



Feedback on the Draft Report of the Future Foundations for Giving Inquiry

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Introduction

The Federation of Parents and Citizens Associations of New South Wales (P&C Federation) is thankful to the Productivity Commission for this opportunity to contribute feedback to its Draft Report as part of its inquiry into the future foundations of giving. The P&C Federation supports the position of individual educational and developmental needs met by a range of differential services expressed through appropriate and well-planned curricula, programs and environments conducted by sensitive and well-trained personnel in conjunction with parents¹ and families.

The core belief of P&C Federation is that the education of our children and youth is the most fundamental means of ensuring individual success and success as a nation. Government's primary responsibility is to ensure education is equitable, well resourced and fully funded.

The P&C Federation is a representative voice for parents and students in public education in NSW. With over 1800 member associations, 5000 association executive members, and 820,000 public school children and their parents, P&C Associations are one of the largest volunteer based organisations within Australia. Our understanding of the issues within education is broad and carries with it the voice of a substantial body of parents and carers.

Feedback

Our feedback here focuses on three chapters of the Draft Report that are most relevant to our member P&C Associations:

1. Chapters 5 and 6 (on the reform of the deductible gift recipient system),
2. Chapter 7 (on the regulatory framework for charities)
3. Chapter 9 (on public information about charities and giving).

1. The deductible gift recipient (DGR) system (chapters 5 and 6)

A long-standing concern of the P&C Federation is that P&C Associations are ineligible for DGR status. Under the current DGR system, the only donations to NSW P&C Associations that are tax deductible are donations to a school building fund which the P&C Association operates. Only a small portion of P&C Associations operate a school building fund, and therefore the most common activities of P&C Associations are not eligible for DGR status. As a result, there can be reluctance and disinterest from donors when it comes to supporting government school P&C Associations, as they cannot claim tax deductions for their donations. Many P&C Association office bearers mistakenly assume that registering as a charity with the ACNC grants a P&C Association DGR status, and can be surprised to learn it does not.

The activities of P&C Associations are of enormous benefit to many government schools, as they often supply services and resources that are not provided for by government funding or school budgets. They will often operate important school services (such as the school canteen or out of hours school care), provide equipment and facilities to the school, apply for community grants to cover costs of a project at the school, and hold fundraisers for the school. In our view, the current DGR system unnecessarily hinders P&C Associations in gaining donor support for their work. The P&C Federation has advocated for expanding the categories of DGR status to cover more activities of P&C Associations, but to date we have not had success.

¹ "Parent" refers to anyone with legal care of a child, such as a parent, carer or legal guardian

With this in mind, we agree with the Draft Report's assessment that the current DGR system is incoherent, unfit for purpose and suffers from a lack of a clear rationale for why some charitable activities have DGR status and others do not.

The Draft Report's suggested principles-based framework for determining DGR status appears a promising improvement. In our view, it is likely that P&C Associations would be able to meet the three criteria for gaining DGR status under this proposed framework, in the following ways:

1. *Principle 1 – there is a rationale for government support.*

The current and dramatic underfunding of government schools is well-documented. Most recently, the Expert Panel Report entitled "Review to Inform a Better and Fairer Education System," commissioned by the Commonwealth government to inform the next National School Reform Agreement, noted:

*"Currently, government schools in all jurisdictions except the Australian Capital Territory (ACT) are, on average, yet to be funded to 100 per cent of the SRS. In contrast, non-government schools in all jurisdictions except the Northern Territory (NT) are, on average, funded at or above their full funding level."*²

*"Underfunding of schools, and government schools in particular, is undermining other reform efforts, with real implications for student educational and wellbeing outcomes, teacher attraction and retention, and ultimately confidence in the public education system."*³

Under current funding arrangements, government schools require every potential dollar that P&C Associations can raise. Providing DGR status to aid in their efforts provides a clear rationale for government support, at least in the case of underfunded government schools.

2. *Principle 2 – there are net benefits from providing government support for the activity through subsidising philanthropy*

As stated earlier, while government schools are publicly funded, P&C Associations often supply services and resources that are not provided for by government funding or school budgets.

