SAVE OUR SCHOOLS

Education Policy Comment

Productivity Commission Should Recommend Ending Tax Deductibility For All Donations To Private Schools

The Productivity Commission has recommended that school building funds no longer be eligible for tax deductible donations. It should go further and end tax deductibility for all donations to private schools which are primarily benefiting the richest schools in the nation.

In its Draft Report on Philanthropy, the Commission made a compelling case to end the tax concession for school building funds. It said there is no rationale for the concession and that the benefits accrue to individuals connected with the schools rather than providing community wide benefits. This finding applies just as much to other tax-deductible funds operated by private schools, but the Commission failed to apply its principled approach consistently by recommending ending tax deductibility for all donations to private schools. It should do so in its final report.

The Draft Report is a damning indictment of the misuse and inequity of the Deductible Gift Recipient (DGR) system for school building funds which are predominantly operated by private schools:

> 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, particularly where students are charged fees. While such donations undoubtedly provide benefits, the likelihood that they generate broader community-wide benefits is reduced. Potential donors are most likely to be those directly involved with the organisation, such as students, their parents or alumni. This could lead to tax-deductible donations being directly converted into lower fees. [p. 188]

Further:

> …the Commission considers that government support for school building funds through the DGR system is no longer an effective or efficient mechanism for delivering government support to the areas of greatest need, and that current arrangements do not obviously align with the broader objectives and priorities of the education funding system.
> ….government support through DGR-eligible school building funds is currently not prioritised according to a systemic assessment of the need for the funding between different schools. The level of indirect government support through DGR-eligible donations is instead determined by the contributions made by donors and the projects that these donors wish to support in particular school communities, rather than through an education system-wide process of assessment and prioritisation of infrastructure needs and priorities. [p. 189]

It said that excluding these school building funds from DGR status "would refocus taxpayer support toward other activities that are likely to have a greater community-wide benefit [p. 190.].

The DGR system is designed to provide tax incentives for donations to eligible charitable organisations. School building funds are currently eligible for such tax concession and they account for a high proportion of entities with DGR status. The Commission estimated that there are about 3,500 charities in the religion and/or education category that have DGR status for school building funds. Total donations to these charities were almost $800 million in 2021. The donations were heavily concentrated in a small number of these charities with 10% receiving about 80% of total donations. The Commission observed that these figures suggest that schools servicing communities with greater socio-economic advantage are more likely to benefit from DGR status for school building funds.

Donations to school building funds are a lucrative source of income for high fee exclusive private schools. For example, 50 of the most exclusive private schools in Australia raked in $461 million in donations over the period 2 017 to 2021, an average of $92 million a year. The large part of this was through school building funds. In 2021, these schools also received $539 million in government (Commonwealth and state/territory) recurrent funding.

Tax deductibility for donations to building funds is used by rich private schools to support an arms race in ornate facilities. For example, it contributed to the notorious $29 million library at Scots College in Sydney that resembles a Scottish castle and Cranbrook's recent $120 million building spree on an aquatic centre, theatre and underground carpark.

These donations are a major source of inequity in school funding. They are ignored in assessing the financial need of private schools for government funding. They add to the huge resource advantage of these schools. They are a stark contradiction of the Gonksi principle of funding schools according to need.

The Productivity Commission also noted that it is a common practice of schools to include voluntary contributions to school building funds on fee invoices, alongside tuition fees. It said this is evidence that the benefits are private rather than community wide:

> Such direct solicitation for donations from the people who are also charged fees is strongly indicative that the main beneficiaries from an organisation's service are likely to be the individual recipients of the service and that any broader community-wide benefits are likely to be incidental. [p. 188]

The Commission said that tax deductibility for donations to school building funds have outlived their usefulness. Tax-deductible status for school building funds was introduced in 1954 when there was little government support for private schools and uncertainty about the constitutional basis for Australian Government involvement in education. Since then, government support for private schools has expanded considerably.

In contrast to the situation when the DGR system was introduced, private schools now receive extensive government recurrent and capital funding. In addition to government-subsidised donations, private schools also receive a range of tax concessions from Australian, state, territory and local governments. This includes Fringe Benefit Tax exemptions and partial rebates, income tax exemption, franking credit refunds, GST concessions, land tax exemptions, stamp duty exemptions, payroll tax exemptions and rates exemptions. These exemptions are a form of indirect government support for private schools. The Draft Report said this change of circumstances is cause for re-assessment of the need for school building funds to have DGR status:

> Providing indirect government support through school building funds means government funding is not prioritised according to a systemic assessment of the infrastructure needs of different schools. [p. 15]

The Commission found that the current DGR system is not fit for purpose:

> ….the arrangements that determine which entities can access DGR status are poorly designed, overly complex and have no coherent policy rationale. This creates inefficient, inconsistent and unfair outcomes for charities, donors and the community.

Indeed, one academic study has called it “a dog’s breakfast”.

