9 February 2024

Response to the

Productivity Commission
Inquiry into Philanthropy
Draft Report - Future Foundations for Giving

Released 30 / 11 / 2023

Author: **Jeff Buchanan**

Table of Contents

1. Introduction

In proposing reforms for the current Deductible Gift Recipient (DGR) system, the draft report of the Productivity Commission "Future Foundations for Giving" has singled out school building funds (for both government schools and non-government schools), to be recommended for removal from DGR approval.

Along with other submissions made since the release of the draft Report, this author believes that the rationale put forward by the Productivity Commission is deeply flawed.

The Productivity Commission states a desire to have reform undertaken and to have this guided by certain principles. This is admirable and the right approach to take.

This author believes that unfortunately, the result put forward in the draft report has various problems where the reasons offered in the Commission's rationale are:

a) Contradictory;
b) Inconsistently applied;
c) Significantly oblivious of the fuller context of the role that DGR funds play in education across the board;
d) Ineffective toward increasing productivity; and,
e) Strongly counterproductive toward enabling the stated government policy of doubling philanthropy by 2030, which is just over 5 years away.

The draft recommendation of the Productivity Commission to remove building fund DGR status for ALL schools is particularly disappointing.

Many will consider this recommendation something of an ideologically cherry-picked effort that has been made as part of some visible, yet misguided, attempt to point to some reduction in DGR fund numbers alongside advocating for a welcome expansion in a range of other categories.

This submission outlines a set of counterarguments that run against the proposed recommendation of the Productivity Commission around school building funds.

Furthermore, this author does not confine this submission to criticism alone, but also offers a way forward with alternative DGR reforms that should be explored and set in motion for consultation in the education community.

Different reform, that will meet the stated goals of the government and increase productivity, lies in another direction.

2. Response to Initial Key Statements in Draft Report

The draft report of the Productivity Commission makes a number of opening statements.

A selection of these are noted here:

General Statements

- *a) Philanthropy contributes to a better society by providing money, time, skills, assets or lending a voice to people and communities who would otherwise receive lower quality, or have less access to, goods and services. (page 2 of Draft report)*

- *b) The Productivity Commission's draft recommendations would establish firm foundations for the future of philanthropy, so that the benefits of giving can continue to be realised across Australia. The proposals would enable greater donor choice and ensure that regulation continues to support trust and confidence in charities. (page 2 of Draft report)*

- *c) The Commission's proposed reforms aim to make the deductible gift recipient (DGR) system simpler, fairer and more consistent. (page 2 of Draft report)*

The author of this response submission agrees with the sentiment outlined in (a), (b) and (c) but contends that the PC recommendation does not achieve some of the stated goals, particularly those around fairness, consistency and donor choice.

On reform: (page 2 of Draft report)

- *d) All Australian taxpayers co-invest in charities through the DGR system, but the arrangements that determine which entities can access DGR status are not fit for purpose – they are poorly designed, overly complex and have no coherent policy rationale.*
- *e) Reform is needed to simplify the DGR system and direct support to where there is likely to be the greatest net benefits to the community. If adopted, the Commission's draft recommendations would mean that more charities overall would be able to access tax-deductible donations.*
- *f) In contrast, the personal income tax deduction for giving does not need substantive reform. Preliminary estimates by the Commission show the personal income tax deduction is likely to be an effective mechanism for encouraging donations of money and other assets.*

While the submission author agrees with broad aspiration and intent of reform statements, they are problematic in the way that different professionals will offer quite different interpretations of those reforms.

In particular, what constitutes outcomes such as 'simplification' and 'greatest net benefits to the community', are not as straightforward and absolute as some might think and are therefore open to debate.

This author contends that there are genuine problems with the untested way in which labels such as 'simplification' and 'net benefit' have been used in the draft report as part of the rationale to withdraw building fund DGR status for schools.

3. Material Benefit – a principle being applied in a tenuous manner

The Productivity Commission draft report opens up the issue of donors potentially receiving a material benefit.

There is a long held general principle that for a donation for be 'tax-deductible' there should not be any significant material benefit back to the donor. If there was a material benefit provided back to the donor, then the transaction is not a gift, but is something else. Current guidelines and conventions do provide for 'mere recognition' of donations where names of donors can be put on buildings, honour boards and other places to recognise their generous contribution if it is the policy of the organisation involved to do so.

