

Submission: Neil Francis

Productivity Commission
Future Foundations for Giving (Inquiry)
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Mr Neil Francis

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‘FUTURE FOUNDATIONS FOR GIVING’ CHARITIES LAW REFORM: ADDITIONAL RECOMMENDATIONS

Dear Commissioners Robson, Abramson and Seibert,

Thank you for the opportunity to make a submission to the Commission’s Draft Report on Future Foundations for Giving. The report has a great deal to commend it.

I write as a professional social and market researcher with some insights that the Commission and Members of Parliament may find useful in their deliberations. I am the author of an extensive series of research volumes into religion and religiosity in Australia, based on high-quality and robust university survey data sets. Volume 4 of the series focuses on *Religion and charity*.

While my research doesn’t *directly* address the specifics of the call for further empirical information about taxation and giving (Draft Report item 4.1), the Commission and MPs are likely to find my Volume 4 (and *Volume 5: Religion, morality and values*) most informative to deliberations. My research findings support the following recommendations:

1. The removal of the special-privileges class “Basic Religious Charity” (already recommended in the Draft Report).
2. A *positive duty* of registered charities to avoid causing harm (in addition to their duty to benefit society).
3. A review process with teeth that may deregister charities that cause harm.

These recommendations are discussed in the following pages.

Thank you again for the opportunity to participate. I would be pleased to appear before the Commission in Melbourne or otherwise answer any questions.

Yours sincerely

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Please note that the opinions expressed in this submission are made in a personal capacity and do not necessarily reflect the position of either Curtin University or the Rationalist Society of Australia.

Submission to 'future foundations for giving' — Draft Report

Preamble

The Commission's Draft Report on future foundations for charitable giving is wide-ranging and detailed. It makes many sensible recommendations for legislative reform, including the qualifying grounds on which a charity may be registered, consistency in reporting requirements at the same level of organisational size, and grounds for qualification for DGR status.

The Draft Report emphasises at least two major thrusts in improving the functioning of the charitable sector in Australia:

- To increase charitable giving and volunteering; and
- To increase public confidence in charities and their support for them.

These are laudable aims and deserving of support.

However, I argue, there is a significant omission in potentially achieving these aims through the current recommendations articulated in the Draft Report. This is because some charities can directly — and even systematically — cause *harm*, in contrast to the almost axiomatic expression throughout the Draft Report that charities only do good.

While the Draft Report does discuss harms, these are mostly covered in the context of potential harm from isolated undesirable volunteer behaviour and of reputational harm through accepting donations from sources, such as gambling and tobacco, that cause social harm. I argue that the Draft Report gives insufficient consideration to the possibility that a charity may structurally have socially harmful practices, even if they are couched in positive terms, or not referenced at all, in the charity's Objects.

Failing to address the potential harm that can be condoned, hidden, or even directly perpetrated by some charities strongly undermines potential success in the two major thrusts above.

So what are some of these potential harms? I refer to *socially damaging* conduct that is unlikely or certain not to fall within the purview of other authorities such as taxation and corporate law that are already considered in the Draft Report.

An abstract harm — distortions in tax expenditures

The Commission should remain cognisant at all times that while charitable giving is generally desirable, *more* charitable giving is not necessarily better. This is especially so in regard to tax concessions. This is because tax concessions can seriously distort funds available for the public good.

That is, especially for high net worth individuals (HNWI), large sums of money can be directly donated to the HNWI's personally-favoured projects as a tax deduction. More recently, social media funding campaigns can garner similar large sums from a select section of the community. Where tax deductible, these funds are therefore *unavailable* to the government's consolidated revenue and therefore cannot be directed through decisions made by the community's elected representatives.

For example, an HNWI may donate \$20m to research regarding a very rare form of cancer (possibly experienced by a family member). This makes the \$20m *unavailable* to government revenue and so is never available to be granted to research into a much more common (and equally deadly) cancer, which the National Health and Medical Research Council would be much more likely to fund.

