Submission to the Productivity Commission

Response to the Future Foundations for Giving Draft Report

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Independent Schools Victoria

Independent Schools Victoria is an organisation committed to the promotion, development and independence of independent schools and innovative thinking on education and issues affecting those schools.

It was established in 1949. Membership is voluntary and is open to all registered non-government schools in Victoria. Independent Schools Victoria is a member of Independent Schools Australia.

It is a member service association supporting more than 220 independent schools state-wide, with over 156,000 school students:

celebrating and promoting the diversity of Member Schools

highlighting that choice in education complements individual family values

applauding independent schools' individual and collective contribution to Australian society.

Independent Schools Victoria has the four core objectives of:

advocating excellence in education – to the education sector and governments

championing Member Schools – on behalf of members

supporting quality education – for the students of Member Schools

establishing foundations for a lifetime – for students, families and schools, and the community.

In its role it:

speaks as an authoritative expert within the independent education sector

works with governments as a valued partner

delivers on its promises because it is strong, positive, intelligent and empowered

believes in educational diversity and choice of schools

is community oriented and caring for Australians.

More information about Independent Schools Victoria can be found at the website **www.is.vic.edu.au**

Executive Summary

ISV strongly supports the Australian Government's objective of increasing the amount of philanthropic giving in Australia. In order to achieve this goal, ISV agrees with the Productivity Commission's finding that the current Deductible Gift Recipient (DGR) arrangements, which have developed organically over decades, need to be made simpler, fairer and more consistent. We also strongly support the recommendation that the Australian Government should take a principle-based approach to determining which charitable activities not currently in receipt of DGR status should gain this status and which activities currently in receipt of DGR status should lose this status. We believe that a fair and equitable application of these principles would rightly result in a wider range of charitable activities being eligible to receive DGR status.

However, any such principle-based approach must be based on objective measures and evidence. ISV is concerned that the conclusions outlined in the Draft Report regarding school education do not match the stated principles. As such, we conclude that they are based instead on subjective views of the relative merits of different classes of charity. Instead, the Productivity Commission should develop a principle-based approach that is based on clearly defined, measurable objectives that are applied consistently to the specific activities undertaken by all charities, and that do not discriminate between different charities or classes of charity based on subjective judgements of relative merit.

In particular, the recommendation to arbitrarily exclude primary and secondary education from DGR status, thereby removing DGR status from all school building funds and, potentially, a number of scholarship funds, is based on misconceptions about how schools operate, and is neither simpler, fairer nor more consistent. This is particularly the case when comparing the recommended treatment in the Draft Report of school education and higher education. The recommendation would have a negative impact on all Australian schools, as well as on governments. In applying its stated principles consistently, the final report should therefore reverse recommendation 6.1.

Finally, given the heavy focus that the Draft Report places on the activities of charities demonstrating an 'equity objective', the Productivity Commission needs to clearly define what it means by 'equity' and explicitly state the activities of charities that the Productivity Commission believes do and do not meet this definition.

Recommendations

Recommendation One:

That the Productivity Commission develop a principle-based approach that is based on clear, consistent, objective measures and that is applied equally to all charities

Recommendation Two:

That the Productivity Commission determine eligibility for DGR status on the basis of the charitable activities being undertaken, not on the class of charity

Recommendation Three:

That the Productivity Commission remove the arbitrary and artificial distinction in the Draft Report between school education and higher education

Recommendation Four:

That the Productivity Commission alter draft recommendation 6.1 to expressly include primary and secondary education in those activities that would retain DGR eligibility

Recommendation Five:

That the Productivity Commission clearly define the term 'equity objective' in the Draft Report and outline which DGR categories it believes currently meet this objective

Recommendation Six:

That the Productivity Commission confirms that scholarships awarded on merit would meet 'equity objectives'.

Recommendation Seven:

That the Productivity Commission's Final Report explicitly list all DGR endorsement types currently in existence, and confirm which would retain and lose DGR status.

Submission

Introduction

Independent Schools Victoria (ISV) welcomes the opportunity to make a submission in response to the Productivity Commission's *Future Foundations for Giving* Draft Report (the Draft Report). This submission should be read in conjunction with the Independent Schools Australia (ISA) submission, as well as submissions from individual schools that provide greater detail about the specific nature of their operations.

This submission addresses the aspects of the Draft Report that specifically impact on school education – namely the recommendations to:

- introduce a principles-based approach to determining which charitable activities should receive deductible gift recipient (DGR) status,
- expressly exclude primary and secondary education from DGR eligibility,
- remove DGR status for school building funds unless the school can demonstrate a specific, equity objective,
- retain DGR status for scholarship funds that retain a specific, equity objective,
- retain DGR status for cultural organisations such as public libraries, public museums and public art galleries.

