



AUSTRALIAN SANGHA ASSOCIATION

A representative body for monks and nuns of all Buddhist traditions

3rd February 2024

Ms. Julie Abramson

Commissioner

Productivity Commission

Dear Ms. Abramson and the Philanthropy Inquiry team,

The Australian Sangha Association and the Buddhist Society of Western Australia are grateful for the opportunity to make a submission to the Productivity Commission with regard to the draft Philanthropy paper.

Like most Charities we consistently wish for the robust development of the Charity sector and the innovative development of delivery models; collaboration between Charities, but also with Government agencies; trust from the Regulators, and the ability to be heard; and increasing confidence from any donors (whether through money, time volunteered, or goods and services) that their important investment achieves the social impact that the charity has declared.

Our submission is not made from a point of self-interest. It is meant to benefit all Charities. Our response is also meant to benefit all well-governed Religions.

Firstly, we would like to offer suggestions in a broad context for the further development of the strategy.

Secondly, given that there are proposals regarding Religions and DGR status, we will add the Buddhist Society of Western Australia as a case study regarding Religious charities and DGR.

Some of our points may also apply to the potential loss of DGR by Aged Care, Child care, and Education Charities.

Submission on the Broad aspects of the Philanthropy paper

We wish to commend the noble initiative of developing a strategy to double philanthropic giving by 2030. We concur that there is the possibility of this uplift, across Australia, if both the Individual and Corporate philanthropist can be convinced of the merits and outcomes of a Charity's stated objectives, and also can readily measure that their donation – in whatever form – has been put to good use and acquitted well. It is a worthy policy cause but not without challenges given problems of the recent past –which we will return to.

A lot of work has been put into the paper, research and construction. Certain progressive submissions, such as Philanthropy Australia, have clearly guided important content in the paper.

For our part we make the following observations:

- **Proof of concept modelling** - The heavy emphasis on tax incentives – some of which will be new structures - to generate increased giving - has not presently been modelled to predict the desired effect (giving doubled) in 2030 and beyond. This modelling needs to include the other intended drivers, other than taxation relief and benefits.
- **Sufficient inputs on the emotional behaviour of donors and their choices** – Reasonable commentators and researchers suggest that the macro and micro study of Philanthropy is a relatively new phenomenon which is not well understood: Rene Bekkers and Pamala Wiepking, in 2010, identified eight mechanisms as the most important forces that drive charitable giving: (a) awareness of need; (b) solicitation; (c) costs and benefits; (d) altruism; (e) reputation; (f) psychological benefits; (g) values; and (h) efficacy. Papers from ([Pamela Wiepking, the Global study of Philanthropic behaviour](#)) and [Rhodri Davies; Past caring: Why study the History of Philanthropy](#) point to archives of behaviour that Australia can learn from and copy, and some that should not be copied!: [The UK Philanthropy archive](#) and [National Philanthropic Trust in USA](#) (the latter of which may have mechanisms that cannot presently be replicated in Australia).
- **Extrapolating of present donor flows and the change required by 2030:** An explanation of the donor inflows by relevant category (Corporate; high net wealth individual; Trusts; Aussie Battlers) and their intended

Charity would show the present philanthropic drivers. It would then be possible to plot the suggested effort and scale (and required areas of emphasis) to achieve the 2030 goal.

There are data sources (such as the ACNC's annual report on Charities: [Australian Charities Report - 9th edition \(2023\)](#)), when merged with other data sets, that ought to be able to disaggregate and explain: the statement that 90% of Donations is being given to 10% of charities; the political and financial power of the very large charities, and their ability to influence policy; the disaggregation of their total revenue streams beyond giving – such as Government grants and contracts.

