

This submission addresses the proposal of the Productivity Commission ('the Commission'), outlined in the Draft Report ('Draft'), to remove deductible gift recipient (DGR) status for religious instruction in schools. I am opposed to the proposed change.

Changes or not?

The phrasing of the Report suggests that the Commission is considering 'expanding the scope', 'extending the DGR system' and 'changing current arrangements' (192). It claims that 'there is not a strong case for changing' (192). However, that is not what the Commission is proposing in the Report. Rather, the Report is proposing a change to the current arrangements, one which narrows the DGR system and reduces its scope.

The only rationale advanced in the Report is that maintaining the current DGR status for religious instruction, while changing the principles that drive future arrangements, would be 'creating an inconsistent approach' (188, my emphasis). This suggests that the problem is rather with the Report's grasp and expression of the unstated principles underlying the current system. Any distinction between one kind of religious activity and another, on which the Commission seeks to rely in seeking to express guiding principles for DGR status, must take into account which religious activities currently have DGR status. If the Report's suggested principles do not express the current position, the Commission should reconsider the validity of those principles and the arguments (if any) for them. It is changing the principles, not maintaining DGR status for religious instruction, which would be 'creating an inconsistent approach' (190).

Such a change should have a rationale, but there is none provided on page 190. The only argument in support of the Report's rationale is deferred to the later discussion on 'advancing religion' on pages 191-92.

Unworkable distinction

The Report seeks to make and then use a distinction between activities that are and are not 'specifically for the purpose of advancing religion' (192). The Report claims, with no supporting argument, that 'school building funds and providing religious instruction in schools' have this purpose, while 'for example, homelessness, health and disaster response services' do not – or at least, not 'specifically' (192). I do not know if this distinction exists in law, but it is poorly conceptualised here.

The Report claims, 'Importantly, this [i.e. not 'extending DGR status to charities solely for the purpose of advancing religion'] will not inhibit religious-based charities from being granted DGR status for other charitable activities that do not have specific exclusions' (192). There are charitable activities that the Report values (they are important and 'should continue' (192)) as deserving of DGR status. It is the distinction that makes the difference.

I take it that the word 'specifically' (and elsewhere, 'solely' and 'purely') is an attempt to allow for the fact that all or almost all charitable service by religious bodies will advance religion: it will reinforce the religious commitment of those performing the service or will commend the religion to those benefiting from the service. The phrasing, then, already concedes a conceptual problem with the distinction.

The Report does not elucidate the distinction further than giving the two asserted examples.

School building funds, in my experience, have the primary purpose of educating students. Church building funds – which the Report has overlooked in this section – typically argue for DGR status with the purpose of preserving the historic value of the church building itself for the community. Neither type of building fund is ‘purely religious’ or ‘specifically for the purpose of advancing religion’. Either type would be a poor example of the distinction the Report is trying to establish.

Religious instruction in schools is provided by external providers (who are the DGR-eligible charities in question). The charities typically exist in their current form in order to qualify for DGR status – that is, they have been set up so as to distinguish their activity, of providing religious instruction in schools, from religious activities that do not currently attract DGR status. The same or similar structures exist for the activities the Report explicitly approves of, *i.e.* homelessness, health and disaster response services. Religious instruction in schools is currently administered in the exact manner of these ‘other charitable activities’ and does not currently have a ‘specific [exclusion]’. Therefore, in the absence of evidence to the contrary, religious instruction in schools should be assumed to be like these ‘other charitable activities’ and should continue to be granted DGR status. The Report gives no such evidence, so the second example does not show the distinction to be valid, either.

If the Commission chooses to persist in using this problematic distinction, the question then becomes, is religious instruction in schools ‘solely for the purpose of advancing religion’? Again, the Report makes no argument that this is the case, but merely asserts it. I argue below that the assertion is untrue (see below, ‘Wider benefits expressed in government policy’). In order to set this purpose argument in the context of the benefits of religious instruction in schools, it is helpful to address a second incorrect assertion in the Report, which raises this question of benefits.

Misconception of religious instruction in schools

The only other objection raised in the Report is the ‘material risk of a nexus between donors to religious organisations and beneficiaries’ (192). The explanatory gloss of such a nexus is that donations for ‘purely religious activities... primarily benefit the people who regularly participate in the activities of the institution’.

