NATIONAL CATHOLIC EDUCATION COMMISSION

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Commissioner Alex Robson
Deputy Chair, Productivity Commission
4 National Circuit
Barton ACT 2600

Upload: https://www.pc.gov.au/inquiries/current/philanthropy/make-submission#lodge

Future foundations for giving draft report

The National Catholic Education Commission (NCEC) welcomes the opportunity to provide a response to the Productivity Commission's *Future foundations for giving* draft report (draft report).

The current Review of Philanthropy is a significant opportunity to address barriers to philanthropic giving and harness opportunities to grow it further.

In some respects, the approach taken by the Productivity Commission in the draft report goes beyond the scope of the inquiry's Terms of Reference and will work contrary to the government's primary stated intention of the inquiry.

NCEC is particularly disappointed with the overreach and disregard for public policy objectives and the priorities of the broader community outlined in Draft recommendation 6.1. The draft report does not recommend any viable alternatives to replace the loss of indirect public support due to the proposal.

The Productivity Commission did not consult with the Catholic education sector on this draft recommendation and the surprise proposals were not foreshadowed in any conversations.

The out-of-scope recommendations will have significant and far-reaching detrimental implications for the Australian Government's commitment to religious communities, school choice, and the growth of philanthropic giving in order to double it by 2030.

Background

NCEC provided a submission in response to the Productivity Commission's Review of Philanthropy – Call for submissions paper published in March 2023.

The submission outlined the role and work of NCEC as the peak body for Catholic education in Australia, responsible for the national coordination and representation of Catholic schools and systems.

Catholic education is the major provider of education outside of government. Catholic schools are inclusive, welcoming students from all backgrounds. Australia's low-fee Catholic schools give families the choice of a holistic, balanced, and affordable education.

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More than 30% of all Australian students are educated in faith-based schools, and Catholic schools are the major provider of faith-based education in the country, enrolling about 60% of students in the non-government sector.

ABS data shows strong growth across all faith-based non-government schools, with enrolments increasing by around 8% over five years. Overall enrolments in faith-based schools increased from over 1.2 million in 2017 to 1.3 million in 2022.

This growth, and the sustained trend over many years, shows the great importance Australian families place on choosing a school that meets the needs of their child and reflects their values and beliefs.

The initial submission also

- described the nature of Catholic schools and systems as not-for-profit organisations within the broader not-for-profit sector. As not-for-profit organisations providing services in numerous communities across Australia, Catholic schools and systems have a significant interest in encouraging philanthropy to maximise the opportunities and quantum of philanthropic giving.
- welcomed the Call for submissions paper's acknowledgment that government policy intervention can be used to encourage, support, and enhance altruistic reasons for philanthropy.
- cited research indicating that faith is a significant motivation for giving. People of faith are more likely to donate and volunteer and contribute significant amounts to philanthropy. There is a significant likelihood that Catholic school parents, families, and communities are strongly motivated to donate and volunteer due to their faith and beliefs.
- outlined the current Deductible Gift Recipient (DGR) status framework within which Catholic schools and systems operate. As providers of education services, Catholic schools and systems must meet the Australian Tax Office (ATO) requirements to be eligible for DGR endorsement.
- noted that Catholic school parents and communities must raise the costs of capital projects privately, although disadvantaged schools can apply for assistance through government grants. Families of students enrolled in Catholic schools take on almost 90% of the funding required to support school buildings and capital works in Catholic schools. In 2021 alone, this investment was about $2.0 billion in capital projects, with federal and state governments contributing only 4.4% and 6.9% respectively.
- encouraged the inquiry to recommend initiatives to maximise opportunities for financial contributions to school building and infrastructure, possibly also supported by a matching funding stream by governments, in line with the unimplemented recommendations of the 'Gonski' Report.
- proposed adding a new DGR category to encourage greater philanthropy to assist schools meet the growing demand for student mental health, wellbeing, and pastoral care services.

NCEC's previous submission should be consulted for more detailed discussion of these points, and as providing context and background for the present submission.

The inquiry and related government policy initiatives

The Productivity Commission's Review of Philanthropy is a significant opportunity to address barriers to philanthropic giving and harness opportunities to grow it further.

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NCEC notes that the inquiry coincides with and is intended to complement other relevant national processes, strategies, agreements, and frameworks, such as the *Not-for-profit Sector Development Blueprint*, intended to support the future of the not-for-profit sector.

The NCEC submission to the *Not-for-profit Sector Development Blueprint* urged that in charting a better future for the not-for-profit sector, these initiatives must build on, and not undermine, the well-established and recognised strengths of the sector identified and encouraged by these processes.