The submission is made on behalf of ISV's 225 Member Schools, all of which will be directly affected by the initial recommendation to remove DGR status from most school building funds and the potential to either remove DGR status or limit the extent of scholarship funds. These schools educated over 156,000 school students in 2023, as well as providing a wide range of other services to the community, such as early childhood education and care services.

The submission is also made as a representative of school education more broadly. If implemented, the recommendations made in the Draft Report would impact negatively on all Australian schools – government, Catholic and Independent. It would also increase the financial pressures on government, and reduce equity across all schools.

In preparing this submission, ISV has obtained limited, sample survey data from 33 schools, and has consulted with schools to determine how their DGR funds currently work. However, the timing of the release of the Draft Report, coinciding with school holidays, has constrained our ability to obtain detailed data from a wider range of schools. The Productivity Commission should note the submissions made by individual schools in order to understand the specific impact of the Commission's recommendations on them.

Establishing a principle-based approach

School building funds were first granted DGR status in the mid-1950s. Since then, the Australian Government has made a large number of changes to the charitable activities which receive DGR status. Decisions have been made organically and incrementally, as various governments have responded to specific, individual issues by creating or cancelling specific DGR classes. At no point has a systematic and consistent assessment been made of the overall rationale for the DGR system.

ISV agrees with the Commission's Draft Finding 5.1 that the current system is 'poorly designed, overly complex, and has no coherent policy rationale' [p2]. All charitable activities should be assessed for DGR status on their merits, with DGR status being extended to a wide range of charitable activities that have not been considered in previous, piecemeal decisions.

ISV further agrees that any future approach should be to design a system that is 'fairer, simpler and more consistent' [p2]. Any recommendations to change the current arrangements should be assessed to ensure that they meet these three principles. Where a proposal leads to the system becoming less fair, less simple and/or less consistent, then that proposal should be rejected.

ISV believes that an additional philosophical objective should explicitly be added to this list – that any decisions made to change DGR arrangements should be based on clear and consistent parameters and objective evidence, and then applied consistently to all charities. This explicit objective would strengthen the Draft Report's conclusion that a principle-based approach would 'reduce the risk of distortions to giving due to different treatment of activities that offer very similar outcomes' [p16].

Recommendation One:

That the Productivity Commission develop a principle-based approach that is based on clear, consistent, objective measures and that is applied equally to all charities.

This recommendation would also ameliorate the statement in the Draft Report that 'making assessments about which classes of charitable activities should be within scope of the DGR system is challenging, subjective and contestable' [p17]. Making decisions about changes to DGR status will have a significant impact on both the charities affected by the decisions and on society as a whole. As such, they should be challenging and contestable. However, in order to establish a truly fair DGR system, any subjective considerations of the relative merits of different charities or classes of charity should be removed when determining which activities are eligible for DGR status. Instead, the implementation of clear and objective measures that are then applied equally to all charities would remove the need to make subjective and potentially biased decisions about the relative merits of different classes of charity.

This is particularly the case where the Commission calls for the DGR system to direct support towards activities ‘where there is likely to be the greatest net benefits to the community’ [p2]. Of the wide range of activities undertaken by charities, working out which of those activities provided the ‘greatest net benefit’ is inherently subjective. Attempting to then apply this rationale to whole classes of charities – the approach taken by the Draft Report – is even more problematic.

Taking this argument to its logical conclusion, the Australian Government would constantly be assessing the relative merit of all charitable activities, and constantly altering the scope of the DGR arrangements to ensure that only those activities deemed the most worthy on the day receive support. It is entirely appropriate for governments to make these sorts of decisions regarding the direct grants that they provide to charities. However, it is not appropriate to lock this level of uncertainty and arbitrariness into the taxation system.

ISV supports the argument outlined by the Productivity Commission that ‘policy settings to encourage giving should align with peoples’ motivations’ [p10]. Where a charity can demonstrate that its activities provide a net benefit to the community, a potential donor is capable of making their own decisions as to whether the donor sees the benefit as sufficient to justify making a decision to donate. Removing the ability of individual donors to make such as assessment would completely remove the purpose for having DGR status in the first place.

As an example, ISV is extremely concerned about the blanket finding in the Draft Report that formal higher education activities should remain within scope of the DGR system, while other forms of education such as school and pre-school education should not be within scope. This recommendation directly contradicts the Productivity Commission’s stated and reasonable objective of ‘reducing the risk of distortion to giving due to different treatment of activities that offer very similar outcomes’ [p16].

