



**Australian Bahá'í Community**

## **Submission by the Australian Bahá'í Community on a Definition of Charity**

The Australian Bahá'í Community is grateful for the opportunity to provide comments on the Consultation Paper on “A Definition of Charity”.

In principle we welcome the government’s reforms of the not-for-profit sector, including the establishment of the Australian Charities and Not-for-Profits Commission (ACNC). We appreciate the government’s acknowledgement that charities and the wider not-for-profit sector are a key part of the Australian community and economy, and we look forward to the reforms fulfilling their purpose of making it easier for the sector to deliver services for the public benefit.

### **Australian Bahá'í Community**

The Australian Bahá'í Community was established in 1920. As members of the Bahá'í Faith—an independent worldwide religion, founded over 160 years ago, with more than five million members around the globe—we work to promote and apply principles derived from Bahá'í teachings which are aimed at contributing to the development of a united, peaceful, just and sustainable global civilisation.

In accordance with our conviction that one of the main purposes of religion is to carry forward an ever advancing civilisation, the worldwide Bahá'í community engages in a number of neighbourhood-level processes that seek to empower individuals of all ages to recognise and develop their spiritual capacities, and to channel their collective energies towards the betterment of their communities. These processes, which are held in neighbourhoods in all parts of Australia and are open to all, include:

- children’s classes that focus on laying the foundations of a noble and upright character
- junior youth spiritual empowerment program, which aims to help early adolescents form a strong moral identity and empowers them to contribute to community well-being
- participatory study circles that aim to provide youth and adults with the knowledge, spiritual insights and skills to become agents of change in their communities
- gatherings for prayer and meditation intended to strengthen the devotional character of the whole community.

As a matter of religious faith – in particular, our belief in the importance of unity – Bahá'ís do not involve themselves in partisan politics and as such are not members of political parties. Obedience to the laws of the land is a distinguishing feature of our beliefs. Bahá'ís vote in elections according to their conscience.

### **Definition of religion**

The Australian Bahá'í Community assumes that the definition of “religion” for the purposes of the new legislation will be substantially the same as that contained in the Charities Bill 2003.

We note that the Bahá'í Faith meets all the criteria for a religion as set out in the Charities Bill 2003. That is:

- Bahá'í teachings and practices involve belief in the supernatural (one eternal, omniscient God)
- the Bahá'í teachings relate to people's nature and place in the universe and their relation to God
- the Bahá'í teachings are accepted by Bahá'ís as requiring or encouraging them to observe particular standards or codes of conduct and to participate in specific practices having supernatural significance, such as prayer
- Bahá'ís constitute an identifiable group
- Bahá'ís see the teachings and practices of their Faith as constituting a religion.

### **Flexibility to allow for different administrative structures**

Australia is home to many religions, each with its own administrative structures. Given the great diversity that exists within the sector, it would be neither practicable nor just to expect all organisations that serve to advance religion to conform to a narrowly-defined administrative structure. We believe it is vital that the diverse administrative structures of different religious organisations be dealt with equitably in order that the introduction of a statutory definition of charity does not unintentionally exclude or discriminate against certain religious bodies due to their varied administrative structures.

To cite the example of our own religion, the affairs of the Bahá'í Faith are governed by elected institutions operating at the local, national and international levels. The international head of the Bahá'í administrative order is the Universal House of Justice, which is based in Haifa, Israel. The Universal House of Justice is elected every five years by the members of all the national governing bodies of the Faith, known as National Spiritual Assemblies. Since 1934 Australia has had its own National Spiritual Assembly, which is responsible under the Universal House of Justice for the administration of the affairs of the Faith in Australia. In addition, there are 183 local governing bodies in Australia, known as Local Spiritual Assemblies, the members of which are elected annually in every local government area where nine or more Bahá'ís over the age of 21 years reside.