While both research projects obviously fulfil a public good, the government-funded one represents a much more pro-socially effective use of those funds for broader society.

There is also concern that some international religious institutions are using Australia as a tax-beneficial 'haven' for funds that should be accounted for elsewhere.

Summary: Tax concessions can demote democratic use of tax funds from advancing broader prosocial purposes. This may diminish **public confidence** in the charitable sector as **beholden to narrow interests**.

Specific potential harms

In the following discussion I will refer to religious charities. This is *not* because religious charities are the only kind that might perpetrate harm, but because my detailed and extensive research, as well as other reports, authoritatively show that harm *can* and *does* occur in religious contexts.

Religion not always prosocial

It is common around the modern Western world, almost axiomatic, that 'religion' is equated with 'prosociality' as good community morals. At least in Australia, this is misinformed.

In my Religiosity in Australia series *Volume 5: Religion, morality and values*, I establish using high-quality empirical data that:

- While being more likely to *disagree* that they're intolerant, Australia's religionists are *more* likely to be intolerant of other religions and religionists and are more likely than Nones (non-religionists) to harbour Islamophobia.
- While being more likely to *say* they support gender equality, are significantly *less* likely to support it in education, employment and leadership.
- Australia's Christians are significantly more likely than other Australians to 'expect' different others to become more like themselves while making little accommodation for their own personal change. They are also more likely to oppose immigration and to favour processing and settling asylum seekers offshore.
- In teaching children values, Devouts (the most religious) are most willing to sacrifice the values of *tolerance and respect for others*, and *good manners*.
- Around 770,000 adult Australians are religious dominionists, believing that theirs is the only acceptable religion and that religious authorities (i.e. their own) ought to be final arbiters of law.
- The religious are *less* likely to be forgiving of criminal offenders, and *more* likely to favour arbitrary permanent detention for someone merely *suspected* of planning a terrorist attack.

- Devouts especially are far more likely to be science and in particular climate change deniers, favouring economic growth and consumption of natural resources.
- While the religious publicly promote sexual “morals”, a majority of abuse cases presented to the royal commission into institutional responses to the sexual abuse of children occurred in *religious* institutions.

Indeed, just today another story of child sexual abuse hidden with a religious sect was [reported](#) in the media.

These findings make it clear that not only is religion no guarantee of lawful, ethical, or prosocial behaviour, but that it may indicate a higher *likelihood* of antisocial offences, at least amongst Basic Religious Charities (BRCs) whose Object is “the advancement of religion” while necessarily eschewing any other Objects that benefit the wider community. (This of course is not to malign all BRCs as committing such offences.)

Summary: There is no substantive reason to *assume* that the religious are more likely to be better or more prosocial than the non-religious, and indeed good evidence to suggest otherwise. There is no valid reason in either equity or conduct to grant special privileges to the exclusive purpose of “advancing religion”, compared with other charities of similar size.

Recommendation 1: *Strongly endorse* the proposal to scrap the special-privileges class ‘Basic Religious Charity’

That the Productivity Commission, Government and Members of Parliament remain cognisant at all times that religion is *not* axiomatically associated with only prosocial behaviour, and that there are strong evidential as well as equity reasons to scrap the special class of Basic Religious Charity.

Religion and charity

Specifically in regard to charity, in *Volume 4: Religion and charity*, I establish using high-quality empirical data that:

- Religious Australians’ “surplus” in volunteering (i.e. relative to the non-religious) occurs mostly in relation to their own **congregational** activity.
- In all charity sectors other than religion, Devouts volunteer at lower rates than Nones — except in international aid, where religious organisations are structurally connected.
- Religionists’ “surplus” in monetary giving occurs mostly in relation to their own congregational activity.
- More money is given to **congregational religion** than to any other charitable sector.
- Most of that religious largesse is contributed by Devouts, and with higher rates of *planned* giving.
- Christians are most likely to hold negative attitudes toward helping indigenous Australians or for the government to give overseas aid.
- Of the 13 charitable sectors, donors to **congregational religion** report:

- The equal-**lowest** rating (alongside education) for their donation being for a "**good cause**".
- Are **very unlikely** to say that their donation will **help different others** or make the world a **better place**.
- The **second-highest rate** (after education) of saying their donation includes a **personal benefit**, with *personal benefit rising with greater donation amount*, and personal *religiosity*. Christians are more likely than Nones and non-Christian religionists to report **personal benefit**.
- The **highest** rate of donating to just **one** charitable organisation.
- **Uniquely very high** rates of feeling **coerced** to donate.