- **Predicting the unforeseen negative changes to the Charity sector by the suggested reforms**, using the same or similar data: for example, if certain Religions are excluded from DGR how might this reduce donations, or related giving (Volunteering time)
- **Care with the intended outcomes of doubling giving by 2030**: Giving does not necessarily correlate with Charity efficiency. Revenue can be diluted by unexpected increases in costs; poorly managed projects within a Charity; increased costs of meeting regulatory changes that must be responded to (a new Association Act; a new Mental Health Act; and challenges to the Charity's status (an ATO review); or the Charity's strategy does not meet the outcomes initially set.
- **Cost of living pressures** which may lead to a deferring of donations in the present year until an individual perceives a more steady and reliable standard of living.
- **Perceptions** that, because the Charity does not have DGR status, it may not be a "trustworthy" charity.
- **A regulatory pause**: If a charity has to let donors know that an ATO review has commenced and the Charity announces that it cannot offer DGR receipts in the meantime, - that this can lead to fear and concern regarding the status of the charity.
- **Measuring Social impact in financial terms**: It can prove very difficult to adequately assess a Charity's efficiency when their platform is on "as needed basis" or "walk-in' transactional behaviour. How does one assess in financial terms a Buddhist monk spending weeks counselling mentally troubled individuals during Covid who could never get an appointment, or could not afford the gap payment? How does one value the social

benefit of Volunteers and the costs that society forgoes because the Volunteers have taken up an important community initiative, denied by local government? (These questions arise whether the output is “efficient” or not). How does one value the largesse of a charity if it chooses to redirect surplus goods and services it has received each week to a more impoverished charity (food and clothing to a Women’s refuge, as an example)?

- **The rebuilding of trust within the Charity sector with the Regulators, Government and other Agencies:** Dr. Andrew Leigh, MP, remarked in June 2022 that the “nine-year war on charities had ended”. However, the Minister would be the first to recognise that trust can take a long time to rebuild and remains fragile if sentiment towards all Charities is not universal and supportive (recognising that there is no such thing as a free lunch, and Governance standards of all Charities must be of a very high level).

This will be a key feature of any strategy because the Charity sector is likely suffering from Compassion and Consultation fatigue. The right balance of regulation with **empowering new resources for the Charity sector** needs to be found and demonstrated as the new and ongoing culture. One simple idea to counter competition between Charities would be a collaborative hub in each major city (and online) where Charities can share best practice and efficiencies with bigger Charities mentoring the smaller. And, if the war is over, announce monthly innovation forums where the generation of regular and sustainable charity giving ideas come from within the Charity sector itself. Lastly, whilst there has been an emphasis on Charity regulation for the last 10 years, there has not been the same emphasis given to well-resourced bodies for Charity advocacy or Charity innovation.

- **Give clear examples of the positive examples from the 4 Charity markets chosen - the UK, US, Canada and New Zealand – as to which initiatives can be copied, or which could be copied if adapted for Australian law or other considerations:** There is a wealth of data that is available from these countries that may assist clear strategies for Australia, and also save some heartache and concern in future years - [Philanthropy New Zealand: Tax benefits for Charitable giving](#); [NPT UK: Charitable giving Statistics in the UK](#); [Fundraising statistics for the USA](#)

(from the aptly named Double the Donation website); and the [USA Special report on giving to Religion](#)

Moving to the second element of our Submission.

Religion and Charity; Religions in Australia and DGR

“In its earliest form, the word philanthropy, from the Greek philanthropia, simply meant love of mankind. The meaning of the word has evolved over time, but from the earliest days, human civilization has depended upon kindness directed towards strangers.” (Source: Ahistoryofgiving.org)

“Religion and charity have been inextricably entangled throughout their long history. The foundations of the three main religions – Christianity, Islam, and Judaism – are each bedded down on doctrines that require their members to do good for others mainly by caring for the ill or destitute and giving to those otherwise in need. The earliest manifestations of civil society grew from that context in the form of associations or guilds (confraternities in the Catholic Church) dedicated to the pursuit of religious aims through various forms of community activity. Perhaps the earliest threats to civil society, as manifested in the Crusades, were similarly generated. Arguably, religion and charity continue to simultaneously sustain and erode the basis for civil society”. (Source: Kerry O’Halloran, Charity and Religion, International Encyclopaedia of Civil Society).