As described in our submission on the scoping study for a national not-for-profit regulator in Australia,<sup>1</sup> the Australian Bahá'í Community has experienced considerable difficulty in seeking to incorporate our institutions because our administrative structures, as set out in the scriptures of our Faith, do not necessarily conform to the requirements of the varied legislation in the States of Australia for the incorporation of associations. At present, the

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<sup>1</sup> Copy available on request

National Spiritual Assembly of the Bahá'ís of Australia is incorporated under the *Associations Incorporation Act 1991* (ACT) and national recognition is obtained through registration under the Commonwealth *Corporations Act* as an Australian Registered Body (ARBN 009 727 128). In addition, 47 of our Local Assemblies are incorporated bodies under several different legislative acts. Only one Local Assembly has been incorporated since 1980, however, because neither the *Corporations Act* nor the various State Acts provides an adequate structure for this purpose. We are hopeful that the reform process currently being undertaken by the Government will help to rectify this situation by dealing flexibly with diverse administrative structures, rather than imposing a “one-size-fits-all” structure.

### **Definition of charity**

The Australian Bahá'í Community recognises the advantages of introducing a statutory definition of charity, as has been recommended by a number of reviews and inquiries over the years. We acknowledge that the current meaning of “charity” has developed over 400 years in common law, resulting in a definition that does not encompass the full range of organisations that currently work for the public benefit in Australia, and does not necessarily reflect the needs and values of contemporary Australian society.

We understand that the new statutory definition will be based, as a starting point, on the Charities Bill 2003, which sets out the following broad elements that an entity must meet to be considered a charity:

- It must be a not-for-profit entity
- It has a dominant purpose that is charitable
- It is for the public benefit
- It does not engage in activities that do not further, or are not in aid of, its dominant purpose
- It does not have a disqualifying purpose
- It does not engage in, and has not engaged in, conduct that constitutes a serious offence
- It is not an individual, partnership, a political party, a superannuation fund or a government body.

We would hope that the statutory definition to be adopted by the government will be one that can be met by all Bahá'í institutions currently operating in Australia. As will be seen from the description above, Bahá'í institutions are not-for-profit entities whose dominant purpose is the advancement of religion and whose other purposes and activities fall under other heads of charity such as the advancement of education, the advancement of social or community welfare, and other purposes that are beneficial to the community. Their purposes and activities are directed to the benefit of the general community and are, in most cases, open to all. We are, however, concerned that the public benefit test as currently proposed may make it difficult for smaller religious bodies like our own to fulfil the criteria for a charity. These concerns are outlined in more detail below.

### **Public benefit test**

In practical terms, the main impact of the reform outlined in the consultation paper for the Australian Bahá'í Community is the proposed introduction of a test to determine whether an entity is operating for the public benefit. The remainder of this submission will focus on the

issues of whether such a test is required; the definition of key terms; and the implementation of such a test

Currently under common law, there is a presumption that charities established for the advancement of religion are for the public benefit. As noted in the Consultation Paper, the government's proposal would overturn this presumption of public benefit by introducing a public benefit test for all charities.

The Australian Bahá'í Community supports the principle that the advancement of religion should be of benefit to humanity. The sacred Writings of our Faith state in relation to religion that:

It involves the acquisition of praiseworthy attributes, heavenly illumination and righteous actions in the world of humanity. This pathway is conducive to the progress and uplift of the world. It is the source of human enlightenment, training and ethical improvement ... It is the cause of human betterment, the acquisition of heavenly virtues and the illumination of mankind.<sup>2</sup>

We also understand the concern of the government and the public that some cult-like organisations may cause detriment or harm to their members and to others, and should not enjoy the benefit of being recognised as charities. Nevertheless, we feel it is important that, in the process of addressing this concern, which relates to a relatively small number of entities, genuine religious organisations are not disadvantaged.

In Ireland, as the Consultation Paper points out, the presumption of public benefit has been retained in respect of charities whose purpose is the advancement of religion. The Australian Bahá'í Community feels that a similar approach could well be adopted in Australia. This would bring the treatment of all religious bodies in line with that of closed and contemplative religious orders. It would also relieve the ACNC of the challenge it will otherwise face, as an agency of secular government, in assessing the public benefit provided by religiously-based organisations. Naturally, as is the case today, any religious entity found not to be acting for the public benefit, or to be causing significant detriment or harm, could have its status as a charity removed, thereby addressing the concern expressed in the Paper regarding cult-like organisations.

### **Defining public benefit**

Should the government decide to proceed with implementing a public benefit test for charities whose purpose is the advancement of religion, we feel that the elements of the "public benefit" requirement need to be assessed carefully.