In the draft report, the issue is opened as follows:

Philanthropy contributes to a better society
While markets are characterised by exchanges between a buyer and seller of a good or service, philanthropy does not involve such an exchange and donors do not expect to receive a financial or other direct benefit in return for their gift.
(page 3 of Draft report)

The notion of material benefit is then used as a key piece of rationale where it becomes linked to a sweeping conclusion about withdrawing DGR status for school building funds, followed by a draft recommendation of the same as a next step.

There are some classes of charitable activities where there is a material risk that donors could convert a tax-deductible donation into a private benefit. For example, where recipients of a good or service are charged (more than nominal) fees by a charity to access goods or services. The transaction here is closer to a market exchange of donations for lower fees and this could incentivise recipients to make tax-deductible donations to lower the non-tax-deductible price they are charged for the good or service. In these circumstances, it is unlikely that including that activity within the scope of the DGR system would provide net community benefits.

The Commission's view is that converting a tax-deductible donation into a private benefit is, in principle, a substantial risk for primary and secondary education, religious education, and other forms of informal education, including school building funds. The potential for a donor to be able to convert a tax-deductible donation into a private benefit is especially apparent for primary and secondary education, particularly where students are charged fees. Potential donors are most likely to be people directly involved with the school and benefit directly from donations, such as students, their parents or alumni….

… …. School building funds for primary and secondary schools and religious education would be the main entities that would no longer be eligible for DGR status under the Commission's proposals. There are currently about 5,000 DGR endorsements for school building funds. Of these, three-quarters are charities and the remaining quarter are government entities, such as public schools.
(page 18 of Draft report)

It is the opinion of this author that the Productivity Commission has chosen an extremely tenuous link that connects the act of major donor support for a school building with a material benefit for their own children, who may attend the school, and then extends this to a rationale for entire removal of DGR status for building funds.

Let's take a step back for a moment and consider what is being proposed here…

Schools have many buildings. Schools have many students.

Schools have many families who relate very strongly to their school and want to help if they can.

While a donor's children may partly benefit, for the comparatively short period of time they are at school (verses the life of a building), it is patently absurd to remove the tax-deductibility from ALL the building funds that helps to motivate many other major donors and general donors to support important projects where thousands and thousands of students will benefit from using the buildings and what takes place within.

How is it a good idea to penalise so many schools and students?

Remarkably, the Productivity Commission considers this tenuous link to not just be a small matter, but a "***substantial risk***" for education! Really?

If the same reasoning were applied to (say) healthcare, then by extension, we now have the bizarre situation where a major donor who gave a large gift to a new hospital wing, and, ALL the other donors who gave to help fund that hospital wing, are ALL going to lose their opportunity to claim tax deductibility because a relative of one of the major donors received healthcare treatment in that hospital wing at some stage?

On the recommendation made in the draft report, the Productivity Commission would have us subscribe to the idea that the generosity of one or more major donors to a building project are "substantial risk" grounds to disqualify ALL donors from tax deductibility because one or more of them have children who briefly benefited from the building. Why would the Productivity Commission see fit to advocate for a sweeping penalty against thousands and thousands of students in government schools and non-government schools, all because an incredibly small number of students might be related to a donor?

Should the education sector really abide by the notion of punishing all schools via loss of building fund DGR status by adding even further funding pressure to what is already a very stressed sector? What a shame if we allow that. If there is to be some realistic acknowledgement of the "greatest net benefits to the community" test espoused earlier on the Productivity Commission rationale, then can we at least admit that with such generous philanthropic support, there will be extensive collateral benefits (long term benefits for the community at large) for thousands and thousands and thousands of other students in the government school or the non-government school who use that building?

Furthermore, this attempt at disqualifying the tax deductibility of a generous gift for a building completely ignores the reality of other facts in these situations, such as:

a) The fact that many building projects in both non-government and government schools enjoy support from past students (alumni);
b) That there are many other donors, who also give smaller amounts to the same building project, who will be demotivated by the loss of tax deductibility.

The Productivity Commission draft recommendation hardly seems like a formula for the progressive development of philanthropy?

For school fundraisers and hard-working volunteers, this will seem like a poorly reasoned punishment metred out to all schools charged with the critical task of educating young people well in their most formative years.

