



Australian Bahá'í Community

Submission by the Australian Bahá'í Community on governance arrangements for not-for-profit organisations

The Australian Bahá'í Community welcomes the opportunity to provide comments on the Consultation Paper on “Review of not-for-profit governance arrangements”.

As noted in our previous submissions on the definition of charity and a national not-for-profit regulator, the Australian Bahá'í Community is supportive of the Government's objectives in its reform of the not-for-profit (NFP) sector in Australia. We welcome the Government's commitment to strengthening the sector, and its intention, in the current process, to “centralise and simplify the existing arrangements in order to reduce red tape and minimise compliance burdens for the sector.”

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 Faith 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 currently incorporated in the ACT 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). 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.

This submission raises two key issues in relation to NFP governance arrangements: the need for flexibility, and the particular requirements of religious organisations.

The need for flexibility

As noted in the Consultation Paper, the *Final Report on the Scoping Study for a National Not-for-Profit Regulator* concluded that “the diversity of the sector should drive consideration of

suitable governance arrangements,” with respondents expressing caution about an overly prescriptive approach to governance requirements. The not-for-profit sector encompasses a diverse range of organisations and entities. Attempting to impose rules based on a standard business structure, without allowing for flexibility in implementation, would, we believe, prove not only futile but counter-productive, with some entities being unable to pursue registration with the Australian Charities and Not-for-profits Commission as they do not fulfil prescriptive requirements.

The Australian Bahá’í Community has raised the issue of the need for flexibility in our previous submissions (copies available on request). We are pleased to note the Government’s commitment, in the Consultation Paper, that any governance rules will be “high-level” and “principles-based”, and that they would 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 present. We remain concerned, however, that there may be a natural inclination which, if not checked, will lead to the imposition of increasingly prescriptive requirements that would, contrary to the Government’s stated intention, add to red tape and increase compliance burdens for NFPs, particularly for diverse and smaller organisations that are presently unincorporated.

The Consultation Paper reinforces our concern by canvassing what we consider to be quite specific requirements in relation, for example, to the qualifications, experience and skills of responsible individuals; rules for managing conflicts of interest; dispute resolution; mandated insurance; governing rules; relations with members; and meeting requirements. In our view, some of the approaches being proposed in these areas are neither “high-level” nor “principles-based”, but rather lower-level and procedural, and likely to be incompatible with the resource limitations of many smaller NFPs. While recognising and acknowledging the need for good governance, the Australian Bahá’í Community recommends an alternative, more flexible approach that enables entities to address the high-level principles of good governance in their governing rules, each according to its purpose and resources, rather than imposing prescriptive rules and requirements.

Requirements of religious organisations

As noted in our previous submission, Australia is home to many religions, each with its own distinct administrative structures. In some cases, these structures are scripturally mandated or form part of a hierarchical international structure, with the result that they cannot readily be modified to comply with specific civil requirements. We believe it is vital that the diverse administrative structures of different religious organisations be dealt with flexibly and equitably under the new arrangements. There is a risk that an inflexible or overly prescriptive approach to governance could interfere with the right of religious communities to practice their religion and manage their affairs according to their sacred Scriptures and teachings.

In the case of the Bahá’í Community, for example, we believe our administrative order be to 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. Accordingly, 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. While recognising our obligation to obey the laws of the land, the Australian Bahá’í Community maintains 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. Indeed, such freedom is fundamental to the right of the individual – established under international covenants to which Australia is a party – to freedom of religion and belief.

In our experience, however, the current structural arrangements available to NFPs in Australia do not adequately accommodate the Bahá'í administrative structure. To cite two examples:

1. The election process of Bahá'í institutions that govern the Faith is a sacred process implemented across the world (there are over 180 National Spiritual Assemblies and thousands of Local Spiritual Assemblies in the world following this administrative structure). A Local Spiritual Assembly is established in each local government area where nine or more Bahá'ís aged 21 years and over reside. Local Spiritual Assemblies consist of nine members elected by secret ballot by all Bahá'ís in that locality aged 21 years and over. The National Spiritual Assembly is elected by delegates in turn elected by the Bahá'í community on the basis of proportional representation. The nine members of the National Spiritual Assembly of the Bahá'ís of Australia, and of Local Spiritual Assemblies, are elected every year and the association or entity comprises of those nine members only, not the members of the Bahá'í Faith who elect the institution, as envisaged by existing legislation related to companies and associations. Furthermore, unlike other organisations, Bahá'í sacred text clearly states that these institutions are not responsible to those who elect them but must “follow in a prayerful attitude, the dictates and promptings of their conscience” These institutions are considered to be responsible to the higher institutional authority, and ultimately to God. These institutions are, however, required by Bahá'í administrative principles to report to the Bahá'ís in the locality on administrative and financial matters.

2. The relationship between the National Spiritual Assembly and Local Spiritual Assemblies, by which the National Assembly is required to coordinate the manifold activities of Local Spiritual Assemblies in Australia, is not provided for in available legislative structures. Salient aspects of this relationship include:

- a. National Spiritual Assembly must recognise the establishment of Local Spiritual Assemblies and the election of these institutions is undertaken under the supervision of the National Spiritual Assembly.
- b. National Spiritual Assembly decides whether a matter lies within the jurisdiction of Local Spiritual Assemblies.
- c. National Spiritual Assembly resolves any amendments to the constitutional documents of Local Spiritual Assemblies, as national consistency in the constitutional documents of incorporated Local Spiritual Assemblies is imperative.
- d. Local Spiritual Assemblies report to the National Spiritual Assembly and forward their minutes to the regional agency of the National Assembly.
- e. The National Spiritual Assembly can overturn on appeal a decision of the Local Spiritual Assembly.
- f. Upon winding up of a Local Spiritual Assembly, its assets transfer to the National Spiritual Assembly to be held on trust for that Bahá'í community.

We understand that other religions have experienced similar discrepancies between their mandates religious structures and civil requirements, and that in the past, some religious entities have been able to address this difficulty through incorporation by special statutes or Royal Charter. However, as noted in section 5.8 of the Consultation Paper, in most cases this is a historical arrangement that is not available to newer entities and may be of limited benefit or possibly superseded by the new arrangements taking effect from the commencement of the Australian Charities and Not-for-profits Commission on 1 July 2012. This reinforces the need for the new governance arrangements to allow for flexible implementation by religious organisations in order to take into account their unique structures and requirements.

*

The Australian Bahá'í Community thanks the Australian Government for this opportunity to respond to the Consultation Paper on "Review of not-for-profit governance arrangements". We look forward to viewing the draft law arising from the consultation process in due course.

Australian Bahá'í Community

January 2012