The NCEC submission welcomed the acknowledgment in the Blueprint Issues Paper that regulatory conditions, taxation policies, and funding arrangements across all levels of Australian government influence not-for-profits activities and outcomes. Government policy intervention can be used to encourage, support, and enhance reasons for volunteering and giving.

However, the NCEC submission also warned that ill-advised policy intervention which is not fit for purpose can equally limit and restrict the ability of individuals and groups to contribute to the important work of not-for-profits.

Response to the draft report

NCEC strongly welcomes the key point of the draft report, which acknowledges that 'philanthropic giving underpins the crucial efforts of charities, not-for-profit organisations, and community groups to support vulnerable Australians and build social capital and connectedness in Australian communities.'

This key point is in line with the Terms of Reference provided by the Australian Government for the inquiry, that 'philanthropy contributes to a better society by providing money, time, skills, assets or lending a voice to people and communities who would otherwise receive lower quality, or have less access to, goods and services' and 'not-for-profits will continue to play a vital role in strengthening and reconnecting our communities.'

However, as a whole, the draft report is not consistent with the inquiry's Terms of Reference.

The purpose of the inquiry, as clearly stated by the Terms of Reference, is to identify and assess opportunities and obstacles to *increasing* philanthropic giving (emphasis added). The background of the Terms of Reference states

> The Government is committed to working with the philanthropic, not-for-profit and business sectors to double philanthropic giving by 2030.

The Australian Government's clear intention was highlighted in the initial call for submissions paper

> It has asked the Productivity Commission to undertake an inquiry to analyse motivations for philanthropic giving in Australia and identify opportunities to grow it further.

Also, in some respects the approach taken by the Productivity Commission in the draft report goes beyond the scope of the inquiry's Terms of Reference and will work contrary to the government's primary stated intention of the inquiry.

These out-of-scope recommendations will have significant and far-reaching detrimental implications for the Australian Government's commitment to religious communities, school choice, and the growth of philanthropic giving in order to double it by 2030.

NCEC is particularly disappointed with the overreach and disregard for public policy objectives and the priorities of the broader community outlined in Draft recommendation 6.1.

Draft recommendation 6.1

The headline outline for proposed reforms to deductible gift recipient (DGR) status in Draft recommendation 6.1 is deceptively uncontroversial.

Draft recommendation 6.1 A simpler, refocused deductible gift recipient (DGR) system that creates fairer and more consistent outcomes for donors, charities and the community

The headline appears to suggest that the substance of the proposal will make the DGR system more simple, fair, and consistent in order to support and grow philanthropy that aligns with public policy objectives and the priorities of the broader community.

NCEC welcomes proposals to reform DGR status on the basis of simplicity, fairness, and consistency. Such improvements would expand access to DGR status resulting in a more diverse set of charities, additional donations, and a more vibrant charitable sector. Reforms to this end are in keeping with the purpose of the inquiry and the wording of its Terms of Reference.

However, the detail of the draft recommendation outlines a regressive approach that appears to target certain well established and regarded not-for-profit organisations by withdrawing their eligibility for DGR status.

The draft recommendation suggests that reforms to DGR status be based on three principles:

- There is a rationale for Australian Government support because the activity has net community-wide benefits and would otherwise be undersupplied.
- There are net benefits from providing Australian Government support for the activity through subsidising philanthropy.
- There is unlikely to be a close nexus between donors and beneficiaries, such as the material risk of substitution between fees and donations.

The draft recommendation goes on to suggest that the application of these principles necessitates that some charitable activities and subtypes be expressly excluded from DGR status including:

- primary, secondary, religious and other informal education activities, with an exception for activities that have a specific equity objective (such as activities undertaken by a public benevolent institution) …
- all activities in the subtype of advancing religion.

Such a proposal is at odds with the purpose of the inquiry and the wording of its Terms of Reference. The government expressly tasked the inquiry with making recommendations to address barriers to giving and harness opportunities to grow it more, not to find ways to impede and reduce philanthropic giving.

The assumed net benefit to the community from this approach appears to be based on a crude formula that the overall number of charities gaining DGR status would outnumber those targeted to have their longstanding DGR status withdrawn.

The draft report does not recommend any policy options or viable alternatives to replace the indirect government support lost by these not-for-profit organisations by withdrawing their DGR eligibility.

Such a simplistic calculation takes no account of the considerable impact that being expressly excluded from eligibility for DGR status would have on the disqualified not-for-profit organisations and the communities they serve.

This draft recommendation, if implemented, would have significant negative impact on the millions of Australians all across the country who access education, health, and other social services provided by faith-based organisations, sometimes in locations where no alternative option is provided.

