Productivity Commission Inquiry into Philanthropy

Goodstart Submission

February 2024

We're for children, not profit.

ABOUT GOODSTART

Goodstart is a not-for-profit social enterprise, a registered charity and Australia's largest provider of early childhood education and care (ECEC). We have 660 centres located across every state and territory, educating 63,600 children from 53,700 families. We employ over 15,000 Australians and have a turnover of over $1.3 billion a year.

Our purpose is to ensure all Australia's children have the learning, development and wellbeing outcomes they need for school and life. All children should be supported to participate in quality early learning and care, regardless of where they live in Australia, their family circumstances, their inclusion support needs, or their early learning setting. Our unique purpose and structure as a social enterprise means we work in partnership with the sector, Governments and the community to improve outcomes for all children – not just the children who attend a Goodstart service.

As a charitable social enterprise, we run our network of services for purpose, not-for-profit. We prioritise investment in programs that improve outcomes for children rather paying profits to shareholders or owners.

We welcome the Commission's inquiry into the Philanthropy and in this submission we present evidence that the Commission's treatment of early childhood education in the report is not consistent with current policy direction for early learning and is likely to have negative unintended consequences for Not-for-Profit ECEC providers. We also note that the treatment of ECEC as 'care' is not consistent with the findings of the Productivity Commission's concurrent inquiry into Early Childhood Education and Care.

In the final report we suggest the Commission amend recommendation 6.1 so 'early childhood education' is expressly included in the category of education rather than in 'care'. This would ensure early childhood education charities would be able to access DGR status for those activities that have an express 'equity objective'.

This short submission outlines the evidence for this change.

Goodstart makes substantial investments as part of delivering on our social purpose. Our recent investments are outlined below.

Investment	FY 2023	FY 2022	FY 2021	FY 2020
Professional development programs to improve quality	$23.1m	$19.0m	$15.6m	$15.4m
Quality improvement programs to support teachers, educators and centre directors	$7.7m	$7.6m	$6.4m	$5.2m
Inclusion programs including in communities facing disadvantage	$11.8m	$9.6m	$8.4m	$10.7m
Increasing children's access & affordability	$4.2m	$4.3m	$4.3m	$3.1m
Providing support for children with additional needs	$4.2m	$3m	$3.6m	$2.6m
Reconciliation	$1.1m	$1.2m	$1.1m	$0.6m
Research and advocacy	$2.2m	$2.7m	$2.6m	$3.4
Social purpose investment	**$54.2m**	**$47.3m**	**$42.0m**	**$41.0m**

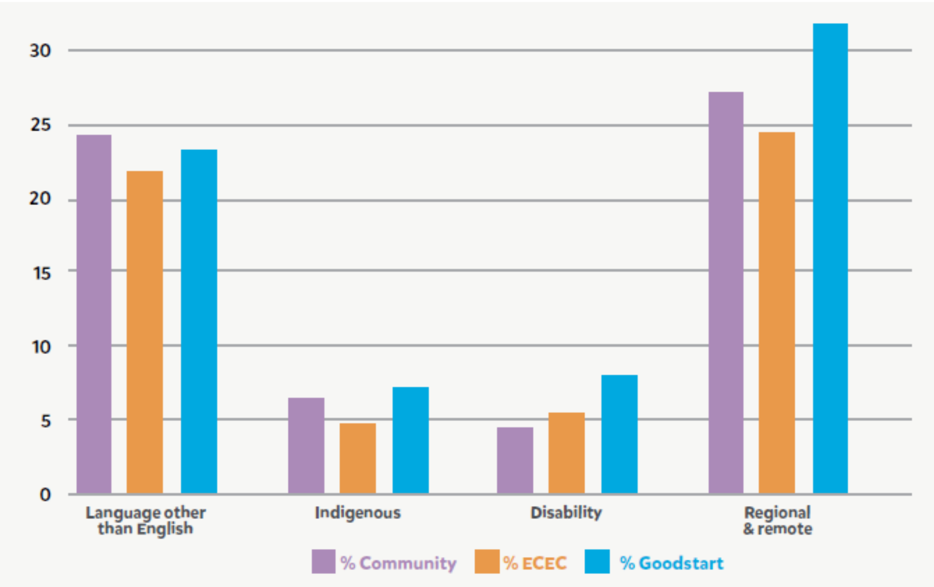
Social Ventures Australia has conducted a Social Impact Study to calculate the "social dividend" on our targeted social purpose investment, which in 2023 was calculated as $5.60 for every $1 invested, or around $382 million. Our social dividend is calculated using a social return on investment methodology and represents the unique social and economic value delivered for children, families, Government and the broader community.