All of the arguments in the Draft Report as to why school education should lose DGR status apply equally to higher education providers. In particular, given that higher education providers are permitted to use DGR funds for any aspects of their operations, the theoretical ability for higher education providers to allocate DGR funding to activities that provide a personal benefit to the donor are significantly higher than for schools. While schools can only allocate DGR funds to future-focused activities such as building funds and scholarship funds, tertiary institutions can allocate DGR funding to immediate, operational expenditure that may have direct links to benefits for individuals – for instance by supporting a research program that provides direct employment to a family member of the donor.

A truly principled approach would assess each activity of school education and higher education on its merits. However, without providing any evidence to support its arguments, the Commission appears to have based its recommendations on a subjective belief that higher education provides a justifiable benefit to the community, while school education does not.

In pointing out this contradiction, ISV does not believe that higher education providers should lose DGR status – these institutions perform an important function for the community, which provided a net benefit to society. A recommendation to retain DGR status for higher education providers appropriately recognises this fact. However, it directly contradicts the stated reasons why the Draft Report recommends that school education loses DGR status. In making Recommendation 6.1, the Commission cannot legitimately argue that it is applying a consistent, principle-based approach to determining DGR status for all charities.

Recommendation Two:

That the Productivity Commission determine eligibility for DGR status on the basis of the charitable activities being undertaken, not on the class of charity.

Recommendation Three:

That the Productivity Commission remove the arbitrary and artificial distinction in the Draft Report between school education and higher education.

As demonstrated in the subsequent sections of this submission, when assessing school education activities against the principles outlined in the Draft Report, the Productivity Commission has misunderstood the arrangements that currently apply to school DGR funds – particularly school building funds – and has thereby mischaracterised the risks of school education retaining DGR status. ISV therefore does not support that school education lose DGR status.

Recommendation Four:

That the Productivity Commission alter draft recommendation 6.1 to expressly include primary and secondary education in those activities that would retain DGR eligibility.

First Criterion: A Rationale for Government Support

The first principle outlined by the Productivity Commission against which a charitable activity should be assessed in order to retain DGR status is that there is a rationale for government support for the activity. The Draft Report argues that a charitable activity will meet this principle where:

- the activity provides broad, community-wide benefits, which would be undersupplied in the absence of government support, and for which people benefit even where they are not directly paying for it, and/or
- the activity meets equity and redistributive objects by helping people in need or improving access to goods and services.

School education has long been considered to be a legitimate charitable purpose, precisely because it provides broad, community-wide benefits. All of Australia benefits where schools provide a quality education for all students. The Commission's report does not dispute this fact.

Moreover, when considering the proposal to remove DGR status from school building funds, it is clear that even though school building funds currently possess DGR status, the provision of school capital infrastructure has been undersupplied. In an environment where governments are struggling to maintain and upgrade existing school facilities, and will be required to make enormous investments to meet additional, future demand, it is unclear why the Commission would recommend removing private investment that helps to alleviate the pressure on governments.

While it is clear that school education, as a class of charity, meets the first element of this criterion, in recommending that primary and secondary education as a class lose DGR status except where they can demonstrate an 'explicit equity objective', the Productivity Commission seems to be choosing to apply only the second element of this criterion to this class of charity.

And even then, the Commission seems implicitly to assume that school education, in which, by law, all children are required to participate, does not meet equity and redistributive objects. As evidenced by the 'base plus needs' approach used to provide direct recurrent funding to schools, all schools enrol students with need. Yet the Draft Report recommends that all schools – government, Catholic and Independent – lose DGR status unless they can do something extra, over and above other classes of charity, to demonstrate that 'explicit equity objective'.

In addition, the Draft Report notes that 'meeting this first step does not require an activity to be explicitly aligned with the policies and priorities of the government of the day' [p181]. This directly contradicts the argument put forward later in the Draft Report, where the Productivity Commission bases its conclusion that school education should not retain DGR status, in part on the argument that ’current arrangements [for school education] do not obviously align with the broader objectives and priorities of the education funding system’ [p189].

ISV therefore argues that, on any reading of the first criterion for retaining DGR status, school education would meet this criterion, and should therefore not lose DGR status on these grounds.

Second Criterion: Net Benefits from Government Support

The second principle outlined by the Commission against which a charitable activity should be assessed in order to retain DGR status is that there should be net benefits to the community from leveraging philanthropy, compared to alternative methods of government support. This may occur where:

- the support identifies and addresses gaps in the provision of goods and services in the community, and/or
- the activity provides net benefits to alternatives, such as grants, because it is likely to generate broader benefits.

The Draft Report notes that this criterion will be met where DGR status promotes productive efficiency, because it promotes additional activity compared to other forms of government support. As identified in the previous section, Commonwealth and state governments are struggling to meet their existing financial obligations regarding school infrastructure. Leveraging philanthropic investment in school infrastructure assists to reduce that burden on government, which would otherwise be forced to pick up the shortfall.

