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Inquiry into the disclosure regimes for charities and not-for-profit organisations

Submission by the Rationalist Society of Australia

INTRODUCTION

The Rationalist Society of Australia welcomes the opportunity to submit our views regarding disclosure regimes for charities and not-for-profit organizations, and related matters, and would also very much welcome the opportunity to elaborate on our views to the members of the Inquiry in due course.

In the following submission we focus on the definition of what should be considered a “charitable purpose” and argue it is no longer appropriate, if it ever was, for the “advancement of religion” to be included in such definition.

The **Rationalist Society of Australia** is a not-for-profit organisation that has in effect existed, with minor name changes, since 1909 when it was founded in Melbourne by a small group of free thinkers including John Latham, later Sir John Latham, Chief Justice of the High Court of Australia. The Society currently has nearly 500 members across all states of Australia. The aims of the society are:

- (a) To propound and advance Rationalism, which is defined as the attitude of mind which unreservedly accepts the supremacy of reason, and aims at establishing a system of philosophy and ethics independent of all arbitrary assumptions or authority.
- (b) To stimulate freedom of thought.
- (c) To promote inquiry into religious and other superstitious beliefs and practices.
- (d) To encourage interest in science, criticism, history and philosophy, as connected factors in a progressive human culture, independent of theological creeds and dogmas.
- (e) To promote the fullest possible use of science for human welfare.
- (f) To promote a secular and ethical system of education.
- (g) To print or publish original material, including electronically recorded material, relevant to the objectives of Rationalism; or re-issue any periodical or standard or notable books on matters relevant to the objectives of Rationalism and to support the printing, publication or re-issuing of the same by any other person.
- (h) To aid the progress of Rationalism by means of publications or literature, public lectures, or other such means and activities which may be determined from time to time.

The Society wishes to make a submission on the second of the Inquiry's main terms of Reference.

With respect to the first Term of Reference: **the relevance and appropriateness of current disclosure regimes for charities and all other not-for-profit organisations**, we simply say there is a clear need for improvement. Currently there is too much room for obfuscation by organisations wishing to take advantage of the lack of transparency across the charitable and not-for-profit sector. There is a clear need for public accountability where either private donations or public funds are sought and used.

The remainder of this submission focuses on the second Term of Reference: **models of regulation and legal forms that would improve governance and management of charities and not-for-profit organisations and cater for emerging social enterprises**. In particular we focus on what should be included in the definition of what is a charity.

The Society believes a reconsideration of the existing definition of “charitable purposes” will bring greater clarity and coherence to the governance and management of charities. In particular, the Society contends the inclusion of “the advancement of religion” in the definition of charitable purposes is not consistent with and unnecessarily distracts from what we accept in our modern secular society as a purpose of charity.

Many organisations, including religious organisations, have historically provided and currently continue to provide charity. However it does not follow from the proposition that an organisation, religious or otherwise, *performs charitable acts* that it is therefore a *charity*.

It is time, we believe, to take “the advancement of religion” out of the definition of charity and measure in wholly secular terms those elements of an organisation that wishes to be considered charitable, whether a religious organisation or not.

Historically the inclusion of “the advancement of religion” in the definition of charitable purpose goes back to the time of Queen Elizabeth I, when England had an established religion and there was a symbiotic relationship between the Church of England and the Monarchy, symbolized by the fact that even to this day the English monarch is crowned in a cathedral by the Archbishop of Canterbury and the appointment of an Archbishop of Canterbury is made by the monarch on the advice of the Prime Minister. While even the original logic of including “the advancement of religion” as a charitable pursuit may have been shaky, it did at the time make sense politically. However in twenty-first century Australia very different conditions prevail. It is time to abandon this archaic throw-back to a previous era. We suspect it has survived to this day, despite its manifest inappropriateness, only because there are powerful vested interests who unjustly benefit from it and up till now no legislator or legislative body has had the courage to challenge them in the public interest. It is to be hoped this Senate committee, this Senate, indeed this Government, will have that courage and take the logically necessary step of removing “advancement of religion” from the definition of charity.

While the Society does not dispute that many religious groups are involved in charitable activities, for regulatory and taxation purposes these activities can clearly be accommodated under the other heads of charity. The question that needs to be asked is, “Is there anything specifically charitable about a religion *per se*?” – as distinct from its charitable off-shoots – that needs singling out for special treatment. The answer, we argue, is “No!”

In Australia, the definition of religion has been clearly established in case law, specifically by the High Court judgment in the so-called “Scientology case”.