While much of what we invest in quality improvement would not meet the criteria proposed by the Draft Report as eligible for tax-preferred philanthropic grants, most of what we invest in inclusion, reconciliation, advocacy and research would be. Goodstart makes substantial contributions from its own resources to support children experiencing vulnerability or disadvantage, and to advocate on behalf of children.

However, Goodstart does not currently qualify for recognition as a Public Benevolent Institution or as a Deductible Gift Recipient.[1] We have found it necessary to work with an auspicing partner, the Benevolent Society, along with Uniting NSW, to establish an Early Learning Fund to provide support for access to early learning for families facing difficult financial circumstances. Thousands of Goodstart employees contribute through workplace giving to the fund (over $260,000 in Fy2023), along with some of our corporate partners, supporting more than 1,100 children to regularly attend affordable early learning. The evaluation of this program was recently cited by the Productivity Commission into Early Childhood Education and Care.

At Goodstart we focus on ensuring children who might otherwise miss out on early learning have their needs met. As a result of longstanding outreach to communities and groups experiencing vulnerability, and the building of support programs for those children, our annual child census shows that Goodstart supports a higher proportion of children from equity groups than the sector or community average.

Proportion of children from key equity groups in Goodstart, the ECEC sector and the community 2023



Source: Productivity Commission (2023) Report on Government Services table 3A.11

Some recent examples of other social inclusion initiatives Goodstart contributes to include:

- Partnering with the Ngurupai (Horn Island) community in the Torres Strait and supported by the Paul Ramsay Foundation to improve early childhood outcomes for local children

[1] We may be eligible for the DGR category of scholarships for preschool programs, a small part of our inclusion work.

- Engaging in world-class research partnerships such as the BetterStart Research group exploring data linkage in South Australia with a focus on vulnerable children and child outcomes
- Expanding early learning access and support for children known to child protection partnering with State Governments in Victoria, South Australia and Queensland
- Funding educator secondments to the Baya Gawiy Buga Yani Jandu Yani U early learning centre in Fitzroy Crossing
- Offering heavily discounted early learning sessions to children from low income families who fail the Federal Government's activity test
- Subsidising inclusion support workers to make up shortfalls in Government funding so that 1,300 children with disabilities or additional needs can access early learning
- Funding a team of social inclusion specialists and allied health professionals to support children who are vulnerable or with additional needs in our centres and to build connection with community
- Advocating for the benefits of early learning and supporting parents through our online communities at the First Five Years website and the Smart Start website, and actively participating in a wide range of Government policy reviews and inquiries.

Most of these activities would likely fall into the categories of activities that the Draft Report recognises as suitable for tax-preferred investment for DGR or PBI entities.

THE ROLE OF NOT-FOR-PROFIT PROVIDERS IN ECEC

NFP providers (including Government providers) have long played a crucial role in ECEC in Australia. Up until 1991, Commonwealth funding for child care (ECEC) was directed to NFP providers as operating grants. From 1991 on, the Commonwealth paid demand-based subsidies as a percentage of fees paid including to the private sector. The result was an explosion in private provision, led by the ABC Learning Group which expanded to over 1000 centres and was, for a time, the largest child care provider in the world. Laden with debt, ABC collapsed in 2008. A consortium of respected Australian charities (Social Ventures Australia, The Benevolent Society, the Brotherhood of St Laurence and Mission Australia) combined to make a successful bid in 2009 to buy ABC Learning – then in receivership – and Goodstart was born.