The Draft Report also notes that this criterion will be met where it is more efficient, arguing that this would occur where it provides certainty or flexibility in funding for charities – particularly charities that would otherwise be more heavily reliant on government funding. For government schools, where decisions on where to allocate capital funding are made centrally, there would be no change in efficiency if they switched from philanthropic support to direct government funding support. For non-government schools, which are required to apply for the limited, direct. government capital funding on a competitive basis, within short-term funding cycles and against timeframes that are more designed to suit government timing than schools' needs, there is a clear efficiency benefit from retaining the certainty and flexibility that DGR status currently provides.

Direct Government Funding

A key criticism made by the Commission of school building funds retaining DGR status is that non-government schools currently receive significant amounts of government funding – both recurrent and capital. This logic implicitly assumes either that the level of support being provided to non-government schools in 1954, when school building funds first obtained DGR status, was appropriate, or that there is a perfect trade-off between government funding and DGR support. This argument also ignores the facts that:

- government schools, which are also eligible for DGR status, have always attracted a significant amount of government funding

- a wide range of charities attract substantial government funding, but have not been targeted to lose DGR status.

The criticism is also based on significant misconceptions about how government funding for schools works. The Draft Report argues that retaining DGR status for school building funds ‘can duplicate or cut across other funding arrangements’ [p189]. In fact, retaining DGR status for school building funds is unrelated to existing recurrent funding streams, and serves to complement and supplement existing capital funding arrangements.

Schools currently receive both recurrent and capital funding from both state/territory governments and the Commonwealth. While different states and territories allocate recurrent funding to schools in different ways, there is a broad consensus of approach, whereby the funding is allocated according to a ‘base plus needs’ approach. This means that all schools receive a base level of funding because they serve the important purpose of educating children, with each school receiving additional funding according to the level of educational need of the specific students at that school.

Under the *Australian Education Act* 2013 and the associated *Australian Education Regulations* 2023, both the Australian Government recurrent funding for all schools – government, Catholic and Independent – and the amount of total funding that each state and territory must allocate for school education under the National School Reform Agreement, are fundamentally based on the concept of the Schooling Resource Standard (SRS).

The SRS is an estimate, based on the characteristics of the students at each school, of the total public funding that each school requires. It has been calculated on the efficient and effective cost of educating a student with no additional educational needs in a school for one year. Each element of Commonwealth funding – both base and need – is then expressed as a percentage of the SRS.

For non-government schools, the value of the base funding is further reduced according to the Capacity to Contribute (CtC) of the school community. Where a school community has greater capacity to contribute financially to the school, its will receive less funding. Those schools with the most socioeconomically advantaged parents will receive 20 per cent of the base entitlement of a government school, and given that base funding typically represents 76 per cent of an Independent school’s total funding entitlement, the funding arrangements already have a very strong socioeconomic equity component to them.

When calculating the value of the SRS, the Australian Government explicitly excluded the capital costs of school education. So the recurrent funding that schools receive takes no account of their requirement to invest in capital infrastructure. Moreover, legislation explicitly prevents most non-government schools from using their recurrent funding for capital purposes. Ironically, the only exception to this requirement is special schools, Special Assistance Schools and Majority Aboriginal and Torres Strait Islander Schools, all of which would all qualify as Public Benevolent Institutions, and would therefore not lose their DGR status under the current recommendations.

With regard to capital funding, all government support from the Commonwealth and Victorian Government for Independent schools is administered by the Victorian Independent Schools Block Grant Authority (VIS BGA). The VIS BGA runs an annual competitive application process for schools to access capital funding. In order to receive that funding, schools must demonstrate both educational and financial need. Contrary to the opinion expressed on page 191 of the Draft Report, which called for revisions to capital funding, to prioritise supporting certain schools (for instance in areas with significant enrolment increases), this is already a fundamental part of the VIS BGA assessment process of each school's level of educational need.

When assessing a school's financial need for a capital grant, the VIS BGA will consider the school's capacity to access finance through all other relevant sources – including their ability to access funding through a school building fund. Where a school attracts significant DGR support through a building fund, that school's financial need for direct capital support will automatically decrease. In this way, there is already an efficient mechanism to ensure that schools that attract significant DGR funding will be less likely to qualify for direct capital funding and, where they do, the funding they receive will also be reduced – thus freeing up additional capital funding to support schools with greater need and less capacity to fund that need themselves.

Even while noting, as outlined above, that the Draft Report states that DGR funds do not need to be explicitly aligned with government priorities, it is important to note that retaining DGR status for school building funds enables capital funding to better align with government priorities, and to target more closely those schools that can demonstrate both a financial and an educational need for support. All schools have a need for capital infrastructure and DGR status reflects this. However, the DGR system helps to supplement current funding arrangements rather than cut across them, by replacing direct government funding with philanthropic investment that increases the net investment in school education while also reducing the cost to government. Meanwhile, direct government funding can explicitly focus on targeting relative need.

