

8 February 2024

Productivity Commission Inquiry into Deductible Gift Recipient (DGR) Status  
Australian Productivity Commission  
GPO Box 1428  
Canberra ACT 2601

Dear Commissioners,

**Re: Retention of Deductible Gift Recipient (DGR) Status for Building Funds in Independent Schools**

We are writing to express our concern with the recent recommendation by the Australian Productivity Commission in its draft report, *Future Foundations for Giving (Draft Report)*, to remove DGR endorsement for independent schools, in relation to building funds. The draft report, in our view, fails to give adequate weight to the public benefit derived from the availability of DGR endorsement for building funds of independent schools - a public benefit expressed in economic productivity, social harmony in a culturally diverse nation, and the effective transmission of Australia's intellectual and cultural heritage. It also fails to recognise the significant public benefit of independent schools in Australia in advancing education as a charitable purpose. In the context of the education sector, DGR endorsement encourages voluntary investment in capital developments that respond directly to the needs of citizens and secures high quality educational choices for parents.

As stakeholders deeply invested in the future of education, we firmly believe that maintaining DGR endorsement for school building funds is vital for the continued livelihood and future of independent schools in Australia, which have a key role in responding to the educational values and choices of parents, and secure improved educational outcomes for the nation. The recommendation in the draft report is neither fair nor in the public interest.

**Independent Schools: An Important Private-Public Economic Partner of Government**

The contribution independent schools make to the Australian educational system and in building the nation's human capital is well known and documented, but the economic and social benefits that independent schools generate locally, and the value they bring to the state and national economies, is less well understood or discussed.

Over the past 50 years, the Independent School sector has grown from around 114,000 students in 1970 to nearly 690,000 students in 2022, representing a change in student share from 4 per cent to 17 per cent. This has provided a vital role in providing educational choice and alleviating government funding pressures. In Victoria over 40 per cent of senior secondary students rely on non-government schools for their education.

Independent Schools are also a critically important employer, infrastructure investor and private-public partner of government.

According to Independent Schools Australia in 2021, Australian Independent Schools:

- Through fees and private contributions contributed almost \$6.9bn to investment in school education and the economy;
- Employed over 115,000 people; and
- Invested \$2.51bn in capital expenditure of which approximately 78% was on land and buildings and improvements: over 30 times the amount invested by Australian Governments through capital block grant programs.

Independent Schools make a substantial contribution to the broader economy and society through the direct employment of teachers and staff, but also indirectly through creating employment opportunities in the building and construction industry and through the purchase of goods and services more broadly. DGR endorsement of school building funds has had a vital role in these developments.

### **DGR Endorsement of School Building Funds is Integral to Independent School Funding and Accessibility**

It is vital that the trusted and valuable public-private partnership between the Federal Government and Independent Schools is maintained and not forgotten or eroded by ensuring the full economic and broader community benefits that independent school and their fee-paying families provide, continues to be realised.

Critical to this is maintaining the DGR status of eligible Independent School Building Funds which were introduced in 1954 and have had bipartisan government support for over 70 years.

Most established independent schools, including Scotch College, receive no government funding for capital expenditure and are heavily dependent on sourcing funding for capital expenditure and building development from their communities through philanthropic contributions and donations.

DGR endorsement of building funds is vital and integral to Scotch College, and other independent schools, in funding and building school classrooms and facilities. The removal of DGR endorsement for building funds will have a detrimental impact on independent schools' preparedness and ability to invest in educational buildings and facilities which will directly impact student outcomes and have broader knock-on effects and economic implications.

If the recommendation to remove tax deductibility for donations to building funds is adopted one immediate implication is that more of the financial burden of not just the recurrent expenditure, but also capital expenditure, will be borne by fee paying families already trying to deal with cost-of-living pressures. In Victoria, it would add further to the material increase in fees already seen on the back of the State Government's decision to impose payroll tax on Scotch College and 49 other independent schools, and raise the cost of education still further, when the national interest is to encourage the availability of high-quality offerings.

The reality is the removal of DGR endorsement for building funds of independent schools would force schools to raise their fees significantly to cover the cost of building projects. Shifting this expense onto parents will inevitably restrict the choice and opportunity for many families to be able to afford to send their children to independent schools, placing more pressure back on the public education sector.

### **DGR Endorsement Encourages Philanthropy and Provides a Public Benefit**

In a democratic and multi-cultural society like ours it is important that public policy not only promotes choice and freedom of association, providing families the opportunity to choose an educational environment that aligns with their values and preferences, but that it also encourages inclusiveness, diversity and tolerance.

Independent Schools like Scotch College, add to the depth and breadth of Australian education by often providing specialised curricula, unique teaching methodologies and tailored programs that cater to the specific needs of each student. The ability to offer tax deductibility for donations greatly assists independent schools in sourcing support that may not otherwise be available and broadening the educational offering and facilities that can be provided. Facilities developed with the help of DGR endorsement of building funds enable the school to expand program support for schools and students through scholarships such as our Indigenous scholarship program. It is contrary to the community interest to restrict further the school's ability to do this.

Scotch College, and many schools like it, have a long history of giving back to the community through scholarship programs and partnering with other schools and the community in sharing their facilities and grounds. Whether hosting local music camps, community ensembles, or local sporting teams, many independent schools already consider themselves to be providing a public service as they open their doors to these and other groups. Furthermore, many independent schools offer First Nations scholarship programs and develop educational opportunities and pathways for Aboriginal and Torres Strait Islanders. At Scotch College this includes scholarships, which often include boarding accommodation bursaries for boys from remote communities. 32 First Nations scholarship recipients have now graduated from Scotch College with their VCE.

