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8 February 2024

Philanthropy Inquiry
Productivity Commission
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Email: philanthropy@pc.gov.au

**Submission to Productivity Commission in response to Draft Report on
Philanthropy**

The Executive Council of Australian Jewry (ECAJ) makes the following submission in response to the Draft Report on Philanthropy (DRP) released by the Productivity Commission on 30 November 2023.¹ The ECAJ is the peak, elected, representative body of the Australian Jewish community. This Submission is also made on behalf of the ECAJ's [Constituent and Affiliate organisations](#) throughout Australia. We consent to this submission being made public.

This submission argues against the adoption of three recommendations which appear in the DRP, namely:

- withdraw Deductible Gift Recipient (DGR) status for school building funds
- withdraw DGR status for the provision of religious education in private and government schools
- remove the 'basic religious charity' and associated exemptions from certain governance requirements under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth)

1. Social and economic benefits of religion

The first two recommendations appear to be based on a sceptical view of the social and economic benefits of religion, which is implicit throughout the DRP.

According to the DRP, the first principle for determining whether a class of charitable activity should be within the scope of the DGR system is whether:

*“there is a rationale for taxpayer support because the activity is expected to generate net community-wide benefits and would otherwise likely be undersupplied by the market”.*²

In the view of the DRP, religious activity fails to satisfy this principle:

“Religious organisations play an important role in many people’s lives and communities across Australia. However, the Commission does not see a case

for additional government support for the practice of religion through the DGR system, based on the first principle above.”³

Although the DRP does not elaborate, it appears to adopt the view that religion is only something that plays an important role in the individual lives of many people and in specific communities, but is not an “activity” that generates “community-wide” benefits, being an activity that would otherwise likely be “undersupplied by the market”.

There is at least one significant study of which we are aware that contradicts this view. This was a study conducted by Deloitte Access Economics whose findings were published in a 2017 report entitled “*Economic value of donating and volunteering behaviour associated with religiosity*”.⁴ The study was commissioned by SEIROS (The Study of the Economic Impact of Religion on Society), an organisation comprised of leaders, representatives and researchers from different religious traditions, academics and policy makers.

This study estimated the total annual value to the Australian economy of volunteering and giving by people who start attending religious services as adults at \$481 million AUD.⁵ The research for the study used data from a national survey of more than 7,000 Australians and found inter alia that:

- Individuals who started attending religious services as adults are 1.7 times more likely to be a volunteer⁶ and 1.5 times more likely to make donations to the community⁷ (compared to people who have never attended religious services).
- The additional volunteers and donors associated with religiosity are estimated to give an additional 30.5 million hours of volunteering per year with an economic value of approximately \$339 million⁸ to the Australian economy, and additional donations of around \$142 million.⁹

The 2017 Deloitte study was limited in scope to measuring the *economic* value of religious and religiously-motivated activity. The benefits of religious belief and activity go beyond cold and clinical utilitarian considerations. There is no economic measure for the sense of purpose, equanimity and peace-of-mind which millions of religious believers derive from their faith, or for contributions to social cohesion, family stability, psychological, emotional and community well-being, and other flow-on benefits to the rest of society, which are inspired by religious faith.¹⁰ One can measure the economic cost of undertaking religious and religiously-motivated activities, but not the human value of all the benefits they generate, such as the comfort and reassurance felt by the elderly, the lonely, the sick and others in need as a result of being cared for in many different ways within their faith communities.

The DRP cites no evidence concerning, and does not consider, either the economic or the non-economic benefits derived from activities inspired by religious faith. It must follow that the view of religion that appears to underpin several of its recommendations is completely unfounded.

2. Recommendation to withdraw DGR status for school building funds¹¹

We have had the benefit of reading the detailed submission made to this Inquiry by the Australian Council of Jewish Schools (ACJS) dated 7 February 2024, and we respectfully endorse its

analysis, and the reasons it gives for rejecting the DRP's recommendation that DGR status for school building funds be withdrawn.

We make three additional observations.