'Other' schools

Another argument put forward by the Draft Report that criticises the lack of a link between funding for school building funds and the 'appropriate' prioritisation of infrastructure needs is that the definition of a 'school' has been extended through case law to include other types of education providers [p189]. It is unclear why this argument leads to the conclusion that all school education provides should lose DGR status – if this is deemed to be inappropriate, the logical solution would be to amend the legislation to make it clear which education providers were and were not deemed to be schools.

Community Access

In its Draft Report, the Commission noted that there would be a case to retain DGR status for school building funds where the infrastructure is made available for use by the general community. However, the Draft Report dismissed this idea, stating simply that ‘in practice it is likely that such an arrangement would be difficult to implement and enforce on an ongoing basis. … [and] may also necessitate high compliance burdens for entities engaging in these classes of activity’ [p190]. This statement both underestimates the extent to which schools already make their facilities available for community access and overestimates the compliance burden to schools of doing so.

ISV has surveyed schools and conducted detailed conversations regarding this issue, and a consistent message from schools is that they are already providing considerable community access to their facilities. Schools have clearly indicated that, while they need to ensure that they operate within regulatory limitations (such as ensuring that community use of DGR-funded facilities does not limit their use as school buildings, and ensuring that schools meet their regulatory obligations with regard to child safety and acting on a not-for-profit basis), they would be not only willing but eager to make their facilities more widely available to the general community.

Indeed, schools have consistently informed ISV that a long-term decline in the funding and provision of community facilities, particularly by local government, frequently leaves schools as the only providers of such facilities in their communities. For instance, one school informed ISV that they already provide substantial community access to a wide range of school facilities. This includes, but is not limited to making the school swimming pool available to the public outside of school hours and providing local primary schools with access to sporting and other facilities to which the schools would otherwise have no access. In particular, the school has noted that the local council regularly approaches the school in order to ensure that the local community is able to access opportunities that the council can not afford to provide. While DGR funds are used to contribute towards a small percentage of the total cost of these facilities, the bulk of the funding is provided directly by the school. The school has noted that, while it sees itself as a part of the broader community, and wants to continue to provide community access to its facilities, the loss of DGR status for school building funds will make that case harder to make than it would otherwise have been.

Removing DGR status from school building funds would not only restrict the provision of school education, but also wider community access to social activities. Schools have also argued that the compliance burden they face occurs when they decide to share facilities, not based on making this a condition of retaining DGR status. As they are already making their facilities available to the community, contrary to the statement on page 190 of the Draft Report, there is no additional compliance burden they would need to bear.

This does not mean that the Productivity Commission needs to explicitly link the retention of DGR status to increased community use of school infrastructure. Rather it demonstrates even further that schools already provide a net community benefit. ISV therefore argues that school education, including school building funds, would meet this criterion, and should therefore not lose DGR status on these grounds.

Third Criterion: Material Risk of Private Benefit

The final principle outlined by the Commission against which a charitable activity should be assessed in order to retain DGR status is that the activity is unlikely to create a material risk that donations can be converted to private benefits. The possibility for individual donors to convert donations to private benefits exists for any donation that may be made to any charity – from a person who donates to medical research to prevent a condition to which they are genetically predisposed or which a family member has previously suffered, to a person whose family members are also members of a community organisation, or to a person whose name is added to a plaque on a seat at a cultural organisation.

As identified by the Commission, however, the private benefits accrued by the donor should be immaterial, or sufficiently low or incidental to the benefits of the donation to the general community. The Commission has noted that this is a greater risk where a charity also charges fees for people to access its services. But the Draft Report notes that this risk is mitigated where the nexus between the benefits and the donations is weak, and points out that activities that are partly funded by user fees can still remain within the scope of the DGR system.

This is the main criterion that the Draft Report uses for justifying its recommendation to remove DGR status from school education. However, in stating that '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 activities' [p188], the Commission has overestimated the private benefit that accrues to individuals who donate to a school building fund, relative to the broader benefits that they provide.

Who benefits?

In singling out school education as a provider of private benefits, the Commission noted that the potential donors to school building funds are most likely to be those directly involved with the organisation – namely 'students, their parents or alumni'. Across the schools surveyed by ISV, they demonstrated a wide range of sources for tax-deductible donations. These includes current parents and staff, alumni and former staff, businesses, external foundations and other community members.

For obvious reasons, it is not school-aged children who are donating to school building funds. ISV's survey results suggest that, on average, the Commission was correct to suggest that current parents and alumni are the most likely to donate. The survey also found that where schools identified current parents as the most common donors to their school building fund they frequently made small donations. This makes sense, as parents are already paying school fees. Larger donations were more likely to be received from alumni.

