



Australian Bahá'í Community

Submission by the Australian Bahá'í Community to the House of Representatives Standing Committee on Economics Inquiry into the Exposure Draft Australian Charities and Not-for-profits Commission Bills

The Australian Bahá'í Community welcomes the opportunity to provide this submission to the House of Representatives Standing Committee on Economics Inquiry into the Exposure Draft Australian Charities and Not-for-profits Commission Bills.

In principle we have been supportive of the proposal to establish the Australian Charities and Not-for-profits Commission (ACNC). In our experience, the current regulatory framework for the not-for-profit sector is unnecessarily complicated and not well suited to the needs of organisations such as our own. We are hopeful that the establishment of the ACNC and related reforms will fulfil their purpose of making it easier for the sector to deliver its services for the public benefit.

The Australian Bahá'í Community has participated actively in the consultation processes regarding the reform of the sector. We have made submissions on the discussion paper on “Charitable fundraising regulation reform” (April 2012), the consultation paper on “Review of not-for-profit governance arrangements” (January 2012), the consultation paper on “A Definition of Charity” (December 2011), and the consultation paper on “Scoping study for a national not-for-profit regulator” (February 2011).¹

In our previous submissions, we highlighted the need for the reforms to allow for flexibility in implementation, taking into account the immense diversity of the NFP sector, and to recognise the particular needs of religious organisations. The current submission raises similar concerns in relation to certain sections of the Bill to establish the ACNC.

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.

There is no clergy in the Bahá'í Faith. The Bahá'í Community is governed by international, national and local governing bodies elected by the members of the Bahá'í Faith. The international governing body, the Universal House of Justice, is based in Haifa, Israel. The national governing body is the National Spiritual Assembly of the Bahá'ís of Australia, which is

¹ Copies of these submissions are available on request.

currently incorporated in the ACT under the *Associations Incorporation Act 1991* (ACT). National recognition is obtained through registration under the *Commonwealth Corporations Act* as an Australian Registered Body (ARBN 009 727 128). Across Australia there are some 183 local governing bodies, known as Local Spiritual Assemblies, 47 of which are incorporated bodies under various Commonwealth and State/Territory legislations, and the remainder of which are unincorporated associations. A Local Spiritual Assembly is established in each local government area where nine or more adult Bahá'ís reside.

Preamble and Objects

The Australian Bahá'í Community is pleased to note the recognition given to the value and diversity of the not-for-profit sector in the Preamble to the Bill:

The Parliament of Australia recognises the unique nature and diversity of not-for-profit entities and the distinctive role that they play in Australia. Not-for-profit entities promote a broad range of community, altruistic and philanthropic purposes. The not-for-profit sector delivers vital services and benefits to communities throughout Australia.

We believe that non-government organisations and other organs of civil society play an invaluable role in Australian society, complementary to that of government, by improving not only the material side of the lives of many Australians, but also the spiritual dimension of their lives.

We support the stated objects of the Bill, which are:

- (a) to maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector; and
- (b) to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector.

We believe that this recognition of the value of the sector and the services it provides should continue to underlie the Government's approach to the reform process, and the manner in which the ACNC exercises its powers and responsibilities.

Governance standards and external conduct standards

Exclusion from the Bill

The Australian Bahá'í Community believes that the introduction of governance standards and external conduct standards is a significant part of the reform process. We note that compliance with the governance standards and external conduct standards is a mandatory condition for entitlement to registration as a not-for-profit entity with the ACNC. Given the importance of this aspect of the reforms, we find it unfortunate that these standards have not been spelled out in the Bill. Instead, it is left to future regulations to specify the governance standards which may require a registered entity to:

- (a) ensure that its governing rules provide for a specified matter; or
- (b) act, or not act, in a specified manner; or

(c) establish and maintain processes for the purpose of ensuring specified matters.

A similar provision exists in relation to the external conduct standards, with the proviso that the future regulations in this area must deal with:

- (a) matters external to Australia; or
- (b) matters not external to Australia but that are closely related to, or have or will have a significant impact on, entities, things or matters external to Australia.