Since then, virtually all of the growth in ECEC provision has been in the private sector. The proportion of service operated by NFP providers has dropped from 32.2% to 24.5% in decade, with recent inquiries by the ACCC and Productivity Commission noting this concerning trend.

Growth in ECEC centre based services by management type

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
NFP	2063	2078	2072	2072	2071	2077	2095	2111	2125	2131	2146
Private	3838	3904	4156	4337	4553	477	5108	5367	5637	5848	6035
Ind. schools	122	131	134	142	166	186	192	211	223	231	235
Government	375	360	360	383	376	376	349	346	345	346	345
TOTAL	**6398**	**6473**	**6734**	**6934**	**7166**	**7455**	**7744**	**8035**	**8332**	**8556**	**8761**
NFP	32.2%	32.1%	30.8%	29.9%	28.9%	27.8%	27.1%	26.3%	25.5%	24.9%	24.5%
Private	60.0%	60.3%	61.7%	62.5%	63.5%	64.6%	66.0%	66.8%	67.7%	68.3%	68.9%
Ind. schools	1.9%	2.0%	2.0%	2.0%	2.3%	2.5%	2.5%	2.6%	2.7%	2.7%	2.7%
Government	5.9%	5.6%	5.3%	5.5%	5.2%	5.0%	4.5%	4.3%	4.1%	4.0%	3.9%
Preschools*	4283	4280	4258	4243	4248	4235	4263	4263	4267	4232	na

Source: ACECQA NQS Snapshot, June Qtr, March for 2023, *Preschools are all either Govt or NFP from ABS 4240.0

The failure of the NFP ECEC sector growth – whether that be NFP long day care services or stand alone preschools – has meant that fewer and fewer families have the option to attend a NFP ECEC service. This is of concern because on average, NFP services provide more affordable, higher quality and more inclusive service than privately provided services:

- **More affordable:** The ACCC found that NFP long day care providers are on average are 7% lower than those of private services. This gap is widest for outer regional and remote services.[2]
- **Higher quality:** NFP services are more likely to meet the National Quality Standard (93%) than privately provided services (88%) and to exceed it (31% vs 16%).[3]
- **More inclusive:** NFP are 1.33 times more likely to enrol children with additional needs.[4] Goodstart is twice as likely to enrol children with additional needs compared to the sector as a whole.
- **More likely to be in disadvantaged communities:** The ACCC found NFP providers made up a higher proportion of services in low SEIFA communities and were more willing to run such services at a loss.[5]
- **Operated on lower margins than privately provided services.[6]**
- **Pay their educators more and employ more on full time contracts than private providers.** As a result, NFP provider had much lower rates of staff turnover (27% vs 41%),[7] which is crucial to maintain the stability of educator child relationships at the heart of quality ECEC that improves children's learning and development outcomes.

Given the NFP ECEC sector is more affordable, higher quality, more inclusive and provides a better employment environment than the private ECEC sector, the time is right to consider what Government can do to ensure ECEC policy settings actively encourage growth in the NFP sector. Recent analysis by the ACCC has demonstrated the market based approach used to date has effectively stymied growth of the NFP sector, and pushed growth into the higher cost, lower quality private sector. The current Productivity Commission inquiry into ECEC has formally asked for submissions *"… about possible reasons why not-for-profit providers have not expanded to meet the growing demand for ECEC. What, if any, barriers and limitations do they face?"*[8]

Goodstart considers that Governments should make specific changes to financing and regulatory settings to provide incentives for the growth and financial sustainability of not-for-profit sector generally, but also specifically in ECEC. Given the level of investment and long term productivity returns from high quality inclusive ECEC, there is a strong case for Australian Governments to follow the lead of the Canadian Government and direct future growth of the ECEC sector into the higher quality NFP sector.[9] In terms of delivery on Government objectives including inclusion, reconciliation, quality and supporting the workforce; the ACCC provides a compelling case that the NFP sector is an efficient and effective partner.

