



**AUSTRALIAN
LAWYERS
FOR
HUMAN RIGHTS**

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Mrs Jo-Ann Miller
Chair, Scrutiny of Legislation Committee
Parliament House
Brisbane QLD 4000

**Scrutiny of Legislation Committee's review of the meaning of 'Fundamental Legislative Principles'
Submission of Australian Lawyers for Human Rights**

Dear Mrs Miller,

Introduction

1. ALHR welcomes the opportunity to make a submission in relation to the Scrutiny of Legislation Committee's review of the meaning of 'Fundamental Legislative Principles'. We are pleased to see the Queensland Government taking positive steps to ensure the protection and promotion of human rights in Queensland.

About ALHR

2. ALHR was established in 1993, and incorporated as an association in NSW in 1998 (ABN 76 329 114 323).
3. ALHR is a network of Australian lawyers active in practising and promoting awareness of international human rights standards in Australia. ALHR has a national membership of over 1700 lawyers, with active National, State and Territory committees.
4. Through training, information, submissions and networking, ALHR promotes the practice of human rights law in Australia. ALHR has extensive experience and expertise in the principles and practice of international law, and human rights law in Australia.
5. ALHR is a member of the Australian Forum of Human Rights Organisations. It is a member of the Commonwealth Attorney General's NGO Forum on Human Rights, and the Department of Foreign Affairs Human Rights NGO Consultations.

Endorsement of the Amnesty International, Human Rights in Law Group submission

6. ALHR supports and endorses the comprehensive submission on the meaning of 'Fundamental Legal Principles' provided by the Amnesty International, Human Rights in Law Group (AI HRLG) on 29 April 2011. Subject to the additional comments made by ALHR below, we consider the AI HRLG to have addressed the key issues relating to the meaning of Fundamental Legislative Principles and give support to the recommendations put forward by the AI HRLG.

Meaning of Fundamental Legislative Principles

7. In addition to formal treaties and international agreements, the sources of public international law, as it relates to the rights and liberties of the individual, include customary international law and human rights jurisprudence developed in international courts and tribunals. In the case of customary international law, states may be considered bound by these rules at international law even if they do not form part of a formal treaty or agreement to which the State is a signatory.¹
8. In this regard, ALHR considers that the framework of fundamental legal principles as they relate to human rights should be extended to include not only those international agreements and treaties to which Australia is a signatory but also to any 'rights and liberties of the individual' as recognised in customary international law and human rights jurisprudence developed in international courts and tribunals.
9. To give this effect, ALHR recommends that the proposed amendment to section 2 of the *Legislative Standards Act 1992* contained in the AI HRLG submission be adopted with the additional references above to be included in the definition of 'international human rights standards.'

Other matters

10. ALHR considers that formalising, at least to some extent, the consideration of the human rights implications of proposed legislation in Queensland is a necessary and timely step to provide some protection of human rights in Queensland and to provide a mechanism to manage the risk of unintended impacts on human rights from such legislation.
11. However, ALHR considers that, while adopting the proposed amendments in this submission and that of the AI HRLG is an important step towards enshrining the protection of human rights in legislation through establishing a formal framework for considering human rights implications, it is not a substitute for taking further action towards protecting human rights in Queensland.
12. More specifically, while ALHR welcomes any move to promote the consideration of human rights in the law-making process, ALHR remains committed to establishing further legislative recognition and protection of positive rights both in Queensland and across Australia more broadly. We would urge the Parliament to consider passing a formal Charter of Rights of the kind which has been adopted by the Victorian and ACT Parliaments and is currently under consideration in Tasmania.

Thank you for providing us with the opportunity to provide input in relation to this important issue.



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¹ United Nations, *Statute of the International Court of Justice*, 18 April 1946; *Polyukhovich v Commonwealth* (1991) 172 CLR 501.