Our reference: BNE 0143599

Your reference: Review of meaning of FLPs

 12/11/01

27 February 2012

Mr Wayne Wendt MP

Chair

Finance and Administration Committee

Parliament House

Alice and George Streets

BRISBANE QLD 4000

Dear Mr Wendt

**REVIEW OF MEANING OF FUNDAMENTAL LEGISLATIVE PRINCIPLES**

Thank you for your letter dated 9 December 2011 inviting additional submissions to the review of the meaning of fundamental legislative principles, which was being continued by the Finance and Administration Committee.

As you know, the Commission made a submission to the review commenced by the former Scrutiny of Legislation Committee. The Commission’s submission is referred to in Report 47, *Our Principles: Review of the meaning of fundamental legislative principles*.

It is intended that this further submission clarify a comment in the Report about the Commission’s submission. At page 11 of the Report, it is stated:

The submission from the Anti-Discrimination Commissioner (submission 1) urged adoption of the proposed federal model for scrutiny of legislation for consistency with ‘human rights’, with the latter defined inclusively as:

…the rights and freedoms recognised or declared by the seven core United Nations human right treaties, as those treaties apply to Australia.

The Commission’s earlier submission referred to the federal model from the perspective of Queensland being in a position to benefit from consultations, inquiries and reports in the federal sphere. These include the National Human Rights Consultation, and the inquiry of the Senate Legal and Constitutional Affairs Legislation Committee into the *Human Rights (Parliamentary Scrutiny) Bill 2010*.

The Senate Legal and Constitutional Affairs Legislation Committee received a number of submissions about the Bill. Key issues included the definition of human rights, as well as the content, form and scope of statements of compatibility.

The federal model for scrutiny of legislation essentially involves:

* a statement of compatibility with human rights to be prepared and presented to the House for each Bill; and
* the Parliamentary Joint Committee on Human Rights to examine Bills and Acts for compatibility with human rights and report to Parliament.

The Commission’s recommendations included incorporating ‘human rights’ into the definition of fundamental legislative principles, and adopting the requirement of a statement of compatibility.

The Commission recommended that ‘human rights’ be defined in an inclusive manner and to allow for changes over time rather than the definition in the federal model, which is cited in the Report. The Commission suggested a definition modelled on the suggestion to the federal inquiry by Reverent Professor the Hon. Michael Tate AO, such as:

The personal rights and liberties recognised or expressed under the Constitutions of Queensland and Australia, in statutes of the parliaments of Queensland and Australia, or in treaties ratified by the government Australia.

In conclusion, the Commission’s suggestions and recommendations in relation to the meaning of fundamental legislative principles in the *Legislative Standards Act 1992* are to:

1. Include as an express objective, that Queensland legislation is consistent with the promotion and protection of human rights;
2. Replace the expression ‘rights and liberties of individuals’ with ‘human rights’;
3. Define ‘human rights’ in an inclusive manner as suggested above;
4. Develop and implement a ‘Guidance Note’ to assist in identifying human rights issues;
5. Replace the requirement for explanatory notes to include a ‘brief assessment of consistency’ with a requirement of a ‘statement of compatibility’ with fundamental legislative principles for all Bills and amendments;
6. Require the Member promoting a Bill to respond to any recommendations or concerns raised by the portfolio committee about compatibility with the fundamental legislative principles.

Thank you for providing the Commission with the opportunity to make this further submission.

Yours sincerely



**KEVIN COCKS AM**

**Anti-Discrimination Commissioner Queensland**