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[2] ACCC ECEC Interim Report June 2023 pp. 18, 92-94
[3] ACECQA NQF Snapshot September Quarter 2023
[4] IPART Review of ECEC Interim Report 2023 p 52-3
[5] Ibid p. 106, 140
[6] ibid p. 129-130
[7] Ibid 55-56
[8] Productivity Commission (Nov 2023) Draft Report on ECEC information request 5.1
[9] Canadian Budget 2021 Chapter 3 https://www.budget.canada.ca/2021/report-rapport/p2-en.html#chap3

National Cabinet has recognised the net community benefit of ECEC in its National Vision for ECEC.[10] Of particular relevance to the philanthropy inquiry is that the National Vision expressly recognises the importance of philanthropy and the NFP sector as one of the enablers needed to realise its vision:

"Philanthropy: *The not-for profit sector plays a fundamental role in the sector including direct provision and the important role of philanthropic advocacy and investment."*

The Prime Minister, in announcing the establishment of a Productivity Commission inquiry into the ECEC sector in Australia in February 2023 said:[11]

"Early learning is good for young ones, it's also good for families, it's also good for our economy. Because if we support women to be able to participate fully in the workforce there will be productivity benefits. It benefits them and their family budgets, but it also benefits businesses who employ women, because they're able to have greater continuity in their career. They retire with higher savings than they would otherwise, and it changes the dynamic in our workplaces. This was the first major commitment that I gave in my first budget reply, in the days when opposition leaders had policies and that made announcements in budget replies. We campaigned for three years with this as the largest on-budget investment that we are making during this term, and it's the largest on-budget investment because there is nothing that is more important than giving the best chance in life for our youngest Australians, some of whom we've met here today…..

"We also committed to do a Productivity Commission Inquiry into the universal provision of early learning. Just as Labor is the party of universal Medicare, of universal superannuation, we also want to be the party that delivers universal, affordable child care - very important going forward. And that's why today we're announcing the Productivity Commission Inquiry with Professor Deborah Brennan as the person to undertake that enquiry…"

The Productivity Commission released a Draft Report on this inquiry into ECEC in November, with a final report due in June. Goodstart welcomed that report as a key milestone on the road to universal early learning for all children[12], and will submit a detailed submission on the draft report.

The Draft Report recognises the vital role that access to ECEC plays in children's lives, as a critical, but only one important factor influencing lifelong learning and success, particularly children experiencing disadvantage. The Report concludes that 'there is a clear rationale for ECEC reform': [13]

"In designing the inquiry's draft recommendations, we consider a universal system is one that focuses on the needs of children, and enables all children to access services that would support their development – while also considering the preferences and needs of their families. An ECEC system that enables universal access is consistent with the draft national vision for ECEC that National Cabinet is considering."

Goodstart would encourage the Commission, in concluding its Final Report on Philanthropy, to ensure that it is consistent with pathway to a universal ECEC system described in the Draft Report on ECEC, and is also consistent with the draft national vision for ECEC that National Cabinet is developing as described earlier.

[10] https://www.education.gov.au/early-childhood/strategy-and-evaluation/national-vision-early-childhood-education-and-care

[11] Transcript media conference 9/2/2023 https://ministers.education.gov.au/anthony-albanese/press-conference-mocca-childcare-centre-canberra

[12] Goodstart media release 24/11/2024 https://www.goodstart.org.au/media-centre/media-releases

[13] Productivity Commission (2023) ECEC Inquiry Draft Report p. 11, 29

ENSURING PHILANTROPY POLICY SUPPORTS ECEC

Not being eligible for DGR status impacts on ECEC providers ability to access philanthropic funds. Many funds are hesitant to donate funds to organisations that are not DGR eligible noting impacts on their own reporting and accountability. Eliciting donations can become challenging as this may require another PBI or DGR or act as the auspicing body, collecting and distributing funds. This can be cumbersome from an administrative viewpoint and also add significantly to the cost of raising and managing funds.