Over the last few years, we have invested significant capital expenditure in our boarding facilities. This would not have been possible without the philanthropic support of our generous donor community. In addition to housing boys involved in our First Nations program they provide accommodation for boys from remote and regional Australia and are used in the school's holidays for providing a holiday camp for severely handicapped children, and respite for their parents.

In recent years Scotch College has also continued to invest in its outdoor camps facilities program and is looking to further evolve its offering in this area. The development of these facilities is again only made possible through the support of philanthropic donations through the Building Fund. These facilities will provide an ongoing economic benefit to the local communities and to the various schools and charitable organisations who utilise these facilities in addition to the school. Without Building Fund tax deductibility many of these initiatives will be at risk.

More broadly our concern is removing tax deductibility for independent school building funds will reduce philanthropy in Australia. We believe the removal of tax-deductible status for our building fund will reduce contributions by 90 per cent, and it should not be presumed that those making gifts to independent school building funds will redirect their gifts elsewhere.

### **Risk of A Private Benefit Being Attained Is Not Consistent and Supported at law**

The argument in the Draft Report that there is a material risk that donors could convert a tax-deductible donation into a private benefit is not consistent and supported at law through the existing requirements of the Australian Taxation Office (ATO) regarding donations, or charitable status afforded to schools under the Australian Charities and Not-for-profits Commission (ACNC).

Firstly, the law is very clear, with regard to the requirements for donations to be considered tax-deductible. One of the four key requirements of the ATO, in relation to a donor claiming a tax deduction for a donation is that it must truly be a gift or donation i.e. the donor is voluntarily making a donation and is not receiving or expecting to receive any material benefit or advantage in return. The ATO provides clear guidance on this issue, gifts to a school building fund cannot be made in return for a benefit or advantage. A gift to a school building fund that provides a benefit or advantage to the donor is not tax deductible. Independent schools are aware of this requirement and generally have well established policies regarding such practices. For this reason, there is not a material risk that donors to a school building fund could convert a tax-deductible donation into a private benefit.

Secondly, the Draft Report, overlooks the fundamental principles of charity law, being that all charities must operate for a public benefit. The notion that donors to School Building Funds are most likely to benefit from their donation does not take into account the fact that advancing education is a long-established charitable purpose and that charities may only operate for a public benefit. Charity law recognises the charitable and public benefit of the advancement of education. Independent Schools are only afforded charitable status if the Australian Charities and Not-for-profits Commission (ACNC) considers that such school has a charitable purpose, invariably advancing education, and operates for a public benefit. Charitable registration with the ACNC clearly demonstrates that a school operates for a public benefit. The suggestion a private benefit may be derived from a donor or a donor's family member using a facility, which may or may not have been built as a result of the donor's gift and is provided for a recognised charitable purpose with a recognised public benefit, simply does not accord with the principles of charity law.

Furthermore, it is hard to draw difference between the benefit derived by a parent or donor to a school and a tax-deductible donation made by an employee of a public benevolent institution who receives the private benefit of an income from such institution, or a donation to a hospice by a family who has obtained the benefit of receiving care at the hospice. Just as these examples are not considered a private benefit for the purposes of a tax-deductible donation, neither should a donation to a school building fund.

### **Conclusion**

It is important that the value of DGR endorsement of building funds be assessed against criteria that give full weight to the public benefit derived from the activity of recipients, whether that be

cultural or educational and the current prevailing law and long-established status afforded to charitable institutions.

The national interest is to encourage investment in education, especially private investment that is achieved through private efforts that do not rely on centralised government decision-making but reflect the values of parents and local communities. Independent schools are strong performing national investments and constitute employers that are an important and valuable public-private economic partner of government.

Critical to this is the long-established policy of DGR endorsement of Independent School Building Funds which has provided, in large part, the funding for school building development, and the accompanying broader social and economic benefits that have flowed.

It is also important to recognise, the arguments made regarding the material risk of a private benefit being obtained from a donation to a school building fund are simply not compatible with the current law and framework regarding donations and charitable status. Independent schools provide a key role in advancing education, a charitable purpose, and have a clear public benefit. It is a failure in accordance with current customary law and in principle to suggest a private benefit may be obtained from tax deductible donations to school building funds.

We urge the Australian Productivity Commission to reconsider its recommendations regarding the removal of DGR endorsement for building funds in independent schools. Adopting this change will not assist the Government achieve its stated aim of doubling philanthropy by 2030; in fact, there is strong evidence to suggest it will hamper it and cause serious harm to the independent school sector with broader economic and social policy implications. The continued availability of this endorsement is essential for fostering a robust education sector that meets the diverse needs of Australian students and families.

Thank you for your consideration of this submission. We hope the Commission will take into account the significant impact that such a policy change could have on the Independent School sector and, consequently, on the overall education landscape in Australia.

We would be happy to meet with you to discuss in further detail the impact that the removal of DGR endorsement of building funds would have and urge you not to implement this Productivity Commission recommendation.

Yours faithfully,

Mr Hamish Tadgell  
School Council Chair

Dr Scott Marsh  
Principal