- The more established faith communities in Australia professing the Abrahamic faiths have been able to found religious schools, and to support and maintain them, with the financial assistance of private donations that have been made through school building funds with full tax deductibility under the DGR system. If the DRP's recommendation is adopted, other faith communities represented by more recently arrived immigrants to Australia, including the Hindu, Buddhist, Sikh and Baha'i communities, will be denied this opportunity, and will thus be treated less favourably. This would amount to indirect discrimination on the ground of religion, which the Federal government is now looking to prohibit through the enactment of new legislation, as recommended by the Religious Freedom Review in 2018.¹²
- Whilst governments provide 100% of the capital funding for buildings and facilities for government schools, 82% of the capital funding needs of faith-based schools comes from school fees, private donations to school building funds and fundraising activities.¹³ The DRP asserts that schools servicing communities with greater socio-economic disadvantage receive a relatively small share of these funds and recommends that DGR status for school building funds should be removed except for schools which are public benevolent institutions (PBIs) or where other equity objectives are met.¹⁴ If this recommendation were to be implemented, donations to these funds, and the contributions they make to the capital funding needs of faith-based schools, would greatly diminish. The government would be left to address these funding needs for religious schools as it currently does for public schools.
- The DRP asserts that there is a "*material risk that donations [to school building funds] are converted into a private benefit*"¹⁵, because "[p]otential donors are most likely to be people directly involved with the school and benefit directly from donations, such as students, their parents or alumni."¹⁶ Whilst potential donors to school building funds are indeed most likely to be people directly or indirectly involved with the school, there is no evidence cited in the DRP, nor does it necessarily follow, that those donors will be the ones most likely to benefit from their donations. School building and maintenance programs, and upgrades in educational facilities almost invariably are rolled out over periods of many years, and the benefits they provide usually last for decades. Accordingly, if there is to be a private benefit to donors, the nature and form of that benefit will be uncertain, long-term and spread across the entire existing school population and future generations of students.

3. Recommendation to withdraw DGR support for the provision of religious education

As a corollary of the DRP's sceptical view of the social and economic benefits of religion analysed in section 1 of this submission, the DRP adopts the view that religious education generally provides relatively little in the way of "net community-wide benefits".¹⁷ It therefore recommends that religious education be excluded from support through the DGR system, unless it has an explicit equity objective.¹⁸

The DRP does not state the basis for its negative view of the intrinsic value of religious education. There is at least one study of which we are aware that contradicts the DRP's view.¹⁹ The study identifies and analyses the advantages of maintaining Special Religious Education, namely:

- strengthening students' culture and identity
- strengthening multiculturalism in Australia by enriching religious diversity
- creating a 'safe place' for exploring religious identity at school²⁰

and explains how these benefits facilitate children's mental health and wellbeing. We submit that these benefits have heightened importance for Jewish students at the present time, as members of a vulnerable minority community which is experiencing unprecedented levels of prejudice-motivated hostility.²¹

Government support through the DGR system for Jewish religious education in private and public schools in Australia occurs through the **Council for Jewish Education in Schools** (ABN 21 194 706 909) (CJES). The Standing Committee on Education of the ECAJ constitutes the CJES. The CJES is named in the list of recipients for deductible gifts in section 30.25 of the *Income Tax Assessment Act 1997* at Item 2.2.11. The CJES is covered by Item 1 of the table in section 30-15 of the Act.

There are four States in Australia in which education in the Jewish religion is provided in private or public schools, namely Victoria, New South Wales, Queensland and Western Australia. The CJES operates through the medium of the Jewish communal roof body in each of those States, respectively the Jewish Community Council of Victoria, the NSW Jewish Board of Deputies, the Queensland Jewish Board of Deputies and the Jewish Community Council of Western Australia.

We would estimate that Jewish schools are attended by 51% of Jewish school-aged children in Australia, numbering about 10,000 students in years K-12 and a further 3,000 students in associated early learning facilities.²² Fourteen of the nineteen Jewish schools in Australia have been admitted as approved organisations of the CJES. This means that they may receive tax deductible donations made for education in the Jewish religion, which may be expended solely for that purpose.

Each such school must comply with a detailed CJES scheme of operation and CJES governance guidelines that apply in each of the four States under the oversight of the Jewish communal roof body in that State and the ECAJ. These instruments prescribe standards that schools must observe in relation to corporate governance, curriculum, teacher qualifications, teaching standards, child safety, staffing, reporting requirements and other matters. In addition, each school is required to maintain a separate CJES bank account and separate CJES financial accounts, and to have those accounts audited annually. Non-compliance by a school with any of these requirements may result in a termination of the school's status as an approved organisation of the CJES and of its entitlement to receive tax deductible donations for education in the Jewish religion.

