

7 February 2024

Dear Commissioners,

The Productivity Commission's report on Philanthropy - Future Foundations for Giving (the Draft Report) has presented several recommendations regarding philanthropic activities in Australia. We, the Baptist Association of NSW and ACT, representing over 350 churches dedicated to supporting and serving our communities in NSW and ACT, appreciate the opportunity to offer our feedback.

We support the review of the Deductible Gift Recipient (DGR) system, aiming to make it fairer, simpler and to enhance transparency to bring about positive impacts on our communities.

However, we wish to express our deep concern about two recommendations in the Draft Report:

1. Removal of the concept of Basic Religious Charity (Recommendation 7.1)
2. Exclusion of primary, secondary, religious and other informal education activities as a DGR category (Recommendation 6.1)

We welcome further discussion and collaboration to ensure that any reforms genuinely enhance the philanthropic landscape while addressing the unique needs and recognizing the significant contributions of religious organisations.

Removal of the concept of the Basic Religious Charity

Recommendation 7.1 in the Draft Report recommends the removal of the concept of the basic religious charity (BRC) and its associated exemptions.

The result of the removal of these exemptions for BRCs would include the ACNC Commissioner being able to suspend, remove and appoint responsible officers¹, meeting ACNC's governance standards² and increased reporting requirements based on their size³.

The most concerning for our churches is the ability for the ACNC Commissioner to have the power to suspend, remove and appoint members of the governance of a religious organisation such as a church. This contravenes Australia's constitutional provisions protecting religious freedoms. Section 116 of the Australian Constitution states:

The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

Removing the BRC exemptions and thus allowing the ACNC to suspend, remove and appoint members of the governance of a religious organisation would be a breach of s116.

¹ Division 100 Australian Charities and Not-for-Profit Commission Act 2012

² Division 45-10 Australian Charities and Not-for-Profit Commission Act 2012

³ Division 60 Australian Charities and Not-for-Profit Commission Act 2012

Further, it is noted that Parliament has intended to legislate consistently with Australia's international treaty obligations including the International Covenant on Civil and Political Rights (ICCPR). Article 18 of the ICCPR states⁴:

1. *Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private to manifest his religion or belief in worship, observance, practice and teaching.*
2. *No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*
3. *Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*
4. *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*

Allowing the ACNC to suspend, remove and appoint members of the governance of a religious organisation runs contrary Article 18.1 of the ICCPR.

We understand concerns regarding reporting exemptions for BRCs. In order to address the issue of transparency of data we would be open to supporting a less onerous category of financial reporting for BRCs in line with the reporting requirement for small registered entities as suggested in the 2018 Australian Charities and Not-for-profits Commission Legislative Review⁵.

We strongly contend that the Commission should reconsider Recommendation 7.1 in the Draft Report. The BRC exemptions around the ability for the ACNC Commissioner to be able to exercise their powers are a necessity to ensure that we continue to protect religious freedoms in Australia.

Exclusion of classes of charitable activities including primary, secondary, religious and other informal education activities

Recommendation 6.1 in the Draft Report recommends excluding religious education as a DGR category. This is despite the fact that faith is an important part of contemporary Australian Society, with more than two in three Australians (68%)⁶ identifying with a religion or having spiritual beliefs.

⁴ Source: Australian Human Rights Commission – *Freedom of thought, conscience, religion or belief*. Available at <https://humanrights.gov.au/our-work/rights-and-freedoms/freedom-thought-conscience-and-religion-or-belief#:~:text=Constitutional%20law&text=Section%20116%20prohibits%20the%20Commonwealth,in%20a%20number%20of%20ways>.

⁵Source: Government Response to the Australian Charities and Not-for-profit Commission Legislation Review 2018 <https://treasury.gov.au/sites/default/files/2020-03/p2020-61958-govt-response.pdf>

⁶ Gross, Z., & Rutland, S. D. (2021). *Special Religious Education in Australia and its Value to Contemporary Society*. Springer International Publishing AG

Further, the NSW Department of Education's Wellbeing Framework⁷ recognizes that wellbeing needs to be considered in five key areas, one of which is Spiritual Wellbeing.

Spiritual Wellbeing is supported through Special Religious Education (SRE) sessions in schools in NSW. These are run primarily by volunteers⁸. Religious organisations are approved to provide SRE in schools and authorise and accredit SRE teachers to ensure that children are being delivered an authorised curriculum in a safe and age-appropriate way.