This omission creates a significant barrier for organisations in the sector, as noted by the Australian Council of Social Services (ACOSS) in its submission to this Inquiry. In the case of the Australian Bahá'í Community we find ourselves, only a few months before the ACNC is scheduled to commence operation, unable to assess whether entities that form part of our community will be entitled to register with the ACNC in their current form. We feel this is an untenable situation.

Given the assurance, in the Explanatory Memorandum and elsewhere, that the governance standards are to be “principle-based, specifying the outcome to be achieved, rather than detailing how an entity must meet the standards” (Explanatory Memorandum Chapter 5), we find it difficult to understand why they could not be specified in the Bill. We suggest that serious consideration be given to the recommendation made by ACOSS in its submission in relation to these standards.

The Australian Bahá'í Community fully concurs with a high-level and principles-based approach in this area, and further believes that such standards should be imposed proportionally based on such factors as the size of the entity, its turnover, the level of government support it receives, and the risks it presents by virtue of its activities.

Application to religious organisations

As stated in our previous submissions, we would have particular reservations about an approach to governance standards that prescribed specific forms of governance for religious organisations. We uphold the right of religious communities to practice their religion and manage their affairs according to their sacred Scriptures and teachings, subject of course to the requirement that they are obedient to the law of the land. In our own case, for example, we believe our administrative order to be divine in nature, having been established by the Founder of the Bahá'í Faith, Bahá'u'lláh, in His *Most Holy Book*, and further developed by His successors 'Abdu'l-Bahá and Shoghi Effendi. In other words, the administrative structure described above, which is implemented by Bahá'ís internationally, constitutes the means by which we put our beliefs into practice. It is not akin to the rules set down for membership in a club or society. We maintain that we should be able to exercise the freedom to establish and maintain our sacred institutions and manage our affairs without undue interference by the authorities in what are essentially spiritual or ecclesiastical matters.

In this respect, we note with interest that the Bill introduces the concept of a “basic religious charity”, and stipulates, in relation to the governance standards, that “The regulations must not require a registered entity to do a thing ... if the registered entity is a basic religious charity.”

A basic religious charity is defined as follows (section 205-35):

An entity is a **basic religious charity** if:

- (a) the entity is a registered entity; and
- (b) the entity is registered as the subtype of entity mentioned in column 2 of item 3 of the table in subsection 25-5(5) (Entity with a purpose that is the advancement of religion); and
- (c) the entity is not entitled to be registered as any other subtype of entity.

However, an entity is not a **basic religious charity** if:

- (a) the entity is a body corporate that is registered under the *Corporations Act 2001*; or
- (b) the entity is a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or
- (c) the entity is a corporation registered under the *Companies Act 1985* of Norfolk Island; or
- (d) the entity is incorporated under any of the following:
 - (i) the *Associations Incorporation Act 2009* of New South Wales;
 - (ii) the *Associations Incorporation Act 1981* of Victoria;
 - (iii) the *Associations Incorporation Act 1981* of Queensland;
 - (iv) the *Associations Incorporation Act 1987* of Western Australia;
 - (v) the *Associations Incorporation Act 1985* of South Australia;
 - (vi) the *Associations Incorporation Act 1964* of Tasmania;
 - (vii) the *Associations Incorporation Act 1991* of the Australian Capital Territory;
 - (viii) the *Associations Act 2010* of the Northern Territory;
 - (ix) the *Associations Incorporation Act 2005* of Norfolk Island.

An entity is also not a **basic religious charity** if it is a deductible gift recipient.

An entity is also not a **basic religious charity** at a time in a financial year if the Commissioner has allowed it (together with one or more other entities) to form part of a reporting group for the year under section 60-95.

An entity is also not a **basic religious charity** at a time if it has received a grant (however described) by an Australian government agency in any of the following financial years:

- (a) the financial year in which the time occurs;
- (b) the previous 2 financial years.