In *Church of the New Faith v Commissioner of Pay-Roll Tax (Vic) 1983 154 Clr 120* [1983] HCA 40; (1983) 154 CLR 120 (27 October 1983), the newly-declared “church” of Scientology appealed against a ruling by a Victorian tax commissioner that Scientology

was not a religion, and that therefore the organisation was not entitled to the generous tax breaks afforded religion in Australia. The lead judgement by Acting Chief Justice Mason and Justice Brennan maintained:

We would therefore hold that, 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. (at p137)

So in Australian law, religion is defined as belief in a supernatural Being, Thing or Principle, plus the acceptance of canons of conduct to give effect to that belief. Therefore, “the advancement of Religion” can only mean “the advancement of belief in a supernatural Being, Thing or Principle and the advancement of the acceptance of canons of conduct in order to give effect to that belief”. It is clear the advancement of belief and of canons of conduct can in no way be construed as charitable acts, irrespective of any praiseworthy charitable activities the belief’s adherents may get up to in their spare time; it is thus also clear the advancement of religion as a head of charity *per se* has no logical justification. Any genuine charitable activity indulged in by members of religious organisations is easily accounted for under the other heads of charity and a separate discrete category for religion *qua* religion is an anomaly and a *non sequitur*.

In the past the inclusion of the “religion” head has been buttressed by the argument that in general religion is a “good thing” and should therefore be supported by the community. Thus, for example:

... the law presumes that it is better for a man to have a religion ... rather than to have no religion at all. *Holmes and others v (UK) HM Attorney General* [1981]

However the fact something is worthy of support does not in itself entail that it ought *ipso facto* be defined as a charity – there are many other worthy activities that are not so defined. Further, in the light of modern history with its plethora of religiously inspired violence, it is at least an open question as to whether it is in fact better in all circumstances for a man (sic) to have a religion rather than have no religion at all. In fact, in modern times “the advancement of religion” could be seen as inimical to the public benefit, rather than supportive of it. This is not just a biased atheist opinion. In a paper delivered to the Inaugural Australasian Christian Legal Convention in 2001, Mr Justice Michael Adams, a leading member of the Uniting Church, admitted:

I do not think it can be seriously contended that any substantial legal, social or political advance, even in the modern era, has been marked by a Christian consensus, with the possible exceptions in the USA of the extension of civil rights to Afro/Americans in the 1960's and 1970's and the changes to the Australian Constitution concerning indigenous Australians in 1967.¹

¹ The Hon Justice Michael Adams: "Christianity and Law Reform: a historical perspective, with special reference to the criminal law." <http://www.lcf.pnc.com.au/convention_papers42.htm>

More recently, a study by Gregory Paul showed that amongst the developed countries, pro-religious democracies consistently endured higher rates of societal dysfunction than pro-secular ones:

In general, higher rates of belief in and worship of a creator correlate with higher rates of homicide, juvenile and early adult mortality, STD [sexually transmitted disease] infection rates, teen pregnancy, and abortion.²

Moreover, each religion believes it is “the one true faith” and all other religions are at least in part committed to false beliefs; in an inclusive and multicultural society this leads to unwanted divisiveness, and tends to loosen communities’ ties rather than strengthen them, despite all efforts of the various religions to “work together”. This is a further reason for not considering religion, distinct from any actual charitable acts that may be performed by religious organisations, to be a public benefit.

Instead of including religion *per se* in the definition of heads of charity we need to be able to single out for charitable status those examples of benign activity performed by religious organisations that are in fact charitable. It is clear the other heads of charity can do this very efficiently and effectively. The discrete category for religion is at best redundant and at worst dangerous.

A similarly flawed rationale for the retention of the “religion” head was put forward by the Commonwealth of Australia *Report of the Inquiry into the Definition of Charities and Related Organisations (June, 2001)*, which justified it as follows:

The Committee affirms that ‘the advancement of religion’ should continue as a head of charity. It is clear that a large proportion of the population have a need for spiritual sustenance. Organisations that have as their dominant purpose the advancement of religion are for the public benefit because they aim to satisfy the spiritual needs of the community.