Currently in NSW there are 99 accredited providers representing 31 different faith groups. In addition, Primary Ethics is the approved provider of Special Education in Ethics (SEE) in NSW.⁹ This extensive representation offers students and their parents a range of choices for students to explore their worldviews and understand their cultural and religious identities, thus contributing to fostering an inclusive school system. Removal of DGR status for Religious Education would undermine inclusion and support for religious diversity in our schools.

Further, the Draft Report seems to indicate that the withdrawal of DGR eligibility would be to those providers delivering *religious* education. There is no mention of SEE providers. If this is the case, the retention of DGR status for providers exclusively supporting non-religious worldview and ethics instruction while those supporting religious worldview and ethics instruction had such status removed, is inequitable and further undermines a commitment to worldview diversity and social cohesion in our schools.

It should be noted that many of the current DGR categories, and potential new categories being contemplated by the Commission, may well provide a broad community benefit, though not a benefit across the entire community. This is of course simply by their nature – they are focused in particular areas of need or service and bring worthwhile benefit in those spheres. The same can surely be said of Religious Education.

Moreover, the benefits of Religious Education to communities and wider society have been well researched and documented. Research by Gross and Rutland¹⁰ is one recent example which shows that Religious Education has great benefits for the broader community as well as the individual.

The study highlights the essential role of Religious Education in promoting social unity and harmony in contemporary Australian society. By providing a space for students to engage with diverse religious teachings, Religious Education contributes to a more inclusive community fabric where individuals develop a nuanced understanding and respect for varied beliefs. It confirms that Religious Education acts as a bridge for interfaith understanding, promoting dialogue and reducing

⁷ Available at <https://education.nsw.gov.au/schooling/school-community/wellbeing-framework-for-schools>

⁸ It is noted that only 3% of SRE teachers are in paid positions, 97% are on a volunteer basis. Source: 2015 Review of Special Religious Education and Special Education in Ethics in NSW Government Schools available at <https://education.nsw.gov.au/content/dam/main-education/about-us/educational-data/cese/evaluation-evidence-bank/2016-special-religious-education-and-special-education-in-ethics-in-nsw-government-schools-2015-review.pdf>

⁹ Source: <https://education.nsw.gov.au/teaching-and-learning/curriculum/religion-and-ethics/approved-sre-see-providers>

¹⁰ Gross, Z., & Rutland, S. D. (2021). *Special Religious Education in Australia and its Value to Contemporary Society*. Springer International Publishing AG

potential tensions between different religious communities. The research also highlights the positive influence of Religious Education in instilling ethical values and promoting civic responsibility, contributing to a community ethos characterised by empathy, cooperation, and mutual respect. The findings emphasise the crucial contribution of Religious Education in cultivating a socially aware and harmonious community atmosphere within the Australian context.

We strongly urge the Commission to amend Recommendation 6.1 such that it does not exclude Religious Education as a Deductible Gift Recipient (DGR) category. Religious Education plays a vital role in supporting students' well-being in schools and contributes significantly to the development of ethical values and civic responsibility. These contributions, in turn, foster the creation of a better community for all.

The risk of private benefits for donors

We note that Recommendation 6.1 in the Draft Report also recommends excluding primary, secondary, religious and other informal education activities as a DGR category on the basis that there is material risk (caused by close nexus between donors and beneficiaries) which could lead to private benefits for the donor. This would lead to the loss of DGR status for donations to School building funds as well as Religious Education in schools.

The Commission's view is that the potential for a donor to be able to convert a tax-deductible donation into a private benefit is especially apparent for primary and secondary education, particularly where students are charged fees. We see no data or factual substantiation of this risk as a broad problem in the sub-type.

Conclusion

The Baptist Association of NSW and ACT does not support the removal of Basic Religious Charity category and its associated exemptions, as the ability for the ACNC Commissioner to have the power to suspend, remove and appoint members of the governance of a religious organisation goes against Australia's Constitutional provisions protecting religious freedoms.

In addition, we urge the Commissioner to amend Recommendation 6.1 such that it does not remove Deductible Gift Recipient status for School Building Funds or for Religious Education.

Religious Education is known and proven to provide strong and wide community benefits.

Thank you for your consideration of this submission.

Regards,

Rev Dr Steve Bartlett - Director of Ministries