Withdrawal of DGR status for school building funds

The proposed policy intervention under Draft recommendation 6.1 appears to be specifically directed to withdraw support from faith-based non-government education, social, and health services.

The draft report notes that ‘most charities that currently have DGR status would be largely unaffected by the proposed reforms’. In fact

> The reforms would expand access to DGR status for animal welfare charities, charities focused on injury prevention and public interest journalism. Charities undertaking advocacy activities related to most charitable purposes would also become eligible for DGR status. This would include a range of charities which are currently ineligible, such as social welfare and human rights organisations that advocate for policy change.

However, the draft report goes on to explicitly state that ‘school building funds for primary and secondary schools and religious education would be the main entities that would no longer be eligible for DGR status under the Commission’s proposals.’

NCEC considers the proposal to withdraw DGR from school building funds to be a direct attack on not-for-profit education services provided by faith communities.

Catholic school parents and communities must raise the costs of capital projects privately, although disadvantaged schools can apply for assistance through government grants. In contrast, government school capital costs are mainly funded by state and territory governments with a small contribution from parents.

The removal of DGR status for building funds for faith-based schools will be particularly profound on low-fee, rural, and disadvantaged faith-based school communities. Almost 40% of Catholic schools are located outside major metropolitan areas and 42% of students enrolled in Catholic schools experience socio-educational disadvantage.

The ‘rationale for school building funds’

On the basis that DGR status was first granted to school building funds seventy years ago, ‘a time when government support for non-government schools was very limited’, the draft report claims that expansion of government funding for non-government schools means the support is no longer needed. This claim relies on a single citation, [1] only a small portion of which addresses current measures relating to the non-government school building funds addressed by the draft report. While written by an eminent taxation law academic, unfortunately the paper shows a lack of understanding of the nature and complexity of recurrent and capital school funding, as well as of the diversity of non-government schools in Australia.

Parental contributions

As highlighted in NCEC’s initial submission to the inquiry, school building (or capital works) funds enabled and endorsed under the DGR framework are significant sources of philanthropic contributions by parents, families, and others to Catholic school communities.

Governments provide all the capital funding for government schools, but only a fraction of the capital needs of faith-based schools. DGR status is one means by which the government provides indirect support for the capital needs of faith-based schools.

Catholic school parents, families, and communities make substantial contributions through donating additional funds for classrooms, libraries, sports facilities, and other capital projects. In making the choice of a Catholic education, families take on almost 90% of the funding required to support school buildings and capital works in Catholic schools.

In 2021 alone, this investment was about $2.0 billion in capital projects, with federal and state governments contributing 4.4% and 6.9% respectively.

Through these generous donations, facilitated by the current DGR framework, Catholic school communities contribute to Australia’s capital infrastructure through the construction and maintenance of school and community assets.

In addition to the significant financial donations and contributions to funding school expenses, Catholic school parents, families, and community members donate countless hours of their time in formal and informal volunteering and in-kind donation of goods and services, across a broad array of activities.

Catholic school communities are deeply reliant on the contributions which parents, families, and others make to ensure they can provide a high quality education for students. Encouraging philanthropy and maximising opportunities for financial and non-financial contributions are vital for Catholic schools recurrent as well as long term sustainability.

[1] Ann O'Connell, ‘Is the tax regime for charities and not-for-profit entities "fit for purpose"?’, Australian Tax Forum, Vol. 38, No. 2, Jun 2023, 267-304.

Example – Catholic Education Western Australia:

Approximately 17 per cent (79,000 students) of all students in Western Australia attend 162 Catholic schools.

Catholic schools, colleges, and learning centres have been a central part of the Western Australian education landscape for over 150 years and constitute the second largest primary and secondary education provider in the state.

The Western Australian Government provides no capital grants towards the cost of building Catholic schools (low interest loans only) and only a small capital grant is received from the Australian Government. This puts a significant burden on Catholic school communities to fund building projects, which has only been exacerbated by the escalation of building costs in recent years.

As a result, Catholic Education Western Australia must prioritise and stage building projects due to these funding constraints.

By contrast, the 2023-24 Western Australian State Budget allocated $227 million for new and upgraded government school infrastructure in that financial year, and $1.5 billion over the forward estimates.[2] This includes $41 million for the construction of a new 620 student primary school.[3]

Removal of DGR status would create additional inequities with the funding of building and maintaining Western Australian Catholic schools.

Certainty of funding for non-government schools and families is critical

Catholic Education acknowledges the ongoing support by Australian governments in the funding of Catholic schools. Recurrent funding provided by governments must be spent directly on recurrent costs, including students, staff, and operating costs. It cannot be spent on capital works.