The Commission recommended that it should be reformed to direct support to where there is likely to be the greatest net benefits to the community. The Commission proposed a comprehensive overhaul of the DGR system applying a principles-based framework to assess and improve the DGR system. It proposed that eligibility for DGR status should be based on the following principles:

- The activity is expected to generate net community-wide benefits that would otherwise likely be undersupplied by the market. The activity improves access to goods and services, including for people on lower incomes, in line with general government objectives for a more equitable society.
- Providing government support for the activity through tax deductible donations generates broader net community benefits than provided by other government funding mechanisms, such as grants.
- The activity is unlikely to create a material risk that tax-deductible donations can be converted to private benefits for donors. Any private benefits need to be sufficiently low or incidental to the act of donating, relative to the benefits available to non-donors. These risks may be heightened for activities for which there is likely to be a close nexus between donors and intended beneficiaries.

It said that charities whose activities do not align with these principles should be excluded from the DGR system. It found that primary, secondary, religious and informal education did not meet these principles and should be excluded in future. It found there is no coherent policy rationale for why these activities are eligible for DGR status. The Commission said that it is difficult to justify DGR status for school building funds under the above principles.

The Draft Report said that an exception should be made for education activities that have an explicit equity objective. All activities undertaken by charities registered as public benevolent institutions should be remain eligible for DGR status because they provide services to groups of people that are in need. For example, many private schools in remote Aboriginal and Torres Strait Islander communities currently have DGR endorsement as a result of registration as a public benevolent institution and this would remain the case under the Commission’s proposed reforms.

Exclusion from DGR would apply to public schools as well but few public schools have DGR status and their income from building funds is relatively small. However, the DGR system presents similar equity failures in the public system as with private schools, albeit on a smaller scale. It means that funding is not prioritised according to assessment of need. It is likely that public schools in more advantaged areas attract more donations for building funds than schools in disadvantaged areas.

Inadequate facilities are a major problem for public schools. Much higher proportions of students in public schools have their learning hindered by a lack of physical infrastructure and poor quality infrastructure than in private schools, especially high fee private schools. Data from the OECD’s Programme for Student Assessment in 2018 show that 35% of students in Australian public schools have their learning hindered by a lack of physical infrastructure compared to 9% of students in private schools and only 4% in higher fee private schools. In addition, a further 36% of students in public schools have their learning hindered by poor quality infrastructure compared to 11% in private schools. Within the private school sector, 16% of students in lower fee schools have their learning hampered by poor infrastructure compared to only 3% in higher fee schools.

However, the DGR system is not a solution to this problem because of the inequities it creates and because the capital needs of public schools are far greater than can be met through tax deductible donations. Governments at all levels should ensure adequate capital funding of public schools, especially disadvantaged public schools. Direct government funding is likely to be a much more equitable and effective mechanism for upgrading infrastructure facilities in public schools than relying on supplementary 'ad hoc' funding through the DGR system.

While school building funds are the main source of donations to private schools, these schools also operate a variety of other funds that are eligible for tax-deductible donations. They include broad-function foundations, library, scholarship, arts and even staff salary funds. These funds play a similar role to building funds in private schools in that the benefits go to those associated with the school rather than provide wider community benefits. It is surprising that the Commission did not assess the role of these funds according to its principles for determining whether they provide a community benefit. It should be a task for its final report.

Donations to private schools that attract a tax deduction or exemption result in less revenue collected by the Australian Government through income tax, which could otherwise be used to fund core government services, such as health care and education, or fund charities directly through grants.

The Commission's findings and recommendations have effectively rejected submissions by private school organisations for continued access to DGR status for school building funds. The justifications presented in these submissions are incredibly weak. Independent Schools Australia and the Association of Heads of Independent Schools submitted that Independent schools should continue to have access to DGR status because donations are critical to capital development and to enhance their capacity to offer additional educational resources.

The National Catholic Education Commission (NCEC) said that DGR status encouraged parents of Catholic school students to contribute to school and community assets. In fact, the NCEC wants to extend tax-deductible donations to include pastoral care and student well-being services. It did not provide any justification for such an extension to the DGR system. The NCEC is never bashful about pushing its snout in the taxpayer trough whenever there is an opportunity, despite Archbishop Anthony Fisher's admission that Catholic schools have "never had it so good".

Private school organisations generally failed to justify their continued access to tax deductible donations. Private school organisations see access to DGR status as an entitlement rather than based on the principle of demonstrated net community benefit and need.

There will be a barrage of manufactured outrage at the Commission's recommendations by private school organisations and their political and media allies. Indeed, the barrage has already begun. The National Catholic Education Commission claims the Draft Report is an attack on religious schools and communities. The principal of the exclusive Pymble Ladies College in Sydney said the recommendation was "shortsighted" and that "we're not in an industry that is ridiculously well funded". This was from a school whose income is nearly $40,000 per student, well over double the average for a NSW public school, and which received $10.8 million in government funding in 2022. he Shadow Education Minister, Sarah Henderson, claims it is a "direct, ideological attack on independent and faith-based schools: and will "devastate non-government schools" despite the fact that the biggest beneficiaries are the richest schools in the country. Sky News claimed that the Report would further erode Australia's Judeo-Christian values.

Let's hope that the Commission stands by its findings and recommendations. Indeed, it should apply its principled approach consistently by extending them to end tax deductibility for donations to school building funds to other tax-deductible funds operated by private schools including broad-function foundations, library, scholarship, arts and other funds. Donations to these funds are all likely to be converted into private benefits and have no net community benefit. The principles adopted by the Commission apply just as much to these funds as they do to building funds. Ending DGR status only for building funds opens the possibility that some of these donations will be diverted to other DGR funds.

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