ISV does not believe that the fact that parents and alumni are the most common donors means that these people are receiving private benefits as a result. Alumni have already passed through the school, and their parents have already paid the school fees. There is no private benefit to the alumnus – except to the extent that future generations of their family might benefit from the donation. However, the same applies to a person with a genetic, medical condition donating funding to medical research, in the hope that a cure for that condition can be discovered in the future that would benefit their relatives.

Regarding current parents, the extent to which they personally benefit from their donation has also been overestimated by the Commission. In ISV's survey, none of the schools surveyed indicated that donors played a role in selecting the projects that were funded through their tax-deductible donations. Of the survey participants:

- 21.2 per cent indicated that donors had no involvement in, or awareness of, the specific projects to which their funding was allocated
- 63.6 per cent indicated that donors were informed of the specific project for which their donation would be used, but that the projects were determined by the school
- 15.2 per cent indicated that donors were able to select the particular project for which their donation would be used, but only from a list of projects already identified by the school's master plan.

All respondents indicated that the projects funded by the school building fund were determined by the school's capital master plan, rather than by the donors, and therefore were linked to the broader needs of the school community rather than the donors' individual preferences.

The ISV survey also revealed that, with regard to school building funds, schools need to ensure that they have sufficient funding to undertake major capital projects before they commence the projects. The amount of time taken for a school to undertake a major capital project, including planning, preparation and construction, means that, even when a school is collecting donations for a specific project, there is typically a significant gap between a parent making a tax-deductible donation to a school building fund and the building becoming available. The benefit that accrues is likely to apply to the next generation of students – after the parents have finished paying fees. The same applies to donations to scholarship funds which are designed to last and to continue to provide benefits to students over a long period of time.

Thus the concept of 'paying it forward' is an important and consistent element of all schools' approaches to donations to their DGR funds. In their messaging to potential donors, particularly current parents, schools emphasise that previous donations to the school have enabled the school to provide its current educational programs and facilities, and that current donations are for the benefit of future generations. Students are also encouraged to reflect on how the generosity of previous generations benefits them, and to develop a 'giving mentality' of their own.

This explicitly future-focused approach to DGR funds, which would mitigate against direct, personal benefits for current donors, is inherent in the nature of the aspects of school education that currently attract DGR status. As previously identified in this submission, the same would not apply to other categories of DGR entities, such as higher education institutions, which the Commission assumes face 'less likelihood of donations being used in a way that provide scope for a substantive private benefit to the doner [sic]' [p191].

Charities and Fees

Another argument put forward in the Draft Report is the claim that, since schools also charge fees to parents, this is an indication that 'the likelihood that they generate broader, community-wide benefits is reduced' [p188]. The Draft Report notes that donations to school DGR funds do provide community benefits, but nonetheless implicitly assumes that there is a trade-off within school education – the greater the private benefit to the parents of a student, the lesser the community benefit. While stating that there is a 'likelihood' of this occurring, the Commission does not put forward any evidence to demonstrate that this is occurring, or the probability of it occurring in individual schools. Instead, it uses this argument to justify removing DGR status from all aspects of school education – regardless of the level of fees being charged by different schools.

The Commission fails to apply the same logic to other classes of charities. For instance, the Draft Report specifically notes that higher education institutions also charge fees. But in this instance, the Draft Report simply concludes that the issue is not relevant, and that there is a 'less likelihood' that the matter is relevant. As identified earlier in this submission, ISV argues that the ability of higher education institutions to use DGR funding for all aspects of their operations creates a greater, not a lesser, risk of private benefit. Under a truly principle-based approach, if the Commission was concerned about charities' other sources of income, given the fungibility of money, they would apply the same approach to all charities that received any private income of any kind.

Fee Invoices

The Draft Report expressed concern about schools that included voluntary contributions to school building funds on their fee invoices, alongside tuition fees. The Commission argued that this was 'strongly indicative' that the main beneficiaries of DGR donations were the parents who received the invoices and that 'any broader community-wide benefits are likely to be incidental' [p188].

ISV and schools dispute this conclusion. Our sample survey of schools has demonstrated that a minimum of schools include references to voluntary donations on fee invoices. Where schools elect to do this, they do so for reasons of efficiency and effectiveness – both schools and parents who wish to make voluntary donations find it administratively easier to handle both transactions together, rather than separately. In line with the ethical standards of their professional association, fundraising staff in schools demonstrate a high degree of professionalism, and are careful to ensure that any references to voluntary contributions comply with the law, and are clearly marked as separate and voluntary. Parents are capable of understanding the difference between voluntary contributions and compulsory charges, and making informed decisions about those different amounts.