In 2021, Catholic school parents, families, and communities supplemented government funds by contributing approximately $3.9 billion of after-tax dollars in recurrent funding towards their children's education. This commitment represents a substantial saving to Australian taxpayers.

In the context of what is often a long-term arrangement, it is critical that families are provided with stability of funding certainty in order to budget for these after-tax dollar commitments.

During the 2022 election campaign, the now Australian Government expressly committed to funding certainty for Catholic and other non-government schools. As part of that pledge, the government stated that

> the funding arrangements that exist for nongovernment schools … will continue in full under Labor. There will be no cuts to Catholic school funding.

If implemented, the withdrawal of DGR status for school building funds proposed by Draft recommendation 6.1 would amount to a significant cut in government support to Catholic schools. The proposed policy intervention would be a significant change to government regulatory conditions with the result of directly impeding philanthropic giving and limit the work of Catholic schools and systems.

[2] See https://www.ourstatebudget.wa.gov.au/2023-24/education.html, accessed 7 February 2024.

[3] See https://www.wa.gov.au/government/media-statements/Cook-Labor-Government/Construction-starts-on-new-school-in-Eglinton-20231124, accessed 7 February 2024.

Example – Catholic Education Tasmania:

Catholic Education Tasmania provides a Kindergarten to Year 12 education for nearly 16,000 students in 38 Catholic schools and colleges across Tasmania.

Catholic Education Tasmania aims to keep tuition fees as affordable for families as possible but also recognises that there may be families with children eligible for enrolment who are willing but unable to meet the fee requirements due to financial hardship.

No child is denied enrolment in a Catholic school or college because of financial hardship. Support is also available for families with 3 or more children attending Tasmanian Catholic schools or colleges.

Many Tasmanian Catholic schools were constructed 40-60 (or more) years ago to suit the teaching and learning methodology of that time. These facilities still represent the core infrastructure on most school and college sites.

For 2024, the Tasmanian Catholic Block Grant Authority approved projects in schools with a total capital value of $25 million. Contributions from Australian and Tasmanian Governments will total $3.5 million. The shortfall in funding of $21.5 million is funded by private income from Catholic families and from the small amount of funding derived from building fund donations.

While the present support is welcome, projections suggest that the current government capital funding will not enable Catholic schools in Tasmania to meet capital infrastructure and compliance requirements in the future.

This real loss of funding would need to be made up by other means, notably through increases in fees paid by parents and families. For Catholic and other non-government schools, it will add a further financial burden on families who contribute to school education and are already dealing with significant cost-of-living pressures.

The 'nexus between donors and beneficiaries'

The third of the draft report's reform principles for eligibility for DGR status is that

> There is unlikely to be a close nexus between donors and beneficiaries, such as the material risk of substitution between fees and donations.

Despite suggestions of the risk of substitution between fees and donations in the draft report, no evidence of this type of misuse of DGR status by non-government schools is provided.

To the contrary, NCEC analysis shows that such a substitution is unlikely to be present in Catholic schools and the suggestion that this may be a material risk in Catholic schools is highly questionable.

An integral part of the mission of Catholic education is to offer universal, affordable schooling to provide families with a genuine choice of a faith-based school. As outlined above, recurrent funding for non-government schools is a partnership between governments, and parents and non-government school communities.

Recurrent funding provided by governments is determined by the Schooling Resource Standard (SRS) funding model, which commenced in 2014 following the 'Gonski' Report. The SRS establishes the minimum cost of educating each Australian student. The funding model provides base funding together with additional loadings for students in priority cohorts and disadvantaged schools.

Government schools are entitled to receive the full amount of the base funding. Base funding for non-government schools is means tested according to the school's 'capacity to contribute' (CTC). CTC calculates how much a school community is expected to contribute to base funding depending on the median income of the school's parents. Government base funding is reduced by the same amount as each school's capacity to contribute.

Through the CTC calculation, the funding model creates a curve of the anticipated fee level for every non-government school. NCEC analysis shows that actual Catholic school fees commonly follow the anticipated fee as intended by the government funding model.
If the draft report's suggestion that there is a material risk of substitution between fees and donations in non-government schools, such a close correlation would not be expected.

Community expectations
As previously noted, when issuing the Terms of Reference for the inquiry the Australian Government highlighted that a focus should be:

> the effectiveness and fairness of the deductible gift recipient framework and how it aligns with public policy objectives and the priorities of the broader community.