The Paper cites the 2010 Senate Inquiry which proposed that a public benefit test contain the following principles:

- There must be an identifiable benefit arising from the aims and activities of an entity
- The benefit must be balanced against any detriment or harm
- The benefit must be to the public or a significant section of the public and not merely to individuals with a material connection to the entity.

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<sup>2</sup> 'Abdu'l-Bahá, *The Promulgation of Universal Peace*, Bahá'í Publishing Trust, Wilmette, 1982, p. 179

While the Consultation Paper does not set out a detailed proposal for the test, it refers favourably to the Charities Bill 2003 which stated that for an entity to be for the public benefit its purpose must:

- be aimed at achieving a universal or common good
- have practical utility
- be directed to the benefit of the general community or a sufficient section thereof. A “sufficient section” is explained as one that is not “numerically negligible”.

As a relatively small religious community, with a correspondingly modest resource base, we are concerned that “public benefit” should not be defined in such a way as to disadvantage or exclude numerically smaller religious bodies. For example, a Bahá’í Local Spiritual Assembly is established with as few Bahá’ís as nine in a locality. Although it is a genuine religious institution according with religious scripture, and its services are made open to all, we are concerned that such an entity may not be assessed as satisfying the public benefit test on the basis that it does not serve a “significant” or “sufficient” section of the general community.<sup>3</sup> Such an outcome would not appear to be consistent with the government’s intention of making it easier for entities established for the advancement of religion to deliver their services. A further unintended outcome would be that a closed or contemplative religious order, which is not required to satisfy the public benefit requirement, would be registered as a charity, while a small open religious order would not satisfy the public benefit requirement.

We note from Appendix A of the Paper that the requirement extending public benefit to a “sufficient section of the general community” does not appear in the overseas jurisdictions that have legislative guidance for the “public benefit” requirement – other than in Ireland, where religious organisations have, in any case, been specifically excluded from the requirement. We see no compelling reason for the Australian requirement to be more stringent in this respect than that applied in other jurisdictions.

The paper does not contain a suggested definition of “practical utility”; nor does it address how an officer of ACNC would assess the “practical utility” or “identifiable benefit” of a religion. The Australian Bahá’í Community believes that “benefit” and “practical utility” must be expressly defined to extend beyond material benefit and to encompass spiritual and social benefit. Like other faith-based organisations, our aims and activities are based on the belief that human experience is essentially spiritual in nature: it is rooted in the inner reality—what some call the soul—that we each possess in common. The services we offer to the community, therefore, aim not just to meet material needs, but also spiritual and social ones, with the ultimate purpose of enabling all individuals to realise their full human potential and contribute to the advancement of society, both materially and spiritually. We would hope that “benefit” will be defined in a way that encompasses such goals rather than strictly material provision of goods and services.

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<sup>3</sup> The Australian Taxation Office Draft Taxation Ruling TR 2011/D2, cited in the Paper, indicates that “limitations to large groups of the community”, including “the adherents of a particular religion”, are “consistent with the public requirement”. Once again, the reference to “large” groups may exclude small religious communities.

## **Implementing the test**

Regarding the implementation of the public benefit test, the Consultation Paper indicates that the ACNC will determine what is needed for an entity to demonstrate that it is operating for the public benefit. The Paper suggests that initially the ACNC could consider whether the public benefit is self-evident based on information the charity provides to the ACNC (for example, in its annual reports), information the ACNC obtains on the charity from other sources, reports and assessments made by other government agencies, and other relevant publicly available information. It states: "It would be expected that little will be required where the public benefit is self-evident and additional work will only be required where the ACNC has raised doubts about an entity's application or on review". The Australian Bahá'í Community supports this approach as minimising the burden placed on charities to prove that they comply with the new definition of a charity.

We further recommend that the existing case law should be available for reference by courts and tribunals in applying the proposed new statutory test, where that case law is not directly inconsistent with the new test. This will help to maximise continuity and certainty for organisations that have been relying on the case law (including the recent cases cited in the Consultation Paper, the *Aid/Watch decision* and the *Word Investments decision*) to assess their ongoing compliance with the requirements of a charitable entity.

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The Australian Bahá'í Community thanks the Australian Government for this opportunity to respond to the Consultation Paper on a definition of charity. We look forward to viewing the exposure draft legislation when it is released in the first half of 2012.

Australian Bahá'í Community

December 2011