Nonetheless, even if this practice was common, the logical solution would not be to remove DGR status for all aspects of primary and secondary school education. Instead, the solution would be to amend the DGR legislation, or to obtain an ATO ruling, confirming that it was not permissible to include voluntary donations on compulsory fee invoices.

Any potential private benefits from donations to school DGR funds are the same as those that would accrue to individuals who donate to any charity that received income from any source other than government. Any charity that experienced a decrease in DGR funding would face the choice of either increasing other income sources to match the loss, or to scale back the extent of the activity in question. Under a truly principle-based approach, if the Commission was concerned about the extent to which private benefits accrued to individuals, this should be applied equally to all charities.

ISV argues that school education, including school building funds, should therefore not lose DGR status on these grounds.

Other Issues

The Impact of removing DGR status from primary and secondary education

While it was difficult for schools surveyed by ISV to quantify the exact proportion of donations that would disappear, if they lost DGR status, most estimated that they would see a drop in donations of at least 50 per cent, with a number anticipating that all of the current donations to their DGR funds could dry up. In particular, schools noted that, where their DGR funds were being supported by external foundations, these foundations explicitly sought to donate to funds with DGR status. As such, any change to the DGR status of school funds would instantly cause these foundations to switch to other charitable activities for their donations.

The Draft Report identified that the majority of schools do not receive significant amounts of money through their DGR-status school building funds, and data obtained through ISV's sample survey supports this statement. However, the Productivity Commission is incorrect to conclude that the benefit of DGR endorsement can be measured solely by the amount of funding received by the school, and thus to state that 'many schools servicing communities with greater socio-economic disadvantage are less likely to benefit from DGR endorsement for school building funds' [p190] simply because they receive smaller total amounts of funding.

In practice, the schools that receive higher amounts of DGR support are larger, longer-established schools. These schools have more and older buildings to maintain, and frequently have to incur higher costs to maintain them. As noted by one school, 'increasing pressure for sustainable development, energy efficiency and preservation of historic buildings create costs far beyond those of a greenfield new build'.

Nonetheless, this does not mean that losing DGR status would have a minimal impact on schools that receive fewer donations. Indeed, while the loss of DGR status would impact all schools, it was noted by several schools in conversation with ISV that the impact would be greater for smaller, newer, less resourced and more socioeconomically disadvantaged schools. While the larger, well-established schools have established networks and alumni associations over decades, smaller and newer schools have not yet been able to build these networks. As a consequence, these schools are more reliant on the benefits of tax deductibility to attract philanthropic support. One consequence of Recommendation 6.1 would therefore be to decrease equity in school education, rather than, as implied by the Commission, to simply reduce the support for schools that the Commission believes do not need government assistance, while leaving other schools relatively unaffected.

Where schools lose DGR status for their current eligible funds, there are three likely outcomes:

- the schools could be forced to seek alternatives, equivalent to the income foregone.

Under this scenario, the most likely outcome is that non-government schools would be forced to increase their fees to cover shortfalls. Where schools increase their fees, this would create a greater burden on parents, thus reducing choice for parents and decreasing equity in educational access. Where the parents who can no longer afford the fees choose to send their children to a government school instead, this would increase the direct financial burden on governments – both in terms of recurrent and capital funding support.

- governments would need to increase their direct financial contributions towards school capital infrastructure.

This is clearly the consequence of government schools losing DGR status, since the sole additional source of income for government schools is direct funding. But there would also be increased need for government to provide support to non-government schools, to ensure that the total capital stock remained sufficient to ensure that all students have access to adequate facilities, to ensure that they can all participate fully in education.

- a reduction in the adequate financial support over the capital cycle sees the total capital stock for school education deteriorate over time.

This would be the worst possible outcome for society. The level of government funding being provided for school capital is already struggling to meet need, and expected increases in the number of school-aged children in Australia will only place additional pressure on schools. Where inadequate facilities are already placing significant limitations on the ability of children to access education, any changes that reduce the amount of voluntary, private investment in education, and which thereby reduces the ability of government to target direct funding towards those school with the greatest need, should be rejected.

A definition of equity

The majority of DGR funds in schools are for school building funds, and these funds comprise the bulk of the funding received by schools. However, many schools also provide donors with access to other DGR funds – particularly scholarship funds and library funds. Of the schools that participated in ISV’s sample survey:

- 100 per cent had a school building fund with DGR status
- 63.6 per cent had a scholarship fund with DGR status
- 42.4 per cent had a library fund with DGR status

Given that Table 6.1 in the Draft Report does not propose any exclusions for cultural funds, ISV presumes that the Commission does not propose to remove DGR status from school library funds. We welcome this recommendation.