The draft report appears to assume that religion, including faith-based education, does not align with public policy objectives or the priorities of the broader community, and has no public benefit. Such an assumption stands in direct contrast to the long-standing appreciation of the direct and indirect public benefits of religion, even within societies of declining faith affiliation.

In a public lecture titled *Faith, Hope, and Charity - Religion as a Public Benefit in Modern Australia*,[4] the then President of the Australian Law Reform Commission, the Hon Justice S C Derrington addressed this very issue. In summarising the history of religion and law, Justice Derrington said that 'religion has been intertwined with the regulation of charities for centuries' and

> that religion has been intimately tied to the legal doctrines surrounding charities since their inception - evolving out of religious causes, and the advancement of such causes being confirmed by the common law as charitable.

After analysing a range of studies on the modern law, Justice Derrington concluded,

> The various studies that I have discussed this evening, suggest that there exist strong arguments for the retention of the presumption of the public benefit of religion, even within the increasingly secular nature of 21st Century Australian society …
> … From a societal perspective, even if a relatively smaller proportion of society enjoys the direct social benefits of religion, the remainder of society will continue to enjoy indirect benefits to varying degrees.

The draft report provides little or no analysis of these issues, let alone any decisive evidence to contradict this conclusion.

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[4] *Faith, Hope, and Charity - Religion as a Public Benefit in Modern Australia.* The Charity Law Association of Australia and New Zealand (CLAANZ) Annual Public Lecture 2019 The University of Melbourne, 29 November 2019. See https://www.alrc.gov.au/wp-content/uploads/2020/03/Faith-Hope-and-Charity-Religion-as-a-Public-Benefit.pdf, accessed 5 February 2024.

As highlighted above, Catholic education is the major provider of education in Australia outside of government. Catholic schools are inclusive and welcome students from all backgrounds. Australia's not-for-profit low-fee Catholic schools give families the choice of a holistic, balanced, and affordable education.

More than 30% of all Australian students are educated in faith-based schools. ABS data shows strong growth across all faith-based non-government schools, with enrolments increasing by around 8% over five years. Overall enrolments in faith-based schools increased from over 1.2 million in 2017 to 1.3 million in 2022.

This growth, and the sustained trend over many years, shows the great importance Australian families place on choosing a school that meets the needs of their child and reflects their values and beliefs. This trend indicates that the current DGR status arrangements for faith-based schools align with public policy objectives and the priorities of the broader community.

The proposal to expressly exclude primary, secondary, religious, other informal education activities, and all activities in the subtype of advancing religion clearly stands in contrast to such community expectations.

Withdrawal of DGR status for Special Religious Education

Support for Special Religious Education (SRE) through the DGR system clearly meets the draft report's principles for reforming DGR status. SRE in government schools is delivered by volunteers whose work creates net community-wide benefits that would otherwise likely be undersupplied by the market.

The Alice Springs (Mparntwe) Education Declaration sets out a vision for Australian education that encourages and supports every student to be the very best they can be. The Declaration states that

> Education plays a vital role in promoting the intellectual, physical, social, emotional, moral, spiritual and aesthetic development and wellbeing of young Australians …

Such a vision corresponds to Australia's obligations under Articles 18 and 26 of the Universal Declaration of Human Rights to provide a mechanism for students to have religious education available as part of their school education. This religious education plays a fundamental role as a precursor to academic, cultural, and philosophical learning for all students.

SRE is the mechanism by which governments meet this obligation, by ensuring that Australian parents have access to faith-based teaching and religion for their children at school, without needing to attend a faith-based non-government school. Governments have legislated for SRE in every state and territory.[5]

Removing DGR status for SRE may limit access to this learning for students whose parents cannot access a faith-based non-government school.

[5] *Education Act 1990* (NSW), s 32; *Education and Training Reform Act 2006* (Vic), s 2.3.4(d) and s 5.2.1(2)(b); Ministerial Direction No. 145 (Vic); *Education (General Provisions) Act 2006* (Qld), Chapter 5; *Education (General Provisions) Regulation 2017* (Qld), Part 5; *School Education Act 1999* (WA) Part 3, Division 3; *Education and Children's Services Act 2019* (SA), s 82; *Education Act 2004* (ACT), s 29; *Education Act 2006* (Tas), s 126; *Education Act 2015* (NT), s 86.

Conclusion

The current Review of Philanthropy is a significant opportunity to address barriers to philanthropic giving and harness opportunities to grow it further.

NCEC looks forward to further consultation from the Productivity Commission throughout the present inquiry in support the Australian Government's commitment to religious communities, school choice, and the growth of philanthropic giving in order to double it by 2030.

Should you have any further questions in relation to this submission, please contact

Yours faithfully

Jacinta Collins
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