Charity has been a core tenet of all Religions for Millennia. In 2500 BCE ancient Hebrews used a monetary tax or tithes to benefit the poor. Plato’s Academy in 387 BCE was a group working for the public good on a voluntary basis. In 1180 CE, Moses Maimonides authored “Mishneh Torah” which includes the eight levels of charity.

Scriptures of all religions exalt the virtue of benevolence, and stress that this is an imperative duty. Voluntary help to strangers (whether that be goods and services, counselling or relief from poverty and suffering) is freely offered as a truly humanitarian act with the expectation of nothing in return.

It is true that some religions have declining declared adherents in recent censuses, following such serious matters as the Royal Commission into Institutionalised Child sex abuse, and its important, necessary and ongoing consequences.

However, some religions such as Buddhism and Hinduism and Islam have been increasing (as per census data) which in part has been driven by inward migration from important overseas cultural centres where their ethics and values are strong. The temples and mosques of these religions (which is true of all religions) are often a starting point for the new Australian migrant's introduction to cultural friendships; advice on government services and agencies; help with housing; and the intricacies of Australian culture.

Just by being a place which is not "home" or "work", Religious spaces offer value to the community as a "third place". We should pay attention as well not only to the social value offered by religions, but to the fact that they make society possible in the form of quasi-public spaces. ("Bowling Alone" by Robert Putnam).

Minister Andrew Leigh, and other commentators, have stated *repeatedly, for many years* that declining religious attendance is a social problem.

We need religious attendance for reasons that make sense even in purely secular terms - to hang out, with each other, for free; to be social beings; to raise and educate children into communities, to get married and to have funerals and to celebrate events, to speak our language, to do something which isn't just work or YouTube surfing. Many religions also have equality built into their doctrine, making religious spaces rare places where we can come together across class and social divides. When we lose these things, we also lose civic community itself.

Many small multicultural charities have reported difficulty accessing any grant funding. DGR is a much more accessible form of incentive to maintain religious quasi-public spaces and activities.

These are actual comments from Buddhist supporters (made in various contexts) which show the traditional and cultural expectations people and new migrants have around Buddhism:

"In Laos, we would go in to help at the temple, and then stay around to chat for a bit afterwards."

"We give a lot to the temple because we expect that the temple will also undertake some social services. There aren't many services in Myanmar."

"We leave the temple hall unlocked at night in case anybody needs it." (In an Australian Korean Buddhist community)

"I saw the monk giving to a beggar every day. I thought this was really charity." (Cabramatta local, observing traditional Buddhist alms round).

From many multi-faith discussions across Australia we believe that all Religions would be able to make similar statements backed by comprehensive data.

Which leads to a very important question for civil society in Australia.

Is it possible to extract Charity from Religion as some submissions to the Commission might suggest – take Religion out of the Charities Act? Or is it more likely that the Religions will still continue their benevolence as they have for Millennia even if tax benefits and status were denied?

Let's speak further about the Buddhist Society of Western Australia (BSWA) as a case study for a Religious Institution and DGR acceptance by Regulatory authorities.

BSWA requires hundreds of volunteers to run multiple teaching facilities, and Monastery/Hermitages. The Female and Male monastics have taken a vow of poverty and have never earned a cent for their charitable endeavours, often over decades. The Society is heavily dependent on donations, rarely ever receiving any grants or Government contracts. Donations to BSWA accounted for 86% of the total revenue in 2022. That there are only six paid staff equivalent to 2.74 FTE to assist with the administration of BSWA ensures that the ratio of donations to expenses is very tight. BSWA needs the regular and consistent help of scores of volunteers!