Putting to one side for a moment the question as to whether such spiritual needs are in fact so widespread, the proposal creates insoluble problems in conceptualization and implementation. Firstly, charity is not about providing for the “needs of the community” as a whole, spiritual or otherwise. Charity is about meeting the needs of those people who through social or individual circumstances are unable to meet their needs themselves. Charities do not meet for example the nutritional needs of the whole community, but only of those members of the community unable to provide for those needs themselves. In order for “satisfying spiritual needs” to be a charitable act, it would need to be demonstrated that the members of the community were not able to satisfy their spiritual needs themselves and needed help. But that is precisely what religious organisations are: groups of people coming together to mutually satisfy their spiritual needs, so there is no question that they are in need of charitable help because they have demonstrated their spiritual self-sufficiency and they cannot be classified as

² Gregory S. Paul: "Cross-National Correlations of Quantifiable Societal Health with Popular Religiosity and Secularism in the Prosperous Democracies: A First Look", *Journal of Religion & Society*, Volume 7 (2005)

people in need of spiritual charity. So the claim that religions “aim to satisfy the spiritual needs of the community” in no way makes them charities in any meaningful sense of the word.

Secondly, according to Abraham Maslow’s widely accepted Hierarchy of Needs, there are a number of base level needs that must be satisfied before higher level needs come into play. The problem is, spiritual needs come at the top of the pyramid and logically, if we classify meeting spiritual needs as appropriate objectives for charity, we must include all the needs below them also. This means meeting any human need whatsoever is a candidate for charitable status, which is clearly untenable.

Maslow’s base level is Biological and Physiological needs, i.e. basic life needs: air, food, drink, shelter, warmth, sex, sleep, etc. This is plainly an area where charities might be needed and historically have been needed, to help those unable to meet these needs themselves. Likewise for Maslow’s second level of Safety needs: protection, security, order, law, limits, stability. The role of charity in the third level – Belongingness and Love needs: family, affection, relationships, work group – is less clear, although there may be some room for involvement. However it is patently obvious that the needs of Maslow’s fourth level – Esteem needs: achievement, status, responsibility, reputation – are needs we expect people to meet without the help of charity: there is no Royal Society for the Preservation of Status and Reputation. The same may be said for the fifth and highest level – Self-actualization: personal growth and fulfilment – where spiritual needs fit; it can hardly be claimed this is an area where charity is appropriate.

In any event, our secular community is rich in the diversity of activities engaged in to find happiness, satisfaction and meaning in spiritual lives, and this spreads well beyond the province of religion. Spirituality is by no means the exclusive province of religion. In April, 2000 the Rationalist Society conducted a two-day conference on *Spirituality Without Religion*³ and there have been important recent books: *Spirituality for the Skeptic* (Robert C. Solomon, OUP, 2006) and *Atheism et Spiritualité* (André Comte-Sponville, Viking, 2007). So concern with spirituality cannot in itself set religions apart from other movements and *ipso facto* cannot be invoked to justify the advancement of religion as a charitable activity.

We can conclude that the attempt of the *2001 Report of the Inquiry into the Definition of Charities and Related Organisations* to justify the “advancement of religion” head as acceptable to the definition of charitable purpose under the guise of “meeting spiritual needs” cannot be maintained and must be abandoned.

There is a further problem with the notion of advancement with respect to religion. If this means attempting to increase numbers and gain converts, such advancement can only be at the expense of other religions, which is not very charitable. If it means the

³ See the proceedings at <<http://www.rationalist.com.au/archive/54/ar54toc.pdf>>

internal consolidation and refinement of the religion and its practices, this amounts to self-help, rather than helping others and again, cannot be considered a charitable activity and for the public benefit.

Finally, the broad brush approach to religion which includes all religious organisations' activities leads to other anomalies. Some religions are engaged in commercial activities and are competing on the open market with non-religious companies in the same niche of the market. A Senate Standing Committee on Economics would be acutely aware that this situation is uncompetitive and distorts the market.

We agree with the recommendation of the *Access Economics* submission to the 2001 *Commonwealth Inquiry Into The Definition Of Charities And Related Organisations* that:

“it is appropriate to distinguish between commercial and non-commercial activities undertaken by charities and related organisations.

“Whether or not charities and related organisations undertake commercial activities in order to perform their core purpose effectively is a matter for them to determine. However, such activities should be subject to the principle of competitive neutrality as applies to similar commercial activities undertaken by government business enterprises and to private sector businesses. For public sector support to charities and related organisations to be effective, efficient, fair and transparent and accountable, it should be focussed on activities that are charitable, religious and community service not-for-profit in nature, and not extended to activities that are commercial in nature.”

Again, this problem would be solved by deleting the religion head altogether and inviting religions to apply for charitable status for their genuinely charitable activities only.

For all of the above reasons, we suggest there is no sound argument for including the “advancement of religion” head in the criteria for charities, and moreover, its inclusion leads to undesirable consequences. **We therefore strongly recommend the Inquiry should seek the deletion of the “advancement of religion” as a definition of charitable purpose.**