

# **Yeshivah Centre Governance Review Panel**

## **Explanatory comments on amendments to proposed structure**

Nisan 5776, April 2016

1. The Governance Review Panel (GRP) undertook extensive consultations and received public submissions in the period August and September 2015. The GRP deliberated on those matters and released its proposed structure document in January 2016. Further public submissions were invited and received in relation to that document. In addition, consultation was undertaken with the Victorian Registration and Qualification Authority (VRQA) in regard to the proposed structure.
2. On 12 February 2016 the GRP provided a memorandum reporting on those submissions and consultation with the VRQA.
3. A revised Structure Document has been prepared to reflect the GRP's conclusions following the GRP's consideration of all the submissions and consultations. This memorandum provides some explanation and comment on those conclusions.

### **VRQA**

4. The VRQA has requested that the GRP clarify that the reference to regulatory authorities in relation to government funding contained in the GRP's memorandum of 12 February 2016, should be understood as a reference to the Commonwealth government acting pursuant to the *Australian Education Act 2015*. The VRQA confirmed that the "not for profit" status is a condition of registration with the VRQA. The "not for profit" status also underpins Commonwealth funding agreements. It is the Commonwealth, as the funding body, that undertakes the financial scrutiny of school

finances to ensure that the funds are used for school purposes and that the schools are operating as not for profit organisations.

5. In addition, the VRQA has clarified that it does not require a 5/4 majority of parent representation on the YBRSL board. The VRQA has confirmed that it requires the school board to be independent of outside influence in order for the school to meet the minimum standards concerning governance. That governance structure must comply with all relevant laws. It must deliver secular education and demonstrate effective financial management.
6. The regulatory requirements outlined in the GRP's memorandum of 12 February 2016 means that the provisions in the proposed structure document for shifting funds between companies at the direction of YCL cannot apply in respect of YBRSL.

### **Rabbinic oversight**

7. This issue was set out in the GRP memorandum of 12 February 2016. The issue of Rabbinic oversight is also related to concerns expressed about the preservation of the institutions under the "ownership" of the authentic Chabad community and concerns that democratisation of the structure will leave the Centre vulnerable to influences that will dilute its religious standards and ethos.
8. In response, the GRP has concluded that the following measures ought to be included in the structure:
  - (a) The preamble referred to in paragraph 2 of the Proposed Structure document of January 2016 should be expanded (this is set out in the revised Structure Document). In addition the following objectives will be added to each constitution:

- (i) that the religious standards of the organisation shall be in accordance with Halacha and Chabad practice as articulated by the Lubavitcher Rebbe;
  - (ii) the organisation was established under the direct auspices of Lubavitcher Rebbe, and shall continue to be committed to and inspired by the philosophy and teachings of the Lubavitcher Rebbe.
- (b) The Chinuch sub-committee shall include such of the vocational Rabbis on the YBRSL and YCL boards as wish to be on the committee, and if he so wishes also the senior Rav of the Yeshivah Shule;
- (c) A majority of each board must be comprised of Chabad adherents.<sup>1</sup> A mechanism will need to be adopted to ensure this outcome. For example, if all 3 YCL nominees to the YBRSL Board are Chabad adherents, then as one of the elected board members must be a vocational Chabad Rabbi, none of the remaining 4 elected members need be Chabad adherent. If however, say only 2 of YCL's nominees are Chabad adherents, then one of the 'spots' of the 4 elected members will need to be reserved for candidates who are Chabad adherents;
- (d) The board of each 3 organisations must include at least 3 Chabad Rabbis engaged on a full-time basis as a Rabbi, teacher or similar religious vocation (or retired from a career in such a vocation). To the extent that the nominated board members of any of the boards do not include 2 Rabbis then the elected board members will need to have reserved spots for such Rabbis;

---

<sup>1</sup> To be a Chabad adherent for this purpose, the appointee must declare in writing that the person regards himself or herself as a Chabad adherent with the signed endorsement of a Chabad Rabbi who is engaged on a full time basis as a Rabbi, teacher or similar religious vocation.