Yet, there has never been more philanthropic interest in the early years, as funds look for investments that they know will have profound and long term impacts on child development and community trajectories. Large philanthropists such as the Paul Ramsay Foundation, the Minderoo Foundation, the Ian Potter Foundation, the Colman Foundation, the Bryan Foundation and others are prioritising investment in early childhood activities. The Royal Foundation of the Prince and Princess of Wales has also set early childhood as a key priority,[14] as has American billionaire philanthropist Mackenzie Scott.[15]

Australia needs a philanthropy regime that supports this movement rather than detracts from it.

This inquiry has been asked, among other things, to: *"Examine the tax expenditure framework that applies to charities. In particular, assess the effectiveness and fairness of the deductible gift recipient framework and how it aligns with public policy objectives and the priorities of the broader community."*

A draft report was released on 30 November. We note that no organisations in the ECEC sector made any submissions to this Inquiry ahead of this report. Disappointingly, the Draft recommendation (6.1) that would expand access to deductible gift recipient (DGR) status for most charities but would eliminate it completely for charities in the ECEC sector. Some aspects of 'childcare' might still be DGR eligible if conducted by a separate public benevolent institution (PBI).

Draft recommendation 6.1 proposes:

The Australian Government should amend the Income Tax Assessment Act 1997 (Cth) to reform the DGR system to focus it on activities with greater community-wide benefits. The scope of the reformed system should be based on the following principles:

- *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.*
- *There is unlikely to be a close nexus between donors and beneficiaries, such as the material risk of substitution between fees and donations.*

In applying these principles, the Australian Government should:

- *extend eligibility for DGR status to most classes of charitable activities, drawing on the charity subtype classification in the Australian Charities and Not-for-profits Commission Act 2012 (Cth) to classify which charitable activities are eligible for DGR status and which are not*
- *expressly exclude the following classes of charitable activities or subtypes:*

[14] https://royalfoundation.com/early-childhood/

[15] "How women billionaires are changing the face of ECEC – an philanthropy" 1/4/2022 https://www.forbes.com/sites/isabellehau-1/2022/04/01/how-women-billionaires-are-changing-the-face-of-early-childhood-education-and-care--and-philanthropy/?sh=568dedb73b09

– primary, secondary, religious and other informal education activities, with an exception for activities that have a specific equity objective (such as activities undertaken by a public benevolent institution)
– the activities of childcare and aged care in the social welfare subtype (other than activities undertaken by a public benevolent institution) – all activities in the subtype of advancing religion
– activities in the other analogous purposes subtype that are for the purpose of promoting industry or a purpose analogous to an exclusion in another subtype
– activities in the law subtype that further another excluded subtype

- *only grant DGR status to government entities where they are analogous to a charity and undertake activities that would be eligible for DGR status if undertaken by a charity*
- *continue to limit the scope of the DGR system to registered charities and equivalent government entities*
- *only use the specific listing mechanism in exceptional circumstances. When it is used, the Australian Government should increase transparency about applications, how these are assessed, and the decision-making process to maintain confidence in the broader DGR system.*

The result of these changes would be DGR status would be largely removed from schools (i.e. school building funds) on the basis that these donations effectively provide a 'private' benefit rather than a 'community benefit'. The report (p 188-191) seeks to re-focus DGR donations *'towards activities with the greatest net community-wide benefits, while seeking to avoid the potential for the donor to convert a tax-deductible donation into a private benefit.'* On this basis, the PC argues that it is 'difficult to justify' DGR status for school building funds (which lead more to private benefit than community-wide benefit). But activities that have 'an explicit equity objective' should continue to be eligible, which would mean some school or informal activities would still be eligible for support through the DGR system (p.190):

