

Definition of Charity, a Buddhist Perspective

Australian Sangha Association Inc.

The following is in response to the request for submissions outlined in 'A Definition of Charity, Consultation Paper October 2011', published by the Australian Treasury as part of its review of the not-for-profit sector. The Australian Sangha Association (ASA) is a representative body for Buddhist monastics of all traditions in Australia. This submission has been prepared by Bhante Sujato together with the committee of the ASA.

For more information about the ASA, see our website: <http://australiansangha.org>. For questions regarding this submission, please contact Bhante Sujato at assecretary@gmail.com, or 02 4883 6331.

Preamble

We applaud the Australian Government's commitment to strengthen the not-for-profit sector, and to develop better governance models to ensure the effective operations of charities. We recognise that there are genuine problems with fraud and other attempts to manipulate the current legal framework. The Buddhist community shares the Government's concern for cult-like organisations. Unhealthy forms of religious or quasi-religious organisations can do great harm to individuals, and do great damage to the reputation and practice of genuine forms of religion.

We also appreciate that the current common-law based legal framework for charities is both unnecessarily complex and slow to adapt to Australia's rapidly shifting context. In particular, we notice that almost all of the current legislation was framed in a time before Buddhism was a significant presence in Australia, and does not take account of the specific needs and contributions of Australia's rapidly growing and diverse Buddhist community.

We support the reform of the legal framework that governs charities, but we would like to raise several issues that we believe will impact on Australia's Buddhist communities. We ask that the Treasury can take account of these concerns in framing the legislation.

Areas of Concern

1. Presumption of public benefit

We are concerned that the requirement to prove public benefit will pose an unnecessary burden on charities as well as on the Treasury. Although the Treasury has attempted to reassure that this will not be the case, we are not convinced. The essential question is whether the significant quantity of additional administration is the most effective way of weeding out attempts to rot the system. Those who manipulate the system will be familiar with the laws and will simply adapt themselves to comply with the requirement, while those who simply get on with their charitable work may be penalised.

RECOMMENDATION: Implement ways to identify those who are abusing their charitable status that do not impose an administrative burden on honest charities. Since the Treasury stands to increase its tax revenues from this reform, the increased revenues should, at least in part, be reimbursed to charities to offset the increased burden of administration.

2. Disproportionate impact on minorities.

Much of the Buddhist community is from an immigrant background, and this means that any administrative requirements becomes a far greater burden, simply due to the language barrier. In addition, as a religion that is only just getting established in Australia, Buddhist organisations tend to have weak administrative and managerial skills, and will often find completing extra forms to be difficult if not impossible.

Adding to the difficulty is that it is not merely a question of translating language, but of translating ideas.

Buddhists, of course, believe that their activities are of public benefit, but this benefit is often of a different kind than that likely to be recognised under Australian law. For example, one of the major forms of religious practice in Buddhism is making offerings as a way of making merit on behalf of departed ancestors. How are we to describe this as a ‘public benefit’ - ‘Giving food to ghosts’? Of course, if we look more closely, such activities do have a tangible public benefit in a way that can be understood. They bring together the family, build strength and community in stressful times, maintain a sense of connection and identity, help with managing grief, and so on. Such practices survive precisely because they provide a very tangible benefit to people – they make them happy. Maintaining a religious culture is an absolutely essential aspect of successfully integrating an immigrant community. Yet such benefits would be doubly difficult for a traditional Buddhist from an immigrant background to translate and explain in a way that makes sense to an officer of the Treasury.

In addition, there are other forms of legitimate Buddhist practice that do not obviously fall under ‘public benefit’, such as meditation. From a Buddhist point of view, we regard meditation as a great benefit to mental health and spiritual growth; and we are prepared to support monastics and other contemplatives in long-term retreats for this reason. To some extent this can be considered as a form of education, as some long-term meditators become teachers and offer public services helping others. Yet many do not become teachers, and any ‘public benefit’ is intangible, yet highly valued.

RECOMMENDATION: Ensure that translation services are made available. Educate Treasury officers in minority religions. Provide examples of benefits that will typically apply in the case of minority religions.

3. Definition of Religion

Defining ‘religion’ is notoriously problematic. The basic problem is that ‘religion’ is an umbrella term that has come to include a wide range of things that have little or no organic relationship. It is therefore a waste of time to look for an ‘essential’ definition of something that, in fact, has no essence.