The local tax office in Perth in 1983 volunteered that the BSWA should register for a School Building Fund as this was a tax benefit that BSWA was entitled to. We were provided with a copy of the **Income Tax assessment Act, 1936** section 78 (1) (a) regarding gifts to School Building Funds and the “Donor Gift recipient” conditions attached to these separate funds.

These clear instructions and arrangements continued well for decades. As the BSWA grew, further Building Funds were added (to comply with the legislation) when there was Buddhist community demand for further teachings in various new locations in Western Australia.

In 2017 the ATO instituted a review of the BSWA’s school building funds and sought to revoke DGR status on all facilities. It gave multiple reasons for its concerns, which included that meditation served little purpose in Australian society and was only of a recreational nature. Despite the regular daily teachings given within our facilities, we were deemed not to be a school as far as the ATO determined it.

The BSWA provided thousands of pages of supporting documentation answering all of the ATO’s questions, including (to name a few) the Buddhist monastic code; the precepts and vows of the Male and Female monastics, books centred on Question and Answer sessions from our world-famous Meditation retreats; daily schedules of our teachings; and comprehensive Video and Audio files of 1000’s of the Buddhist teachings that had been given over decades.

As the ATO did eventually revoke one building fund – that of Dhammaloka Meditation centre – in 2020 (after considerable efforts by BSWA to explain its moral and ethical stance), the BSWA Committee decided to take the matter to the Federal Court: BSWA vs the Commissioner of Taxation.

We attach the Judge’s determination November 2021 - (see attachment).

Dhammaloka’s School Building fund was subsequently reinstated in May 2022, 4 and a half years after the review started. The disagreement had probably cost each party in excess of \$200,000, not counting the unpaid hours of Monastic involvement preparing detailed responses and checking 40 years of documentation.

BSWA noticed in December 2022 that the ATO's School Building Fund policy (TR 2013/2) had not been changed – despite the Judge's determination that it was inconsistent with the law of Australia. BSWA made further representations to the Federal Government.

The ATO issued a Tax impact statement - [ATO Decision Impact statement - BSWA vs the Commissioner of taxation](#) which we fear will never be implemented if the proposals of the Philanthropy paper are adopted. For a relatively small charity, an enormous effort had to be expended to defend our morals and ethics. Certainly, we perceive that our right to advance Religion was being vigorously challenged and pejorative determinations made by certain parties who did not research our Buddhist charitable tenets carefully and thoughtfully.

We wish therefore to make the concluding following points to the Productivity Commission and would welcome the opportunity to present at a public hearing in Perth to expound on these matters.

Constitutional background

1. Because of s.7 of Schedule 2 of the *Charities (Consequential Amendments and Transitional Provisions) Act 2013*, a purpose which, before commencement of the *Charities Act 2013*, was charitable is effectively deemed by that section to remain a charitable purpose.

2. That provision clearly recognises that the Commonwealth Parliament does not have constitutional power to regulate all activities of charities, except for the (obviously limited) number of charities which may be trading or financial corporations within the meaning of s.51 (xx) of the Commonwealth Constitution. The *Charities Act 2013* and related legislation therefore is limited to specifying which charities (formed under State law) are to receive various benefits or otherwise be affected by Commonwealth legislation passed under applicable heads of power in the Constitution.

3. The proposed changes to DGR status for school building funds are accepted as being within Commonwealth legislative power because they relevantly

concern issues of taxation (which is a matter within Commonwealth power under s.51 (ii) of the Constitution). However, it would not be within Commonwealth legislative power to purport to change the underlying law of charities, which is a State matter.

Problems with the proposed legislative changes

4. The current legislative regime already:

4.1. adequately excludes the DGR status for any school building funds unless the school or college is carried on by an association otherwise than for profit or gain of its members;

4.2. adequately restricts the funds of a school building fund with DGR status being used for the operating expenses of the school or college, by limiting the use of the funds to acquisition, construction and maintenance of school buildings; and

4.3. provides for revocation of DGR status by the ATO if either of those restrictions are breached.