- (e) One of those Rabbis will be Rabbi C T Groner who will be a member of the Board of each of the three companies, unless removed by a 75% vote of the members at a general meeting. Rabbi C T Groner's successor will be endorsed by a 75% majority of the members at a general meeting;
- (f) The YBRSL board is to be comprised of 5 positions elected by members (parents), 3 appointed by YCL and Rabbi C T Groner. One of the 5 board members elected by parents must be a Chabad vocational Rabbi;
- (g) To address the potential problem of the lack of suitable Rabbis a board member who fills the position of Rabbi may be employed at the Centre but cannot be on the board of the organisation in which he is employed (this rule shall not apply to Rabbi C T Groner);
- (h) The candidature for all of the boards shall require the candidate to sign a declaration of acknowledgement that the organisation is a Chabad institution committed to conducting its religious affairs in accordance with Halacha and the ethos of Chabad;
- (i) Section 249D of the *Corporations Act* provides that 5% of members may requisition a general meeting of the company. Ordinarily in companies of the size of those proposed in this structure, a higher percentage is provided in the Constitution to prevent the company from becoming paralysed and dysfunctional by a small group of disgruntled members. In this instance the GRP considers that it would be an appropriate safeguard to stipulate that a general meeting can be requisitioned by 25% of the members of each company.

**Role of trustees**

9. There remains some misconception about the extent of the trustees' involvement in the structure. As previously explained "trustees" means those people who remained members of any of the 3 associations as at 31 December 2015.
10. The GRP has further considered the matter. It no longer considers that it is necessary or indeed practicable to require the trustees to nominate a board member of the Interim Committee of Management.
11. The GRP considers that it is appropriate for the trustees to nominate 2 board members only for the first term to the board of YCL and 3 board members for the first term only to the board of CIVL. That is a small minority of the boards but provides some measure for the continuity of corporate and cultural knowledge. In the case of YBRSL, the trustees shall nominate one independent member of the board for the first term. That will be the extent of the trustees' continuing role. Thus, the ongoing role of the trustees is as follows:
  - (a) to nominate 2 independent members (out of 5) for the interim board of each company pending elections (or 4 if ICOM members are not available);
  - (b) to nominate 2 (out of 10) for the board of YCL for the first 3 year term;
  - (c) to nominate 1 independent member to the board of YBRSL for the first term;
  - (d) to nominate 3 (out of 9) for the board of CIVL for the first term.

**CIVL**

12. The memorandum of 12 February 2016 referred to issues about membership of CIVL. These included concerns that not all seat holders at the synagogues within the Yeshivah Centre were “Anash” and that the notion of Anash was insufficiently defined. The GRP has concluded that the following measures would be appropriate to address those issues:
- (a) The board of CIVL would have the capacity to cancel the membership of a member if the board of CIVL considers by 90% majority that the person was acting in a manner that was inimical to the interests of Chabad-Lubavitch;
  - (b) An application for membership to CIVL from a person who is not a seat holder would need to be supported by a declaration that the person considers him or herself to be a Chabad adherent with that declaration endorsed by the signature of a vocational Chabad Rabbi.

**Requirement for payment of fees**

13. The GRP has given further consideration to this issue.
14. Voting rights will only be affected if a member has outstanding fees in respect of CIVL or overdue school fees in respect of YBRSL. If, for example, a parent has been assessed for less than full fees, or is on a payment programme or a scholarship then that parent is not in arrears unless the reduced fees have not been paid in accordance with the payment programme. It is neither remarkable nor unfair that a parent who takes advantage of the educational facilities provided by YBRSL without paying the fee that has been assessed as fair, should not be entitled to vote.

15. Candidature for board membership will also require the nominee to have paid his or her assessed fees.