While we acknowledge that it is impractical and probably impossible to agree on a completely satisfactory definition of ‘religion’, we should take this opportunity to move towards a definition that is less unsatisfactory. This is not a meaningless or purely academic task. In an age where religion and its associated controversies have become ever more contested areas of public and legal space, it is incumbent on legislative powers to ease the work of judges, juries, and other decision makers by providing the most clear and relevant definitions possible. And it is equally incumbent upon the religious practitioners to represent their communities and assist the government by providing clear and considered opinions. In so doing we do not hope to arrive at a perfect definition of religion, merely a better one.

Although the legal definition of religion in Australia is far from satisfactory, it is no worse than in most other countries. And despite the problem of definition, it works reasonably well most of the time. Australia has a good record of religious tolerance. Most Buddhists are happy to live in Australia, feel that their religion is respected, and that they can practice without prejudice. Nevertheless, the extant definition is rooted in archaic ways of thought and needs to adapt as the religious scene in Australia changes.

Buddhists in Australia generally understand that the Government accepts Buddhism as a religion, regardless of whether they feel the current definition is ideal. Nevertheless, certain Buddhist groups do not accept that Buddhism falls under the current definition, and therefore they believe it would be dishonest to apply for religious tax concessions and the like. We understand that this is not the intention of the Government, but the unintended consequence is that some valid charities will not receive the benefits they are entitled to.

Allow us to make the following remarks. These are specially relevant to Buddhism, but many of them will also apply to Hinduism and some other Asian religions.

1. We would prefer to see a polythetic definition rather than the current essentialist definition. Rather than identify one or two ‘essential’ characteristics of religion, we believe it would be more helpful to present a cluster of related notions, some or all of which are found to characterise religions.
2. A definition of religion in our pluralist society should consider the manner of self-definition and identity that religions have adopted for themselves historically. In Asian religions, for example, there is much less emphasis on exclusivity of religion. For example, it is very common for someone who considers themselves a ‘Buddhist’, and who would identify as such in a census, to visit and make offerings at a shrine for a deity of ‘Hinduism’ or ‘Taoism’. Moreover, while Buddhism involves faith or belief in certain principles,

Buddhists do not speak of their religion as a 'faith'. Traditional terms for Buddhism by Buddhists include 'Dhamma-Vinaya' ('Teaching/Truth and Discipline'), sasana ('Teaching'), or Agama ('traditional wisdom').

3. In treating an Australian legal definition of religion, we must also be mindful of producing something that will be useful in context. Why, we should ask, is religion given special treatment anyway? If an organisation is offering benefit to society, should the government not support that, irrespective of whether they 'believe' in a Higher Power? In performing charity, religious organisations are quite consciously not merely transferring funds and resources to those who need them, they are doing so as part of a context that nurtures the whole of humanity. It is a means of grace for those serving as much as for those who are served. Religious charity not only fills the belly, it builds community, calls individuals to a higher morality, and ultimately moves towards the fulfilment of our deepest spiritual needs. Such aims are hard to capture in empirical terms. Nevertheless, they provide a good reason for the continuation of religion's special role in charity. In respecting this role, government is reflecting the general tenor of attitudes in the community.

It should be emphasised that this is a best case scenario. Religions often abuse their roles, for example using their charitable status to proselytise. Coercing or manipulating the vulnerable to join one's religion is a travesty of the true aim of religion to provide spiritual support and uplift. This is a matter of grave concern for Buddhists in Asian countries. We regularly hear of how the young and the poor are manipulated by unscrupulous Christian evangelical organisations. While such tactics do not reflect the mainstream religious practitioners of Christianity, the complaints are real, and should be listened to. The Australian Government should ensure that organisations that benefit from its charitable laws do not abuse this status in such ways. This not only undermines the benevolent intentions of the charitable laws, it is an affront to Australia's good reputation among its Asian neighbours in countries like Sri Lanka, Malaysia, Thailand, Indonesia, and so on.

The most influential statement defining religion in Australia has been the High Court ruling of 1983 in the Scientology case.

'For the purposes of the law, the criteria of religion are twofold: first, belief in a Supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief, though canons of conduct which offend against the ordinary laws are outside the area of any immunity, privilege or right conferred on the grounds of religion.'

