

Submission to the philanthropy inquiry – Productivity Commission Report on DGR status of Christian schools

4/02/2024

The Australian Productivity Commission (APC) has produced a draft report entitled *Future Foundations for Giving* which will have major ramifications for Christian charities and schools, which currently have tax deductible gift recipient status (DGR).

The APC report seeks, among other things, to:

- remove both the advancement of religion and the advancement of education from the classes available for DGR status; and
- remove school building funds from DGR status.

It is an understatement to say that such changes to Australian law would heavily impact Christian and other religious schools and charities that are providing much needed services in our nation. But these proposed changes are also unprecedented, contrary to common law charity doctrine and wrong-headed.

A. What is a charity at law?

Quoting from the Commonwealth consultation paper, [What is a Charity?](#) (emphasis added):

19. Pemsel's case identified four categories or 'heads' of charitable purposes which are:
 - the relief of poverty;
 - the advancement of education;
 - the advancement of religion; and
 - other purposes beneficial to the community not falling under any of the preceding heads.
20. A public benefit requirement is central to the concept of what is charitable except where the purpose is the relief of poverty. Under the common law, there is a presumption of public benefit for charities established for the relief of poverty and the advancement of education or religion. For the fourth head of charity, the onus is on the purported charity to prove that it is for the public benefit.

Both education and religion (i.e. recognised religions) have always been presumed to entail a public benefit.

The reasons for that presumption are fully elucidated in the [transcript](#) of The Honourable Justice Derrington's lecture entitled [Faith, Hope and Religion as a Public Benefit in Modern Australia](#) (2019 CLAAZ Annual Public Lecture). Again, I quote:

What this discussion shows, is that religion has been intimately tied to the legal doctrines surrounding charities since their inception – evolving out of religious causes, and the advancement of such causes being confirmed by the common law as charitable.

Drawing on its common law sources, the Commonwealth *Charities Act 2013* states at section 12(1)(d) that the purpose of 'advancing religion' is a recognised charitable purpose – where 'advancing' includes, protecting, maintaining, supporting, researching and improving (see section 3, Definitions). Justice Derrington's lecture also explains the broad definition of 'religion' adopted by Australian law (see paragraphs 25 and 26).

Likewise, the purpose of advancing education is a stated charitable purpose under the *Charities Act 2013* (Cth)(section 12(1)(b)).

Mirroring the common law, both religion and education are presumed under section 7 of the *Charities Act 2013* (Cth) to be for the public benefit, absent evidence to the contrary.

Against the contention that religion is basically a private matter and best kept out of the public sphere, Justice Derrington goes on to explain in detail the reasons for retention of the presumption that religion has a public benefit, namely that religion:

- promotes moral and community values;
- confers broad social benefits; and
- confers broad economic benefits

(see paragraphs 40 to 61 of the [transcript](#)).

B. Religious Schools in particular

Charities, including schools and religious institutions, are, by definition, not-for-profit entities. All income is reinvested in the charitable purpose and no individual or group profits financially from the entity's activities. Tax deductible giving, i.e. DGR status, is at the core of the benefits government bestows upon charitable institutions. For obvious reasons, these institutions are reliant upon the generosity of individuals and businesses in order to function and survive. The public benefits that accrue to society as a whole justify the tax deduction.

Removal of DGR status is therefore tantamount to a denial of the charitable status of the entities concerned.

Why does the APC think religious schools (including building funds) should not have the benefit of DGR status?

- Despite the legal presumptions outlined above, and without citing any evidence, the APC simply denies the community wide benefits of religious schools based on atheist-materialist dogma – the reductionist, rationalist opinions of those opposed to religion of any kind.
- The APC says that a tax deductible donation to a school building fund is:
 - “converting a tax deductible donation into a private benefit...”; and
 - “a substantial risk for primary and secondary education, religious education and other forms of informal education...”.

In essence, the APC's report is at odds with well-established Australian charity law and the long held expectations and committed participation of large numbers of Australians who attend religious institutions, or send their children to schools run by religious charities, or both.

First of all, these schools are committed to providing school age children with a quality education, sporting and cultural opportunities and moral instruction – the very essence of a charitable purpose. And this provision is not for just a few 'elite' children but for substantial numbers of children, all over Australia.

Secondly, these schools relieve the public education system of a significant additional burden, ensuring by their very existence that public education is sustainable, that public school infrastructure is not overwhelmed, and that student-teacher ratios in the public system are appropriate. Like the health system in Australia, there is a mixture of providers and this affords both choice and sustainability.

Not only does the APC deny the fundamental tenets of charity law in Australia, but its assumptions (more like prejudices) are revealed in the quoted dot points above:

- the phrase "converting a tax deductible donation into a private benefit" assumes that the benefits of a school building fund will be purely 'private', denying both the scale of the benefits being received by thousands of children across Australia, and the long term benefits to the nation of such children being equipped to take their part in civic society, and, along with their publicly educated counterparts, to run the businesses and governments of tomorrow; and
- the phrase "a substantial risk for primary and secondary education, religious education and other forms of informal education..." is frankly nonsensical and inexplicable. One could hope for better from a body as important and economically literate as the APC.

Why would any right-thinking person seek to (effectively) remove the charitable status of religious schools in Australia? Why penalise a specific group of DRG recipients who make a significant and highly valued contribution to the education and betterment of Australian society, particularly our young?

C. Conclusion

This proposal of the APC is yet another product of left-leaning, materialistic policy and politics that relentlessly hollows out the heart and soul of Australia by ignoring or diminishing the value of family, faith and community. Instead it seeks to impose its reductionist worldview on everyone, thumbing its nose at the rich traditions and legal presumptions that have made Australia such a great nation, and a safe and secure place to raise our children.

As one of the many Australians who choose to send their teenage children to a religious school, I strongly oppose this report.