It is crucial to contextualise this by noting the degree to which government schools are systematically underfunded by governments. The Schooling Resource Standard (SRS), which provides the benchmark for all schools, is only designed to provide the minimum level of funding required for 80% of students to attain acceptable levels of literacy and numeracy. Even with this relatively low benchmark, government schools do not receive nearly 100% of their full SRS funding. For example, the current bilateral agreement between the Australian and NSW governments provides that in 2023, government schools will receive only 92.2% of the necessary SRS levels of funding. Moreover, that agreement allows the NSW government to consider another 4% of its funding obligation to be met by a charge for funding the NSW Education Standards Authority and to capital depreciation in an accounting manoeuvre that is applied only to government schools and not to their non-government counterparts. As a consequence, the underfunding of government schools in NSW alone for 2023 has been calculated at \$1.9 billion.⁴

² See <https://www.education.gov.au/review-inform-better-and-fairer-education-system/resources/expert-panels-report>, p. 75.

³ Id., at p. 35.

⁴ Bilateral Agreement, accessed at <https://www.education.gov.au/download/4346/new-south-wales-bilateral-agreement/35966/extended-agreement/pdf>; Adam Rorris, *How School Funding Fails Public Schools*, accessed at https://www.aefederal.org.au/application/files/3817/0018/3742/Rorris_FundingFailsPublicSchools.pdf, p. 18.

P&C Association fundraising routinely supports the purchasing of a wide variety of resources for government schools, including:

- Capital improvements such as the construction or renovation of sports areas, covered outdoor learning spaces, libraries, and toilets;
- Fixed and moveable play equipment;
- Classroom resources and materials, including books, supplies, and classroom technology;
- Library books and fixtures;
- Covered walkways between classrooms and buildings;
- Support for school activities, such as transportation other costs for excursions and camps.

In this context, facilitating donations to P&C Associations would provide net benefits for schools that governments currently do not provide.

3. *Principle 3 – the activity is unlikely to create a material risk that tax-deductible donations can be converted to private benefits for donors*

Given school parents will be the main donors to P&C Associations, and their children are thus likely to be beneficiaries of these donations, it could potentially be asserted that P&C Associations may not meet this criterion. However, P&C Association work is for the benefit of the school community as a whole, not just the children of donor parents. The benefits to an individual donor's children are minute compared to the benefits to the wider community, and it would be highly difficult to argue that there is a risk of personal benefit. Moreover, many donations to P&C Associations go towards services and projects that will continue to benefit a school long after the children of donors have left, or which may not even benefit the school during the time of their child's schooling. For these reasons, the work of P&C Associations provides broad community benefits that are not outweighed by benefits to the donors.

With all this said, there are other points the P&C Federation considers worth raising:

Should DGR continue to apply to government school building funds?

The proposed principles-based framework would exclude school building funds from DGR status. The rationale for this outlined in the Draft Report focusses heavily on non-government schools, and on the weak case for granting these funds DGR status when non-government schools already receive revenue from both school fees and government subsidies. We would note, however, that several government school P&C Associations operate a building fund for their school, and the numerous flaws outlined in the Draft Report are not readily applicable to these government school building funds.

We would further note that, in the context of systematic underfunding of the government school sector outlined earlier, government school building funds remain one (albeit small) way that government schools can address this shortfall.

Recommendation

- 1.1. The P&C Federation supports the proposed principles-based framework outlined in the Draft Report.
- 1.2. That the Productivity Commission consider changes that would allow P&C Associations for government schools to acquire DGR status.
- 1.3. That the Productivity Commission consider allowing school building funds in government schools to retain DGR status.

2. A sound regulatory framework (Chapter 7)

Information Request 7.1

We are concerned by the Draft Report's proposal of enabling the ACNC Commissioner to require a charity undergoing revocation to provide evidence that its assets have been transferred to another registered charity. At times, the Draft Report comes close to treating the revocation of an organisation's ACNC registration as essentially the same as that organisation dissolving. It is important to emphasise that revoking a charity status is entirely distinct from a charity winding up.

We understand the Draft Report's underlying concern that the ACNC has no direct means to ensure a charity's assets will remain in the charity sector after its registration is revoked. However, if the ACNC is to have more powers to account for these assets, it is crucial that it have jurisdiction only over surplus assets accumulated during an organisation's charity registration and as a result of its status as a charity (e.g. from donations). Assets that, for example, date from before an organisation's ACNC registration should not be included in such a framework.

