percentage accepted</b>	<b>52%</b>	<b>85%</b>
<b>Bills with recommendations or comments on matters of FLP supported/partially supported by government</b>	<b>27</b>	<b>22</b>
<b>Proportion of recommendations or comments on matters of FLP supported/partially supported by government of total legislative amendments accepted</b>	<b>16%</b>	<b>18%</b>

## Legislative impact 2012 - 2017

# Urgent bills

Parliament	54 <sup>th</sup> Parliament	55 <sup>th</sup> Parliament
Bills introduced	203	192
Bills declared urgent under SO 137 and passed by the House in the same week introduced	15	2



*Image courtesy of ABC News, 30 November 2016*



*Image courtesy of Hamish Cairns, from the collection of the State Library of Queensland, 1 December 2013*

# A Human Rights Act for Queensland

**2016**

**Legal Affairs and Community Safety  
Committee inquiry into whether to introduce  
human rights legislation  
to Queensland.**

**2018**

**Introduction of Human Rights Bill 2018 (Qld)**

**2019**

***Human Rights Act 2019(Qld)* passed on 27  
February 2019**





# *Human Rights Act 2019*

## **Key features of the Act:**

- **protects 23 fundamental human rights and freedoms**
- **establishes Queensland Human Rights Commission for human rights complaints processes**
- **all bills introduced to parliament to be accompanied by a statement of compatibility**
- **all subordinate legislation to be accompanied by a human rights certificate when tabled**
- **human rights limited only to the extent that is reasonable and demonstrably justifiable.**

# *Human Rights Act 2019*

## **Key features of the Act relating to the scrutiny of legislation:**

- **scrutiny of legislation aspects expected to commence from 1 January 2020**
- **the parliament can make an override declaration under the Act, with time limits to the overriding legislation**
- **a bill containing an override declaration must, at the time of introduction, be accompanied by a statement explaining the exceptional circumstances.**

### **The relevant portfolio committee *must***

- **consider a bill and report to the Legislative Assembly about whether the bill is not compatible with human rights**
- **consider the statement of compatibility tabled for the bill and report to the Assembly about the statement**
- **the intention of the Act is that the portfolio committee will consider any limits on human rights have been sufficiently justified.**

### **The relevant portfolio committee *may*:**

- **when considering subordinate legislation, also consider the relevant human rights certificate.**



# Scrutiny of legislation from 2020

**Portfolio committees currently consider:**

- the policy outcomes to be achieved by a bill
- the application of FLPs as defined in the Legislative Standards Act
- the lawfulness of subordinate legislation

**The *Human Rights Act 2019* provides portfolio committees with additional functions:**

- scrutinising bills for compatibility with human rights, and scrutinising statements of compatibility tabled with bills
- scrutinising non-Queensland laws for compatibility with human rights
- considering statements of incompatibility issued by a court



# Scrutiny of legislation from 2020

## **Relevant to legislative scrutiny in the Queensland Parliament, the Act:**

- **does not amend the Legislative Standards Act and has no impact on the functions of portfolio committees under the *Parliament of Queensland Act 2001***
- **therefore the Act's requirements will be in addition to current functions regarding technical scrutiny of bills and subordinate legislation**
- **the FLPs and the newly prescribed human rights are not mutually exclusive, there are many instances of overlap**
- **Queensland does not have a dedicated scrutiny committee (unlike the ACT and Victoria)**
- **additional resourcing will be required to adequately support scrutiny on both FLPs and human rights.**

## Potential disruptions

- **rights may be limited due to public interest considerations, for example, for the purposes of community safety**
- **in exceptional circumstances, the parliament can make an override declaration, which has the effect of overriding human rights**
- **committee membership reflects political composition of the House and the majority held by the government of the day**
- **the parliament can declare a bill urgent under SO 137 and direct that the bill not stand referred to a portfolio committee or refer the bill for a short period of time.**

Limitations, override  
declarations and  
urgent Bills

# Some limitations to rights protection

**There is nothing in the Human Rights Act to stop a parliament from:**

- **introducing a bill containing provisions incompatible with human rights, the committee examining the bill and the statement of compatibility, and the bill being subsequently passed without amendment**
- **introducing a bill containing an override declaration explaining the potential violation of human rights, and the bill being subsequently passed without amendment**
- **declaring a bill to be urgent under S0 137, and referring the urgent bill to a committee for a period shorter than the minimum six weeks, or directing that the bill not stand referred to a committee at all.**

Thus rendering the Human Rights Act ineffective?



# A step forward in rights recognition

**The Human Rights Act is expected draw attention to the human rights compatibility of proposed legislation by:**

- **the provision of the statement of compatibility with the bill**

**In addition, the Act requires public entities to act and make decisions in a way compatible with human rights:**

- **fostering a human rights culture in public entities, that may in turn influence the actions of the elected government and its political platforms.**

Thus ensuring more rights-compatible law?



Taking a wider perspective...