5. The restrictions referred to in para 4 are adequate and do not require legislative amendment.

6. If donations to school building funds are actually being made by donors in lieu of paying fees to the school or college (as indicated in the Commission paper may have happened), the result must be that the moneys donated to those funds are effectively being utilised for operating expenses of the school or college rather than for acquisition, construction and maintenance of school buildings, with the result that DGR status of such a fund can and should be revoked by the ATO under the existing legislation. The appropriate response to such an issue is therefore not cancelling the DRG status of all school building funds by the proposed legislative change. The Commission's recommendation of such legislative change has not taken account of the following:

6.1 the recommendation is based on hypothetical, possible misuse of funds and not on proof of the extent of actual misuse;

6.2 with respect to such hypothetical, possible misuse of funds, the response is entirely disproportionate and unfairly discriminatory against all DGR school building funds who comply with the applicable legislative restrictions;

6.3 the proposed legislative amendments would, unless they only apply to registration of new funds and do not affect the ongoing operation or status of existing funds with DGR status (an outcome which is not suggested in the Commission paper), may cause serious financial harm to not-for-profit school building funds which require ongoing support to complete or expand existing school buildings and/or to repair and maintain school buildings. For development projects to be unable to be completed or properly maintained is plainly entirely contrary to the public interest and would be harmful and against the public interest. (NB: DGR receipts issued by BSWA in 2021, were \$329,788.18 - Dhammaloka Building fund had been revoked and the account put into suspense during the court matter – which accounted to 16% of total revenue for BSWA (a not insignificant figure); and

6.4 the percentage reduction in annual Commonwealth revenue resulting from the DGR status of not-for-profit school building funds is obviously miniscule, and does not warrant abolition by legislation of DGR status of all those school building funds for the reasons in the draft report.

7. Furthermore, there is strong reason to suppose that the overall level of tax deductible donations will be reduced if potential donors are informed that particular existing tax deductible funds that they wish to continue to support will no longer have DGR status. A reduction in the overall level of tax deductible donations to legitimate existing funds with DGR status will cause harm and provide no public benefit.

8. At the broad, hypothetical policy level referred to in the Commission paper, allowing all legitimate school building funds of schools or colleges carried on otherwise than for profit or gain of individual members of associations to have DGR status for funds to acquire, construct and maintain school buildings will be shown to be for the public benefit if those school building funds are able to successfully raise sufficient money by donation to develop and maintain the school buildings. The public benefit will become apparent because sufficient money has been raised from donors who have made an informed decision to

donate to a fund because they think the fund's purposes are in the public interest. The success of the school building funds reduces the need for public money for the projects of the school building funds. It is therefore clear that successful school building funds operating in accordance with the current legislative regime are in the public interest.

9. In the circumstances of the long existing arrangements for DGR status for school building funds of not-for-profit schools or colleges, the only appropriate role of legislative change is to ensure that all school building funds with DGR status comply with the current (reasonable and accepted) legislative requirements referred to above, leaving determination of whether donors wish to support particular funds to the donors' individual subjective views about what funds will perform activities which they consider are in the public interest and should be supported. Hence, which legitimate funds are or are not in the public interest is a very subjective matter which can and should be properly decided by donors rather than by the proposed legislative amendments. That many donors may be influenced in their decisions by religious teachings which, as detailed above, have for millennia promoted charity and benevolence provides no rational, reasonable or non-discriminatory reason to deprive donors of the historical right to a tax deduction if they make such decisions in the public interest.

Conclusion

- We very much support a doubling of overall Charitable Giving by 2030.
- That Donor Gift Recipient (DGR) status is extended to all registered charities, and applies to all of a Charity's activities.
- That the National Giving Campaign is innovative and very appealing.
- That the pursuit of new innovations to encourage Charitable Giving is a constant endeavour to 2030, and beyond.
- As Charity Governance is strengthened that there be a commensurate and noticeable investment in Charity Innovation and Advocacy.

Yours sincerely,

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and

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