In public schools, DGR support for education in the Jewish religion occurs in only two States, Victoria and New South Wales, via the United Jewish Education Board Inc (ABN 94 057 080 137) and the New South Wales Board of Jewish Education (ABN 47 000 049 785) respectively. To the extent that this DGR support is provided through the CJES, these institutions must also maintain a

separate CJES bank account and separate CJES financial accounts, and have those accounts audited annually.

Each year, the ECAJ arranges with its own auditor for the individual audited CJES accounts of participating institutions to be collected and consolidated into a single set of audited national accounts. The consolidated audited national accounts are lodged each year with the ACNC as a part of the Annual Information Statement of the CJES.

Although Jewish schools are not, as far as we are aware, registered as Public Benevolent Institutions, many of their students, especially among those who are religiously observant, are from a disadvantaged background.²³ The removal of the existing support for religious education through the DGR system would thus have a disproportionately negative impact on this cohort in all four of the States in which private Jewish schools operate.

Jewish students in the public school system are also more likely to be from families who cannot afford to pay private school fees, and who have no means of paying for their children to receive religious education in a formal school setting other than through Special Religious Education classes. The recommendation in the DRP for the withdrawal of DGR support for the provision of religious education in government schools²⁴ seems to us to be completely contrary to the DRP's ostensible emphasis on achieving greater equity in the tax system. This recommendation would do the opposite.

Further, the DRP has assumed that there is, in principle, a substantial risk that donors who support religious education are converting their donations into a private benefit.²⁵ This assumption is demonstrably false insofar as it may apply to donors who support the provision of Jewish religious education in public schools.

For example, as previously noted, in NSW Special Religious Education classes in Judaism are provided by the New South Wales Board of Jewish Education (known as BJE). It provides teaching in Judaism to 1,297 students in 61 schools across NSW on a weekly basis.²⁶ BJE receives an annual allocation of funds from the Jewish Communal Appeal (JCA) out of a general pool of funds raised by the JCA from several thousand donors. BJE is only one of 25 organisations which is supported by the JCA.

Most donations to the JCA are made to the general pool. Under the JCA's Trust Deed, the allocation of these donations is subsequently decided upon by the JCA's Board of Governors on the recommendation of its Allocations Committee. JCA donors who thus support religious education in public schools, among many other charitable causes supported by the JCA, can have no realistic expectation of benefiting privately.

In summary, if the DRP's recommendations were to be adopted, the CJES would lose its DGR status and this would have an especially heavy negative financial impact on almost every Jewish school in Australia, and on the New South Wales Board of Jewish Education and United Jewish Education Board Inc in Victoria. Much of this impact would fall upon socially and economically disadvantaged families.

4. Recommendation to remove the ‘basic religious charity’ and associated exemptions from certain governance requirements under the *Australian Charities and Not-for-profits Commission Act 2012 (Cth)*²⁷

If this recommendation were to be adopted, one of the consequences would be that the ACNC Commissioner would be able to suspend, appoint and remove the leaders (‘responsible persons’) of religious charities.²⁸

We have had the benefit of reading the detailed submission made to this Inquiry by Dr Alex Deagon and Dr Mark Fowler.²⁹ They have considered the draft recommendation to empower the ACNC Commissioner to suspend, appoint and remove the leaders of religious institutions in light of Australia’s international obligations under the *International Covenant on Civil and Political Rights*³⁰ and related documents. They have also considered the recommendation in light of the Australian Constitution.

Drs Deagon and Fowler have concluded that “*the removal of the BRC exception is an egregious and severe interference with religious freedom in Australia. It is contrary to international law and likely to be unconstitutional for multiple reasons.*” We respectfully endorse their analysis, and the reasons they give for rejecting this recommendation.

In addition, we believe there are compelling policy reasons why charities that are conducted for the advancement of religion or other purposes that have a basis in religious doctrine should not under any circumstances have leaders imposed upon them by any arm of government or government agency. Any question as to whether a religious charity is operating in accordance with its authorised purposes may require reference to be made to the doctrines of the relevant religion. No government official and no court is competent to be an arbiter of religious doctrine, and they should not be put in a position where they may be called upon to make decisions of that nature.