"The Commission is also proposing that education charities should be able to obtain DGR status for specific activities that have an equity objective, without the need to be registered as a PBI. Adopting this approach means that activities such as providing scholarships to assist disadvantaged students access education opportunities, or education programs that specifically assist disadvantaged students would be in scope for DGR status. Where such activities only constitute part of a charity's activities – for example where a school funds a scholarship program – the charity would need to meet the gift fund requirements to quarantine tax-deductible donations to the specific equity activity."

"Expressly excluding these primary and secondary education activities (except where these have an equity objective) would refocus taxpayer support toward other activities that are likely to have a greater community-wide benefit. It would also provide an additional integrity measure to minimise the incentive to restructure charities that undertake education activities to maintain DGR status in a way that can still create a close nexus between donors and beneficiaries. "

However, curiously, the report chooses to treat early childhood education differently from school education. 'Child care and childrens services', as the report describes our sector, has been grouped under 'social and public welfare' alongside aged care rather than with education (p 191). The report (p. 191) mentions 'child care' only once under the category of 'social and public welfare':

"There are some classes of charitable activities that are currently broadly excluded from the DGR system where the status quo of not providing access to DGR status for these activities should be maintained.

*"The activities of **childcare** and aged care that fall within the charity subtype of advancing social and public welfare should continue to be excluded. Expressly excluding these activities provides greater clarity about the types of activities that should and should not be supported through subsidised philanthropy. However, it is important to note that as per the Commission's proposed approach for other activities such as education, PBIs undertaking childcare and aged care activities would continue to be eligible for DGR status. As with school building funds, this exclusion is based on a concern that where the main activities of a subtype of charities is charging fees to provide services to beneficiaries, there are material risks that donors would convert a tax-deductible donation into a substantial private benefit.*

"A further reason for excluding these charitable subtypes from the DGR system is there are other extensive government funding arrangements in place for childcare and aged care. Extending DGR status to these activities risks inequitable and allocatively inefficient provision of additional government support that would overlap with those other funding arrangements."

As a result, a 'child care' entity would not be eligible for DGR **status "other than activities conducted by a PBI."**[16]

Categorising early childhood education as 'social welfare' rather than 'education' is not consistent with two decades of accumulating evidence in brain science and subsequent changes in public policy that squarely position ECEC as the start a child's education journey. When the DGR categories were last considered in 1999, education scholarship funds included 'preschool courses' as well as primary and secondary courses[17].[18] 'Pre-school course' has the same meaning as in the GST Act 1999 and is simply as an 'institution that is approved by the relevant state or territory body to conduct a pre-school course'. This ruling over 23 years ago is outdated and has been overtaken by the revolution that has happened in the regulation and expansion of early childhood education since then. In July 2009, COAG agreed to a National Early Childhood Development Strategy. This led in turn to the development of:[19]

- The National Partnership Agreement on the National Quality Agenda for ECEC (Dec 2009)
- The National Partnership Agreement on Early Childhood Education (Dec 2009)
- The development of the Early Years Learning Framework for ECEC
- The formulation of the Education and Care Services National Law (2010) enacted by all States and Territories
- The establishment of the Australian Children's Education and Care Authority to sustain national co-operation of the National Quality Framework for ECEC (2011)
- The shift of responsibility from the Family and Community Services portfolio to Education (2008).

The Productivity Commission's Draft Report on ECEC extensively canvasses the vital role that early childhood education plays in the education sector (see pages 97-129). The Gillard Royal Commission into Early Learning similarly articulates the importance of early learning to the education journey of children, and how understanding of its importance has progressed rapidly over the past two decades:

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[16] Some organisations that are registered as PBIs also run ECEC services, such as Uniting Care. Some ECEC providers have associated PBI entities that support specific 'social equity' aspects of their work such as KU and SDN. Getting new PBIs established for other ECEC charities would be very challenging with low chances of success.