At a range of points, the Commission calls for various charitable activities to demonstrate 'explicit equity objectives' in order to retain DGR status. Table 6.1, for instance, applies this particularly to school education. While Box 4.7 defines both horizontal and vertical equity, the application of the word 'equity' is extremely imprecise, and can mean very different things to different people. The Draft Report does not outline anywhere what the Productivity Commission considers would constitute an 'explicit equity objective', nor who would define such an objective. ISV recommends that, if the Final Report retains any references to explicit equity objectives, the report needs to provide greater clarity about how the Commission defines this term.

Recommendation Five:

That the Productivity Commission clearly define the term 'equity objective' in the Draft Report and outline which charitable activities and classes of charity it believes currently meet this objective.

In particular, current DGR arrangements confirm that scholarship funds will attract DGR status where the scholarships are awarded 'on merit or for reasons of equity'[1]. ISV's sample survey of schools has shown that, of the schools that offer DGR-eligible scholarship funds:

- 42.8 per cent currently offer scholarships funded through DGR donations solely on explicit equity considerations (usually, but not exclusively, socioeconomic)
- 33.3 per cent currently fund scholarships on both a merit basis and on other equity considerations through a DGR-eligible fund
- 14.3 per cent currently use their DGR scholarship fund solely for merit-based scholarships, with merit being identified in a wide range of areas.

It is not clear from the Draft Report whether the Commission considers that scholarships awarded on merit would meet the undefined 'equity objective' test, and therefore which scholarship funds would remain eligible for DGR support. If the Commission does not reconsider its recommendation to remove DGR status from the entire school education class, this point needs to be made explicit in the report.

[1] https://www.ato.gov.au/businesses-and-organisations/not-for-profit-organisations/getting-started/in-detail/types-of-dgrs/dgr-table-deductible-gift-recipient-categories/education#Education

Recommendation Six:

That the Productivity Commission confirms that scholarships awarded on merit would meet ‘equity objectives’.

Finally, there are a number of DGR endorsement types that are included in the education category that are linked to school education, but that have not been explicitly mentioned in the Draft Report. These include, for example:

- Roman Catholic public funds for religious instruction in government schools
- Public funds for ethics education in government schools
- Public funds for rural school hostel buildings
- Government special schools

ISV believes that, if the Commission retains its recommendation to remove DGR status from all school education activities unless the activity can demonstrate an ‘explicit equity objective’, the Productivity Commission needs to be explicit about which of these endorsement types would and would not retain DGR status. While ISV presumes that there would be no question of public funds for rural school hostel buildings and government special schools retaining DGR status, we would be particularly concerned if the Productivity Commission determined that funds for religious instruction and ethics education in government schools retained their DGR status merely because they were provided in government schools.

Recommendation Seven:

That the Productivity Commission’s Final Report explicitly list all DGR endorsement types currently in existence, and confirm which would retain and lose DGR status.

Conclusion

When the Treasurer first released the Terms of Reference for the *Future Foundations for Giving* Report, he explicitly identified the Australian Government's aim to double the amount of philanthropic giving to Australian charities by 2030. ISV was therefore surprised that the Draft Report recommended the removal of DGR status for DGR categories associated with school education, particularly since school building funds represent the second largest category of existing DGR-endorsed entities.

Some current donors, particularly charitable foundations that actively seek DGR-endorsed entities for their donations, will simply transfer their donations to other charities that do possess DGR status. But the bulk of donors to schools do so because they have a connection with the school – for instance as a current parent, a previous student or a local community member. These donors believe that the school does provide a wider benefit to society, and donate accordingly. It is incorrect to assume that, were school funds to lose DGR status, the funds would simply be diverted to other charitable endeavours. As a consequence, the recommendation to remove DGR status from most charitable activities undertaken in school education would have the impact of reducing net giving, not increasing it.

In seeking to improve the current DGR landscape, ISV agrees with the Commission that 'there is no explicit policy rationale justifying why some charitable activities are within scope, but others are not' [p15]. We support any recommendation that increases the number of charitable activities that can access DGR status. We also support the establishment of an objective, principles-based approach to determining which charitable activities should receive the benefit of taxpayer support, provided through DGR status.

However, the Draft Report fails to meet its own stated intention of applying a principle-based approach to the question. It fails to provide appropriate evidence that school education would fail to meet its stated principles, and fails to apply those stated principles to other charities. As such, it is hard to avoid the conclusion that the Report is based on misconceptions about the benefits that school education, particularly non-government school education, provide to society. This is consistent with the implementation of other recent policy developments in school education, such as the application of payroll tax by the Victorian Government to some Victorian non-government schools. Public policy should be implemented fairly and equitably, and not based on unfair stereotypes and preconceived ideas. ISV calls for the Productivity Commission to rethink Recommendation 6.1 in its Final Report to the Australian Government.