Moreover, the DRP itself acknowledges that the ACNC Commissioner has never exercised the power to suspend, appoint and remove a responsible person in relation to any charity.³¹

Accordingly, we submit that the recommendation that the ACNC Commissioner be empowered to suspend, appoint and remove responsible persons in relation to religious charities should be rejected. The granting of such a power would be bad policy and the need for it has not been demonstrated.

5. Conclusion

For the reasons advanced in this submission we urge the Commission to reject each of the three recommendations outlined above, which appear in the DRP. We thank the Commission for the opportunity to make this submission and wish it well in its deliberations.

Yours sincerely

Peter Wertheim AM
Co-CEO

ENDNOTES

Note: All links are as accessed on 31 January 2024.

- ¹ DRP as accessed via <https://www.pc.gov.au/inquiries/current/philanthropy/draft>
- ² DRP p.16.
- ³ DRP p.18. See also pp. 191-192.
- ⁴ The complete report is accessible via:
<https://www.deloitte.com/content/dam/Deloitte/au/Documents/Economics/deloitte-au-economics-donating-volunteering-behavior-associated-with-religiosity-01062018.pdf>
- ⁵ *Ibid*, pp. iii, 25.
- ⁶ *Ibid*, p. 14.
- ⁷ *Ibid*, p.21.
- ⁸ *Ibid*, pp. iii, 18, 24.
- ⁹ *Ibid*, pp. iii, 23, 25.
- ¹⁰ Jesse Graham and Jonathan Haidt. 2010. ‘Beyond Beliefs: Religions Bind Individuals into Moral Communities.’ *Personality and Social Psychology Review* 14(1): 140-150.
- ¹¹ DRP pp. 15, 18, 167, 188-191, 202.
- ¹² ‘Report on religious freedom in Australia’, Expert Panel chaired by The Hon Philip Ruddock, 18 May 2018:
<https://www.ag.gov.au/sites/default/files/2020-03/religious-freedom-review-expert-panel-report-2018.pdf>
- ¹³ Independent Schools Australia, Submission 250, p.3:
https://www.pc.gov.au/data/assets/pdf_file/0018/360180/sub250-philanthropy.pdf
- ¹⁴ DRP p.190.
- ¹⁵ *Ibid*.
- ¹⁶ DRP p.18.
- ¹⁷ DRP p.188.
- ¹⁸ *Ibid*. See also pp. 190-191.
- ¹⁹ Zehavit Gross and Suzanne Rutland, Special Religious Education in Australia and its Value to Contemporary Society, January 2021. DOI:10.1007/978-3-030-67969-9. ISBN: 978-3-030-67968-2. Accessible via:
<https://ccd.sydneycatholic.org/wp-content/uploads/2021/10/SRE-executive-summary-Nov2018.pdf>
- ²⁰ *Ibid*, pp. 10-11.
- ²¹ Julie Nathan, ‘Preliminary statistics concerning surge in antisemitic incidents following Hamas atrocities in Israel on 7 October 2023’, *Executive Council of Australian Jewry*, 15 December 2023:
<https://www.ecaj.org.au/wordpress/wp-content/uploads/ECAJ-preliminary-report-antisemitic-incidents-since-Oct-7-attack-1.pdf>
- ²² ACJS submission, p.1, para 4.
- ²³ As detailed in the submission of the Australian Council of Jewish Schools referred to in section 2 of this submission.
- ²⁴ DRP p.19 (Figure 6), p.204 (Figure 6.3).
- ²⁵ DRP p.18.
- ²⁶ BJE website under ‘Our Impact’: <https://bje.org.au/donate/>
- ²⁷ DRP pp. 222-225, and Draft recommendation 7.1.
- ²⁸ DRP pp. 224-225.
- ²⁹ Submission 276, accessible via: https://www.pc.gov.au/data/assets/pdf_file/0020/370415/sub276-philanthropy.pdf
- ³⁰ (adopted 19 December 1966, entered into force 23 March 1976) 999 *United Nations Treaty Series* 171. Ratified by Australia on 13 August 1980.
- ³¹ DRP p.225.