[17] Income Tax Assessment Act 1997 section 30-37

[18] https://www.ato.gov.au/businesses-and-organisations/not-for-profit-organisations/getting-started/in-detail/types-of-dgrs/l-z/scholarship-funds 'preschool' defined in Tax Ruling GSTR 2000/30 https://www.ato.gov.au/law/view/document?docid=GST/GSTR200030/NAT/ATO/00001

[19] See Parliamentary Library (May 2014) Universal Access to Early childhood education: a quick guide https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1314/QG/ChildhoodEducatAccess#:~:text=In%20December%202009%2C%20COAG%20agreed,and%20Care%20(the%20NQF).

"The science now tells us that making this investment in the early years pays the biggest dividends. While quality schools still really matter, the way a child grows, learns and develops in the years before school is pivotal. The best start lays the foundations for a better life."[20]

In the face of this evidence, the Commissions own inquiry into ECEC and its historic draft recommendations, Goodstart and others in the ECEC sector were surprised to see that the Draft Report on Philanthropy is referring to ECEC as 'child care' and working from a categorisation of 'education' and 'welfare' established more than two decades ago. We also note that the 2000-era narrow recognition of 'Pre-school' in the current DGR categories is missing from the Draft report. We recognise that the Draft report process is an opportunity to identify and address oversights such as this one, and appreciate the opportunity to bring these matters to the Commissions attention so they can be addressed in the final report.

INCLUDE EARLY CHILDHOOD EDUCATION IN THE EDUCATION DGR CATEGORY

Goodstart recognises that not all of the activities conducted by a charity operating in ECEC should be eligible for DGR status, as much of our work is 'fee-for-service' provision of early childhood education services, akin to a private school. But, as described earlier in this report some of our activities do have a net community benefit, and are not being conducted on a fee-for-service basis. Goodstart currently invests around $12 million a year directly in social inclusion activities to support children experiencing vulnerability, and a further $3 million on advocacy, evidence and reconciliation initiatives to advocate that all children should have the best possible start in life. These activities should be eligible for DGR status on the same basis as schools outlined above.

The simplest solution would be for 'early childhood education' to be expressly included in the category of education rather than in 'care' alongside on-comparable sectors like aged care. Early childhood education charities should be able to access DGR status for activities that have an express 'equity objective' while excluding activities where the benefit might flow back to the donor.

The case for treating ECEC as part of education has been made by the Productivity Commission itself in its other November draft report (draft finding 1.1, pages 11, pp. 97-105, 108, 484-488). Indeed, the case for early intervention to support child development through ECEC has been made in multiple places, with the argument that that the greatest returns are made the earlier the intervention.

[20] Royal Commission into ECEC (August 2023) p. 1

Goodstart recommends that recommendation 6.1 be amended as follows:

In the fifth dot point, add the words "early childhood" before primary and secondary education, and delete the words "child care" before the word "aged care".

The relevant paragraph would then read:

In applying these principles, the Australian Government should:

- *extend eligibility for DGR status to most classes of charitable activities, drawing on the charity subtype classification in the Australian Charities and Not-for-profits Commission Act 2012 (Cth) to classify which charitable activities are eligible for DGR status and which are not*
- *expressly exclude the following classes of charitable activities or subtypes:*

  *– **early childhood,** primary, secondary, religious and other informal education activities, with an exception for activities that have a specific equity objective (such as activities undertaken by a public benevolent institution)*

  *– the **activities of aged care** in the social welfare subtype (other than activities undertaken by a public benevolent institution)*

  – all activities in the subtype of advancing religion

  – activities in the other analogous purposes subtype that are for the purpose of promoting industry or a purpose analogous to an exclusion in another subtype

  – activities in the law subtype that further another excluded subtype.