Our principal concern is that this distinction will be highly difficult in practice, and could thereby unduly burden or undermine charities. Distinguishing surplus charitable assets from non-charitable assets strikes us as a complex and resource-intensive process, where there would be many cases of ambiguity. The Draft Report does not provide evidence of a widespread problem that would warrant this large increase in ACNC regulatory powers.

Without adequately distinguishing between charitable and non-charitable assets there is a risk that revoking an organisation's ACNC registration could become a de facto dissolution. This would be unacceptable to us for several reasons:

1. By far the most common reason for an ACNC revocation is that a charity has not fulfilled its annual reporting requirements. However, such cases are often simple oversights. In our experience with P&C Associations, a common reason is that a P&C Association's Executive Committee has changed without a proper handover, which means the requirement to report to the ACNC has not been passed on, and the new Executives are simply unaware of this obligation. Such cases involve no malicious intent and are generally easily resolved. In many of these cases, the new Executives successfully re-register with the ACNC without any issues. Subjecting them to de facto dissolution would be wholly disproportionate.

In other cases, lack of annual reporting to the ACNC occurs because the charity has wound up and neglected to notify the ACNC, in which case the question of what becomes of its assets is redundant.

2. It may deter organisations with a charitable purpose from registering with the ACNC. If a simple oversight may result in an organisation losing its assets, it may conclude that this risk outweighs the benefits of charity tax concessions. Any increase in regulatory requirements as a result of this reform could also be a deterrent.
3. It carries a high risk of duplicating or encroaching on the powers of a charity's primary regulator.

To the best of our knowledge, the current safeguards are adequate for most purposes:

- Under current rules, to register an organisation as a charity, the ACNC must be assured the organisation satisfies ACNC requirements. In particular, its objectives must be charitable and its governance must meet ACNC standards.
- This is primarily evidenced through the organisation's governing document, which outlines the objectives to which its funds must be directed, as well as its governance structure.

- These governing documents are generally approved by the charity's primary regulatory authority.

If an organisation's charity status is revoked, it would remain under the same objectives that the ACNC has deemed acceptable and which are still overseen by the primary regulator. This should provide assurance that its funds will still be directed toward charitable purposes, even if it is no longer registered with the ACNC.

There are only a few possible exceptions to this:

1. Unincorporated associations, which may not have a clear regulator. However, the available evidence suggests these account for perhaps 2% of charities⁵ and that they are typically very small in revenue. The Draft Report also notes that some unincorporated associations can still be subject to state and territory legislative authority (unincorporated P&C Associations in NSW are an example of this).
2. The Draft Report (p.229) raises the possibility of a charity structured as a proprietary company limited by shares amending its constitution to remove any requirement to operate on a NFP basis. However, such companies may only account for 1% of charities⁶ and most charities cannot amend their constitutions so easily without their primary regulator's approval.

With this in mind, we would suggest the Productivity Commission's concern would be better addressed by an agreement across charitable regulators that assets of a formerly ACNC-registered charity are to continue to be used for charitable purposes. As long as this is the case, we do not believe there is any reason for assets of a revoked charity to pass to another charity. The details of such an agreement would need to be carefully designed, however we would suggest this is a preferable framework to granting the ACNC Commissioner new administrative powers.

If the ACNC is to have a more active role in this, it should be restricted to limited areas, such as to charities that are propriety companies limited by shares, as per the Draft Report. These charities are freer than most charities to change their charitable purpose, and it is thus more reasonable that the ACNC have a more direct regulatory powers on their charitable activities.

Recommendations

- 2.1. It is important to not turn revocation of ACNC registration into de facto dissolution.
- 2.2. In ensuring the assets of a revoked charity remain in the charity sector, the focus should be only on assets accumulated during the organisation's charity registration and as a result of its status as a charity.
- 2.3. If there is assurance the assets of a revoked charity will continue to be directed towards a purpose that is charitable, there is no need for the assets to be passed to another charity.
- 2.4. The best means to gain this assurance would be via an agreement among the charity regulators rather than enhanced administrative powers for the ACNC.
- 2.5. New administrative powers for the ACNC in this area should be restricted to limited areas such as charities in the form of propriety companies limited by shares.

