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The Presiding Commissioner
Philanthropy Inquiry
Productivity Commission
MELBOURNE VIC.

BY EMAIL

Dear Commissioner

Future Foundations for Giving – Draft Report, November 2023
My ref.: BOO 37

This submission is directed to religious education in schools and, in particular:

- the proposed exclusion from deductible gift status of donations in support of such education; and
- the proposed transitional arrangements for phasing out recipients of gifts made for this purpose from deductible gift recipient (DGR) status.

The author shares with the Commission the view that the scope of the DGR system is challenging, subjective and highly contestable¹ but submits that there are some objective factors which should lead to different conclusions from those tentatively reached by the Commission in these areas.

Religious education in schools

1. Gifts for this purpose currently fall within Division 30A of the *Income Tax Assessment Act 1997* (Cth). As noted in the Terms of Reference for the Inquiry², philanthropic giving supports the building of social capital and connectedness in Australian communities. In the case of giving for religious education in schools, the Commission's proposition that there may be better ways to enhance net public benefit and its concern that donations which may incidentally benefit the donors would appear to overlook the significant degree of connectedness between the schools in question and their local communities. The Commission acknowledges the desirability of supporting young people³ and the important role that religion plays in many people's lives and communities⁴ but it is respectfully submitted that the contribution of religious education in schools has been under-estimated in the Draft Report.

¹ Draft Report, p. 184.

² Background, Draft Report p. iv.

³ Draft Report pp. 18, 170. Page 188 may also be noted, although there is a distinction between religious education in public schools and school building funds in the private sector.

⁴ Draft Report, pp. 18, 192.

2. It may be, moreover, that the Draft Report⁵ somewhat over-estimates the degree to which donations for religious education in schools produce a private benefit to donors who already gain a private benefit from such education. The Draft Report does not quote statistics for gifts from students or their parents or guardians but it is probable that there are many reasons why others may choose to support this cause. They may, for example, be motivated by religious beliefs, by a conviction that religion on the whole is a salutary means of addressing social alienation and disintegration or a historical loyalty to a cause or school where it is promoted.
3. For constitutional reasons⁶, it may be doubted whether, even if there were a political appetite to do so, religious education in schools would attract Commonwealth funding and it is recognised in the Draft Report⁷ that the availability of forms of government funding alternative to DGR is a relevant criterion in the determination of whether or not a class of recipient should be excluded from DGR status. In the case of religious education in schools, there is no level of funding by Government grants equivalent to or approaching the \$194 million cited in the Draft Report⁸ for capital grants to private schools.
4. Furthermore, organisations constituted solely for the purpose of supporting the provision of religious education in schools can be anticipated to have fewer opportunities to supplement any loss from a removal of DGR status than other charities. To take one example, apart from that of grants discussed above, the Commission is asked to consider workplace giving. It is unlikely that secular employers whose workforces typically comprise people of various religions or those who profess to have no religion at all would find an offer of the possibility of workplace giving to a religious cause as something conducive to industrial harmony.
5. Diversity in giving is an important social outcome and this submission supports the recognition of that in the Draft Report.⁹ Inclusivity in society fosters social cohesion and one way to achieve that is by encouraging a broad range of religious giving. This should include giving for religious education in schools.

Transitional arrangements

6. At the outset, it is noteworthy that these generally fall into three categories:
 - provisions designed to allow individuals or organizations to re-order their affairs to take account of the new situation – in this case, the diminished field of DGR coverage;
 - provisions which, while excluding some individuals or organisations from the new environment (perhaps with transitional provisions of the foregoing character), extend the benefits of that environment to others who would be excluded on the condition that they comply with additional requirements thought to be effective in achieving a smooth transition to that environment;
 - provisions (commonly called grandfather provisions) which, while excluding from the new environment new entrants whose only claim to inclusion is their acceptability under the old

⁵ See p. 183.

⁶ Commonwealth Constitution, section 116.

⁷ Pages 179, 182

⁸ Page 189.

⁹ Page 17.

environment, allow existing players under the old environment to continue to operate in the new environment.

7. At paragraphs 8 – 10 below, this submission attempts to explore options for transitional arrangements in the second of the categories just discussed. At paragraph 11, a case for grandfathering is advanced.
8. The Draft Report acknowledges the importance of donations for small charities.¹⁰ It is submitted that, if there is to be a restriction on the deductibility of gifts for religious education in schools, it would be justified to restrict the class of recipients by reference to the annual amount an entity receives by way of donations.
9. The avoidance of discrimination may be another area by reference to which charitable giving for religious education in schools could be limited as to its DGR eligibility. It is not suggested that a religious organisations seeking to maintain DGR eligibility for religious education in schools be compelled to sponsor religious education contrary to its own beliefs but it is suggested that the school classes it sponsors should be open to all, regardless of whether the attendees (or their families) share those beliefs. It is submitted that the case for exclusion from DGR status is more compelling where the classes are directly discriminatory than would be the case where attendance is open to all. It needs to be remembered that many young people have inquiring minds and that the etymology of the word *education* is to lead the mind out.
10. At several points¹¹ the Draft Report recognises the importance of transparency and the present submission does not question that but it is reasonable to suggest that, if there is a case for restricting the availability of DGR status for giving for religious education in schools, favourable consideration should be given to organisations which, after a suitable transition period, are able to demonstrate appropriate levels of transparency. This may indeed enhance the integrity of the DGR system.¹² In determining what is an appropriate level of transparency, it is submitted that the size of the organisation, its resources and the total value of deductible gifts it receives would need to be considered to avoid the imposition of undue administrative burdens.
11. Contrary to the Commission's view¹³, it is submitted that there is a case for grandfathering existing DGR recipients in the field of religious education in schools. Many are thought to be small charities with little prospect of attracting funding from other sources. As the Commission¹⁴ has identified less than 5,000 charities in this group (including school building funds which are outside the scope of the present submission), it is unlikely that the fiscal impact of grandfathering would materially distort the DGR system. It is noted, moreover, that only 39% of total giving to DGR-endorsed charities is claimed as a tax deduction by individuals under the DGR system.¹⁵ This suggests a further diminution in the fiscal effect of grandfathering giving for religious education in schools.

Conclusion

¹⁰ Draft Report, p. 163.

¹¹ For examples, see pp. 31, 183, 191, 195.

¹² Comparison may be had with the Commission's own observations on integrity at p. 199 of the Draft Report.

¹³ Draft Report, p. 20.

¹⁴ *Ibid.*, p. 204 at Figure 6.3.

¹⁵ *Ibid.*, p. 207. The dollar amounts are given at Table 6.2.

12. On the grounds of community connectedness, the intangibility of undue benefits to donors, the scarcity of alternative funding sources and diversity, this submission has advocated for a continuation of DGR status for religious education in schools. If, however, the Commission remains of the view that this status should be discontinued, there is a case for reducing the impact of that discontinuance by reference to the amounts received where a tax deduction is claimed, the avoidance of discrimination and/or appropriate levels of transparency. Should the Commission reject that case, this submission finally outlines arguments for grandfathering of organisations currently having DGR eligibility for donations to sponsor religious education in schools.

Yours sincerely,

Greg Booth