There are various problems with this definition from a Buddhist perspective.

1. 'Supernatural'. This word is problematic for Buddhists in several ways. First of all, the root meaning of supernatural is that there is something that is 'outside' or 'above' nature, which intervenes in ways that are not subject to the observable laws of nature. Such a concept does not exist in Buddhism. For Buddhists, all of reality, including such entities as gods and spirits, are a part of nature, and operate in accord with the same basic principles as the rest of us. That is, they are impermanent, conditioned, limited realities. I would argue that the use of such a concept is alien to Buddhist thought (and to Eastern religious sensibilities generally). Could we fit Buddhism under this head? Maybe we could round off the corners enough so that a square peg will fit in the round hole. But the purpose of a legal definition, surely, is to ensure that all religions are accepted as they are, without having to adapt their modes of thought to those of other cultures.

A further problem is that the phenomena normally considered to be 'supernatural' do not play the same role in Buddhism as they do in theistic religions. Deities or spirits may be 'worshipped' by offerings of rice and so on, but such acts only incidentally pertain to Buddhism, and are never considered to be part of the ultimate concern of Buddhist teachings. They are done for worldly, limited goals, like good health or passing exams, while Buddhism concerns the higher existential questions of suffering and freedom.

Indeed, there are many Buddhists for whom such things are entirely marginal in their religiosity, and even those who outright disbelieve them. This in no way affects their own self-identity as one who practices the Buddha's teachings.

2. 'Being, Thing, or Principle'. The central objects of worship in Buddhism are the Triple Gems. These are the Buddha, considered historically as the religious teacher who founded Buddhism, or spiritually as the nature of Awakening in the human heart; the Dhamma, the teachings of the Buddha, or more subtly as the refined Truth that the teachings point to; and the Sangha, the monastic Order, or else the community of Awakened disciples. None of these are remotely 'supernatural'. While the Buddha could be considered under this head as a Being, and the Dhamma as a principle, the Sangha is neither, but a community. In addition, the use of the singular in the definition is a hangover from western monotheism and is unnecessarily narrow.

3. 'Acceptance of canons of conduct in order to give effect to that belief'. This aspect of the definition is welcome and unproblematic. However, we must note the presumably unintentional irony of the rest of this sentence. The judge explicitly states that religious convictions are no justification for conduct that transgresses 'ordinary laws'. Yet this is precisely what most human rights legislation in Australia does: grants exemptions for religions. The Australian Sangha Association has released a public statement opposing such exemptions. We believe that the whole purpose of human rights is to establish universal 'canons of conduct', and that religions should be at the forefront in setting good standards of human rights behaviour, not seeking to justify discrimination on the grounds of religion.

RECOMMENDATION: We draw attention to the thesis of Ian Ellis-Jones, 'Beyond the Scientology Case' (<http://utsescholarship.lib.uts.edu.au/dspace/handle/2100/404>). Following extensive discussion and analysis, Ellis-Jones arrived at the following definition. We would recommend this for adoption as the legal definition of religion in Australia. We have made one change to Ellis-Jones' formulation, omitting the words 'faith-based' from the first sentence, for reasons we have explained above, and also because it is redundant in its context (as it is followed by 'beliefs'). The rest of the definition we find to be clear and useful, inclusive of those things that should be included, and helpful in distinguishing those things that should not be included. It is somewhat longer than 'essentialist' definitions, and we believe this length makes the definition more useful. The terms and ideas used in the definition are explained in detail by Ellis-Jones, and these provide a clear framework for implementing the definition.

Definition of Religion

"Religion" means an amalgam (but not necessarily an organised or coherent system) of ideas, beliefs, practices and activities which:

- a. include doctrine, dogma, teachings or principles containing a world view or general picture of the world and otherwise pertaining to that which is perceived to be of ultimate value or importance and worthy of reverence, worship and adoration, whether or not involving a belief in the supernatural (that is, a belief that there is more than one order or level of reality),
- b. include a set of sanctioned ideals and values in terms of expected ethical standards of behaviour and moral obligations, and
- c. are supported by a body of persons (consisting of one or more faith-based communities) established to give practical expression, at times communally and otherwise on an individual basis, to those persons' respective understanding of those ideas, beliefs, practices and activities.