⁵ E.g. ACNC. 2023. *REVIEWING CHARITIES' FINANCIAL INFORMATION AND ANNUAL FINANCIAL REPORTS - 2021*

⁶ Ibid

Draft Recommendation 7.5

The P&C Federation reiterates the conclusion of the Draft Report, supported by feedback of many participants in this inquiry, that current compliance for charities is overly burdensome, driven in large part by excessive duplication in reporting requirements. It is worth noting that NSW P&C Associations are governed entirely by volunteers and at least 96% of P&C Associations registered with the ACNC are small charities, and keeping compliance obligations minimally burdensome would be beneficial from their perspective. With that in mind, we fully support Draft Recommendation 7.5 to require governments to consider the effects of volunteers when designing policies and programs.

To this end, there are some specific areas that commonly impact P&C Association that we feel could be harmonised.

For example, when P&C Associations get new Executives, they must update the names with the Australian Business Register (to change the authorised contact person on the ABN), with the NSW Office of Children's Guardian (for Working With Children Check purposes), and the ACNC if they are also a registered charity. As P&C Associations get new volunteer Executive members every three years on average, it is not unusual for some of these to be overlooked. Streamlining them should be feasible; for example, when changing the responsible person names with the ACNC, the ACNC could require new responsible persons to select who will be the authorised contact for the ABN and who will be the registered with the Office of Children's Guardian, and the names could be updated at those entities via a data sharing arrangement.

The P&C Federation would also support a nationally consistent approach to fundraising and would consider the ACNC a logical entity to regulate such a national regulatory scheme.

3. Public Information About Charities and Giving (Chapter 9)

In the P&C Federation's view, the information charities are currently required to provide to the ACNC is generally reasonable, and we do not see a need for any dramatic overhaul in this area. While the Draft Report explores the possibility of creating a standardised measure of charity effectiveness, we agree with the Draft Report's assessment that this would not be practical. The range of sectors charities cover, and the range of work charities do even within sectors, is enormous and it is difficult to envisage a standardised measure that would adequately capture the effectiveness of all this work. As the Draft Report notes, the benefits of such a measure are uncertain and it would also likely greatly increase the regulatory burden on charities. We agree with the ACNC⁷ that at most, a non-mandatory measure for service performance could be created for charities to submit voluntarily. While service performance may be a useful measure for donors, much of this information could be gained from the information already publicly available such as financial and annual reports.

The P&C Federation generally has no objection to the recommendations in this chapter, however we would add that the capacity for the ACNC to assess what charities currently report could be considered. For example:

- Governing documents: When applying for charity registration, organisations must submit their governing document to the ACNC for assessment. However, there are numerous charities whose governing document lodged with the ACNC is clearly incorrect or invalid, but whose charity application was nonetheless approved. This suggests there are, or have historically been, problems with the ACNC's screening and approval process. We suggest strengthening this process would provide assurance that a charity's purpose is indeed valid.
- Annual Information Statements: Some Annual Information Statements report information that suggests a need for closer inspection. For example, there are anomalous cases of registered

⁷ ACNC 2015-16 Regulator Performance Framework Self-assessment. P. 12

charities reporting yearly balances of \$0, as well as no yearly income or expenditure. This suggests the charity is dormant or insolvent, or that a mistake has occurred, however there is little sign the ACNC is alerted to these anomalies.

Examples like these suggest the ACNC can struggle to ensure charities are meeting their obligations. This is buttressed by the figures in the Draft Report (Table 7.1) showing the ACNC seldom uses the regulatory powers available to it (the main exception being revoking charity status for not submitting two or more annual information statements). This risks undermining assurance that charities are operating to satisfactory governance standards, for example by raising the possibility that some charities are operating insolvent without the ACNC being aware. Strengthening the ACNC's capacity to verify that charities are operating to its standards would be beneficial to strengthening confidence in the charity sector.

Recommendation

3.1. Strengthen the capacity of the ACNC to ensure charities are adhering to current ACNC standards and requirements.

Conclusion

We thank the Productivity Commission for this opportunity to comment and make recommendations toward the final report on the Future Foundations for Giving.