The Bill does not provide a rationale for this definition of “basic religious charity”, nor for the exemption of these entities from the governance standards and certain other requirements of the Bill. If this provision is intended to be a recognition that the government should not unduly interfere in the affairs of religious organisations, then we are supportive of this principle. We note, however, that it applies to some religious entities and not others, based on the somewhat arbitrary distinction of their incorporation status. For example, in our case, it would apply to the 146 Bahá’í Local Spiritual Assemblies that are not incorporated (assuming they meet the other criteria), but not to the 47 similar bodies that are incorporated, nor to the national governing body which is also incorporated. Furthermore, the Bill excludes from the definition of “basic religious charity” religious organisations incorporated under State and

Territory association incorporation legislation, but does not exclude those religious bodies incorporated through special State acts of parliament. These inconsistencies are likely to create considerable confusion and inequities in the application of the governance standards and other provisions of the Bill.

Enforcement powers

The Bill provides in Chapter 4 various enforcement powers to be exercised where the Commissioner “reasonably believes” an entity has or “is likely to” contravene a provision of the Act or has not complied or is likely to not comply with a governance standard or external conduct standard. These include issuing warning notices, issuing directions, entering into enforceable undertakings, applying to the courts for injunctions, suspending or removing responsible entities, and appointing acting responsible entities.

While acknowledging that these powers are modelled on those of other regulators such as ASIC and ACCC, the Australian Bahá’í Community finds that they extend beyond the “light touch” approach anticipated earlier in the reform process, particularly in their application to federally regulated entities, which would include the national governing body of our Community, and a considerable number of the 47 incorporated Local Spiritual Assemblies.

We are particularly concerned about the power vested in the Commissioner to remove or suspend responsible individuals from an entity, and to appoint acting members in their place. While noting that “basic religious charities” would be exempt from this power, as noted above, the definition of this concept excludes many religious bodies, including within our own religious tradition. We find it highly inappropriate that a secular authority should assume the power to appoint acting members for a religious institution.

Penalties

The Australian Bahá’í Community is concerned that the administrative penalties stipulated in the Bill are severe, significantly higher than current penalties applicable to the sector, and disproportionate to the risks presented by such relatively minor offences as failure to lodge a report, return, notice or statement on time.

The submission by ACOSS deals with this matter at some length, noting that the penalties are disproportionately severe for the risks presented by this sector and in relation to comparable regulatory jurisdictions, and that the Bill represents a substantial increase in the penalties imposed for what are often fairly trivial offences.

In relation to the Bahá’í Community, we note that many entities are small, with as few as nine members, and that the resources at their disposal are proportionately modest. Unincorporated Local Spiritual Assemblies, which constitute the majority of Bahá’í institutions in Australia, are not currently accustomed to the requirement of reporting to a regulator and keeping it informed promptly of changes to their circumstances.

As the Bill currently stands, such an entity could be penalised \$550 if it failed to lodge a document on time and did not realise its mistake until six months had passed. Furthermore, the penalties may apply cumulatively for each matter to be reported, increasing the penalty in excess of \$550. For example, if an entity lodges notification late in connection to the

replacement of two of its directors during an Annual General Meeting, multiple penalties could be imposed for four instance of late reporting – two in relation to the removal of the retiring directors, and two in relation to the appointment of the new directors.

Finally we note that, at this stage, many incorporated entities would be subject to two sets of reporting obligations and penalties in connection with late lodgement. At least during the interim period until the ACNC replaces other regulatory structures, the obligations and penalties on incorporated charities will in fact be multiplied, against the intent of the reforms.

Such a regime would not help to build trust and confidence in the ACNC. It would be both unfortunate and counter to the aims of the sector reforms if a harsh and punitive system of penalties were to deter entities from registering with the ACNC due to concern that the high cost of relatively minor infringements may be beyond their capacity to pay.

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The Australian Bahá'í Community thanks the Committee for this opportunity to comment on the Exposure Draft Australian Charities and Not-for-profits Commission Bills. We look forward to receiving the outcomes of the Committee's Inquiry in due course.

Australian Bahá'í Community

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