The harm of financial coercion and burden

This evidence surfaces a very significant downside to the ‘blind’ desire to increase charitable donations: potential and actual monetary coercion as a financial burden on donors. This is *especially* so in the congregational religious charity sector (the most likely to comprise BRCs), where donors are far more likely to feel coerced to donate, and the least likely to think that their donations are for a worthy cause or help different others.

It’s worth noting that donations to congregational religion are not presently — and are not recommended in the Draft Report to be — tax-deductible. In that sense, they don’t create a distortion of government revenue and consequent public expenditure for the common good.

Nevertheless, the research findings raise some profound implications.

Summary: There is compelling evidence that some religious charities exist to benefit their own personal beliefs at the expense of helping different others, and especially that some cause *financial harm* through soft or hard coercion to donate along with poorer levels of working for a “good cause” or “making the world a better place”.

A further significant harm — member coercion

A further significant harm of which the Commission must be aware via other research and submissions is the cult-like behaviour that occurs in some religious sects. This submission does not seek to criticize religious sects about the non-normativity or otherwise of one belief system or another, only to raise awareness of harm.

Some sects can cause very substantial **psychological harm** to their members and others. This occurs through profoundly antisocial cult-like behaviours such as:

- Actively suppressing free thought or dissent; demanding unquestioning loyalty.
- Seeing themselves as unique and separate from the rest of society.
- Penalising members or their relatives and friends for leaving.

These are all *antisocial methods of control* including through *social isolation*. **Social isolation is strongly associated with depression, anxiety, and suicidal ideation.**

These harmful practices have no place in any organisation, especially charities, which enjoy special privileges over other types of organisations on the premise that they provide benefits to the community. This underpins two further strong recommendations.

Recommendation 2: Establish a *positive* duty to avoid harm

That there be express obligations for registered charities to have a *positive* duty (as employers do against discrimination) to avoid harm amongst stakeholders. This not only governs the admissibility of a charity's Objects, but the practical behaviour of its people and the tenets it operates under.

Examples of these might include:

1. Requiring a charity's governing body to *consider* harms and where appropriate, establish plans to avoid and combat them, evidenced by a **compulsory summary statement in their annual report**.
2. Providing examples of potential harms to guide governing bodies such that abstract harms (e.g. economic substitution for commercial services) are excluded, but concrete ones are included: e.g. social isolation; ensuring that donations are not causing financial hardship and are indeed voluntary; ensuring that receiving a *general* benefit from the charity (e.g. food, clothing, housing, education) is never conditioned by the charity requiring the beneficiary to adopt, accede — or be subject to attempts to adopt or accede — to a religious, political or other affiliation or belief.

However, these duties would be ineffectual without a follow-up system. **Public confidence** is more likely to be boosted by knowing that bad charitable apples will be evicted from the barrel, rather than merely 'waxing and sorting' the other apples for benefactors to choose amongst.

Recommendation 3: Establish an investigative office with coercive powers

That a sub-office of the Productivity Commission be established which may receive complaints from those who feel harmed by a charity in ways that do not qualify for investigation and action under other authorities such as taxation and company law. The office may commence its own investigations on reasonable grounds, and compel a registered charity to respond properly to its inquiries. A clear and fair process should be established, including *Show Cause* (potential deregistration) notice, and the right to appeal decisions to the appropriate administrative tribunal. With proper process, the Commissioner, Minister, or delegate would hold authority to deregister a charity.