I note in passing that the phrasing of the Report could suggest that this explanatory gloss is the test of what a ‘purely religious activities’ are, *i.e.* that the gloss supplies the argument I have said above is missing from the Report. I think it is fairer to read this as a claim that ‘purely religious activities’ have this one property (the nexus or the risk thereof), rather than as a comprehensive test. On one hand, the Report conceives of non-religious activities that share this property: the likely nexus is given as one of ‘the key elements of the Commission’s proposed approach in this inquiry’ (186). If, on the other hand, the Report is merely claiming that all purely religious activities do share this property, this is mistaken: as William Temple (Archbishop of Canterbury 1942-1944) said, ‘The Church is the only society [*viz.* institution] on earth that exists for the benefit of non-members’, *i.e.* those who do not regularly participate. Again, the Report has asserted (incorrectly) without argument.

To return to the objection on page 192 regarding primary benefit: this does not apply to religious instruction in schools.

Religious instruction in schools is not an activity which primarily benefits participants in the activities of the institution providing it. First, regarding ‘the institution’, a typical provider of

religious instruction in schools is constituted by representatives of multiple cooperating religious institutions. Second, and more crucially, religious instruction is open to any student in a school. To enrol in and attend Christian SRE, it is not even necessary to be a Christian, let alone a regular participant in the activities of a particular religious institution. Not all the students in Christian SRE are Christian and not all attend churches, let alone the particular church of the teacher or those church(es) attended by the donors.

There is also a clear difference in age between the two groups: students (mostly non-tax-paying) who are the primary beneficiaries of religious instruction and the donors (tax-paying) to the charities that provide it. There will be overlap – some parents (who we may term secondary beneficiaries) of some students may also be donors to SRE providers – but elsewhere the Report states that such a nexus can be severed by the existence of an arms-length entity (190) or be weakened if access is open to a wider group (190; cf. 188). SRE providers are typically arms-length entities, which do offer a service to a wider group: the entire student body of a school.

Wider benefits expressed in government policy

NSW government schools are also beneficiaries of religious instruction and are clearly separate from external providers. In the narrowest sense, schools benefit when they have their curriculum goals (set by government policy) met. That government policy recognises the value of religious education for student wellbeing and for connecting students with their faith communities.

Both these positive outcomes match well to the Commission's terms of reference, which recognise the efforts of charities to 'support vulnerable Australians and build social capital and connectedness in Australian communities' (iv). Neither outcome is exhausted by the Commission's deliberate sidelining of any 'additional net community benefits' (190). Neither rests on a (hypothetical) government intention to advance religion.

In keeping with the Commission's aims outlined on page 181, the current approach increases the total funds available for the service (without external providers, SRE is not provided or funded at all), facilitates diverse and pluralistic approaches to providing the service (all providers who qualify are welcome), and generates increased social capital through institutional cooperation.

The Report has not demonstrated any awareness or consideration of such benefits of religious instruction in schools.

Summary

The Report uses language that consistently characterises making a change in one direction as resisting a change in the opposite direction. This can be misleading. The principles the Report advances to express the intent of current DGR arrangements fail to account for those arrangements.

The Report asserts a distinction between religious activities on the basis of a purpose of advancing religion, yet fails to logically express any such distinction. The only argumentative support is two alleged examples: the very activities the Report seeks to exclude. This is begging the question.

The Report acknowledges the existence of charitable activities that ought to retain DGR status – further, that this is an important outcome to which its principles should lead. Religious instruction in schools shares many characteristics with these charitable activities.

The Report asserts but does not argue that religious instruction in schools has the specific/sole/pure purpose of advancing religion. This ignores the NSW government policy (and that of other state governments) that calls for religious instruction in schools for entirely other purposes.

The Report claims or implies that religious instruction in schools primarily benefits regular participants in the institutions that provide it. It does not argue for this and it is mistaken.

Throughout, the Report ignores the nature of religious instruction in schools – open to all, provided at arm's length from particular religious institutions, and yielding benefits to students, parents, schools and the wider community that satisfy the Commission's stated aims.

The Commission has no reason to agree to the change proposed in the Report. Charities set up to provide religious instruction in schools should continue to have DGR status.