4. Inconsistent and contradictory application of reasoning

If the Productivity Commission was still of the view that the reasoning offered in the draft report was sound, then another question to ask would be – why is the same reasoning not being applied to scholarship funds and library funds in all schools?

Furthermore, why isn't the same reasoning also being applied to universities and university colleges that enjoy unfettered DGR benefits?

In all these cases there will be the same instance where a major gift comes from a donor who has immediate family connections to the school, university or university college? It is very easy to mount the same flawed argument.

Surely if the Productivity Commission reasoning for the removal of building fund DGR status for ALL schools was so compelling, then it would naturally follow that DGR status for ALL other funds in ALL schools and the entire DGR status for ALL universities and ALL university colleges should also be removed!

However, in the view of this author, for reasons not explained in great detail in the draft report, the Productivity Commission has seen fit to stop the application of this reform at building funds only in schools, declaring that:

Most other classes of activities in the education charitable subtype, including formal higher education and research activities would remain within the scope of the DGR system.

(page 18 of Draft report)

With such inconsistencies and contradictions, the draft recommendation has to be re-examined.

5. Some confronting but necessary context

For different reasons, ALL schools in ALL types of school sectors (government, catholic and independent) are battling some of the most challenging education funding conditions ever in place.

Setting aside the frequently quoted political discourse and unhelpful school sector warfare, there is a simple truth that more funding, from all governments and elsewhere, for ALL schools, is what is needed in education.

On the whole, schools are not the kinds of organisations that are swimming in unused cash with so much surplus funding they can't think of things to spend it on.

Nearly all schools are fighting rolling annual budget battles of various kinds, and if any school was given additional funding in any form (government funding, donations, or other income), they would instantly know what to do with it and would invariably put it to good use.

Except for Special Schools and a handful of other exceptions, all Australian Schools, both government and non-government, (who are also charged with the crucial responsibility for the most formative years of educational development in young people) are already significantly disadvantaged with unfair DGR restrictions compared to universities and university colleges.

Currently, a donor can give two dollars or more to any university or university college in Australia and those funds can be spent on anything, with no real restrictions, with no questions asked.

Across education, the difference between school DGR conditions and those afforded to universities and university colleges is a truly unfair situation:

- School age education plays such a crucial role in the formative learning years;
- Schools are currently saddled with <u>significant</u> DGR limitations;
- Higher levels of education (universities and university colleges) enjoy <u>no</u> DGR limitations;
- Now the Productivity Commission draft report is recommending a further reduction in DGR support for school fundraising; and,
- The same Productivity Commission draft report sees no case for applying any change to any other education DGR arrangements.

How is this consistent with greater productivity and doubling philanthropy in a little over 5 years and supporting a vital school sector that is already struggling through many other funding pressures?

<u>The funding pressures across ALL schools</u>

Consider the extent of the pressure:

- Non-government schools account for around 35% of enrolments and the income demographics range from highly disadvantaged families through to families with considerable financial capability
- Government Schools account for around 65% of students and while these schools will have a higher proportion of financially disadvantaged families, they also have a significant proportion of families with considerable financial capability
- All governments (state and federal) that fund schools are technically 'broke', carrying substantial debt on behalf of all taxpayers and facing increasing community and political pressure to reduce expenditure

- The growth trajectory in non-government school recurrent funding continues to decrease at pace for many schools given current funding policies. “Parent capacity to contribute” mechanisms and an expansion of state government mechanisms that also reduce funding to non-government schools mean that non-government schools are further singled out for reduced government funding.
- Capital funding for non-government schools operates through a very limited grant pool system that continues to be squeezed more and more each year. Most non-government schools get no capital grant funding. Non-government schools borrow funds for capital projects and repay loans on commercial terms.
- Revelations continue that state governments have not been funding the government schools (which they are responsible for) to the required “School Resource Standard” for some time.
- Like the community at large and the business sector around Australia, both non-government schools <u>and</u> government schools are experiencing cost increases across every aspect of their operations.
- Parents of all school students pay taxes, and some parents, across all school types, pay a great deal of tax.
- Parents paying fees at non-government schools are already SAVING governments well over $8 Billion p.a. (some governments like to make noise in the political debate about funding, but none of them want all those students to roll back into government schools)
- ALL taxpayers are contributing a large amount annually to both government schools (more than $55 billion per annum) and non-government schools (more than $18 Billion per annum), with parents of non-government schools paying a further (more than $11 Billion per annum) out of their after-tax income in the form of school fees and other costs.
- It follows that some of the largest taxpayer contributions to both non-government and government schools are substantial contributors to ALL school funding.
- Some non-government schools and their communities in the state of Victoria are now experiencing unbelievable cost increases in the form of millions of dollars in state payroll tax.
- Even in government schools now, there are real problems with additional costs being passed on to families and in the midst of all that, many government schools are trying hard to fundraise with limited tools like the current (and inadequate) DGR options.

By taking away the DGR status of building funds, the draft Productivity Commission recommendation takes away the only option that ALL schools have to do something to fight back against a kaleidoscope of funding pressures.

One crucial aspect of philanthropy is that it helps the public move away from the idea that “the government funds everything”.

In various ways the Productivity Commission and many others regularly advance the idea that it is worthwhile to try and motivate and mobilise other forms of support, so governments don’t have to keep constantly stepping in.

Yet by taking building fund DGR status away from government schools, the Productivity Commission is precisely reinforcing the idea that community and industry should be prevented from helping more … and that the burden be completely left to governments to fund!

In the interests of objective fairness and increased productivity across all schools across the education sector that currently favours universities without question, <u>what is needed is NOT a reduction in DGR support for schools, but an expansion.</u>

6. A better way with more attractive outcomes

When the stated aim of the current government is to double philanthropy by 2030, the answer does not lie in the reduction of DGR funds that are currently being used by many schools.

Rather, the answer lies in the expansion of DGR approved fund options to all schools.

Consider the table below that summarises current arrangements:

	Government Schools	Non-Government Schools
Existing DGR Options	Building Fund Library Fund Religious Education Fund	Building Fund Scholarship Fund Library Fund
Exclusions	Everything else	Everything else
Existing external DGR option	In certain circumstances, schools can access DGR via the Australian Sports Foundation for sports projects on a project-by-project basis, with a percentage fee payable to the Australian Sports Foundation.	

Existing DGR Options for UNIVERSITY COLLEGES and UNIVERSITIES	Anything and Everything

Now consider an expanded DGR system that is fairer, lifting all schools with more options that bring them closer to par with universities and university colleges:

	Government Schools	Non-Government Schools
New range of DGR Options for SCHOOLS	Building Fund Library Fund Religious Education Fund Sports Fund (new) Arts Fund (new) Technology Fund (new)	Building Fund Scholarship Fund Library Fund Sports Fund (new) Arts Fund (new) Technology Fund (new)
Exclusions from tax deductibility for SCHOOLS	Any fees for direct products or services linked to tuition (to be specified)	School Fees Any fees for direct products or services linked to tuition (to be specified)

Making a transition to expanded DGR arrangements
All DGR fund requirements and related trust deeds (for existing funds and new funds) to transition to a straightforward, streamlined system with a common set of rules and simple annual compliance and reporting requirements.

At some point the Australian Sports Foundation would be phased out of involvement with schools – but maintained everywhere else they currently operate across sport.

This is the real reform that is possible and is required play a role in enabling the government to meet its stated objective.

It puts schools, where the crucial formative years of education are taking place, on a much fairer footing with Universities and University Colleges.

This level of reform also achieves a broad range of attractive outcomes:

- ✓ Greater fairness involving DGR application across the whole education system;
- ✓ An increase in diversity and equity by supporting ALL schools with more options;
- ✓ A significant benefit to the community wherever more donor support is raised;
- ✓ A cost to government well worth the policy change that will help it achieve its stated goal of doubling philanthropy by 2030;
- ✓ An employment boon with more people hired for fundraising roles; and,
- ✓ An increase in productivity via employment in fundraising and improvement in school education outcomes under siege by multiple funding pressures.

Interestingly, these outcomes would meet various aspirations outlined in draft recommendation 6.1 in the draft Productivity Commission Report:

- There is a rationale for Australian Government support because the activity has net community-wide benefits and would otherwise be undersupplied.
- There are net benefits from providing Australian Government support for the activity through subsidising philanthropy.
- With more students being supported in many more ways, any close nexus between donors and beneficiaries involving material benefit risk remains negligible and not a reason for dismissing an entire opportunity to provide much needed support and advancement for school education across the board.

[Submission Ends]

Jeff Buchanan
BSc (Hons) Dip Ed
CFRE (ret), FEdPlus