



DGR CATEGORY FOR PASTORAL CARE SERVICES

– CONSULTATION ON IMPLEMENTATION DESIGN

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1. ABOUT ISA

Independent Schools Australia is the national peak body representing the Independent school sector. It comprises the eight state and territory Associations of Independent Schools (AISs). Through these Associations, ISA represents 1,187 schools and over 667,259 students, accounting for close to 17 per cent of Australian school enrolments.

ISA's major role is to bring the unique needs of Independent schools to the attention of the Australian Government and to represent the sector on national issues.

Independent schools are a diverse group of non-government schools serving a range of different communities. Many Independent schools provide a religious or values-based education. Others promote a particular educational philosophy or interpretation of mainstream education. Many Independent schools have been established by community groups seeking to meet particular needs or to reflect the religious values of a particular community. Independent Catholic schools are a significant part of the sector, accounting for eight per cent of the Independent sector's enrolments.

Independent schools include:

- Schools affiliated with Christian denominations for example, Anglican, Catholic, Greek Orthodox, Lutheran, Uniting Church, Quaker and Seventh Day Adventist schools
- Non-denominational Christian schools
- Islamic schools
- Jewish schools
- Montessori schools
- Rudolf Steiner schools
- Schools constituted under specific Acts of Parliament, such as grammar schools in some states
- Community schools
- Indigenous community schools
- Schools that specialise in meeting the needs of students with disabilities
- Schools that cater for students at severe educational risk due to a range of social/emotional/behavioural and other factors.

Most Independent schools are set up and governed independently on an individual school basis. However, some Independent schools with common aims and educational philosophies are governed and administered as systems, for example Lutheran schools. Systemic schools account for 17 per cent of schools in the Independent sector. Four out of five schools in the sector are autonomous non-systemic schools.

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2. OVERVIEW

The Australian Government recently announced a new deductible gift recipient (DGR) category to be added to the Income Tax Assessment Act 1997, allowing the establishment of a fund to collect tax deductible donations, for use in the provision of pastoral care services in Australian schools.

The Australian Government already provides funding for pastoral care through the National School Chaplaincy Program (NSCP). The government has expressed its intention for the new DGR category to complement the NSCP by providing additional private investment in pastoral care while confirming DGR eligibility for pastoral care services provided under the NSCP.

Following are the key criteria identified by Treasury as underpinning the legislative criteria establishing eligibility for the proposed new pastoral care DGR category:

1. A DGR category for **funds** operated by an **Australian Charities and Not-for-profits Commission (ACNC) registered charity** or **Australian government agency**.
2. The fund must be established and maintained **solely to support the activity of delivering pastoral care services** to **Australian primary and secondary school students**.
3. The provision of pastoral care must be delivered by an **appropriately qualified worker** whose **predominant purpose and function is to provide** pastoral care to students **in a school environment**.

3. GENERAL COMMENTS

Feedback from the state and territory is broadly supportive of the proposal to create a DGR category for pastoral care services however this was not universal.

One Association of Independent Schools (AIS) noted the following concerns that were raised by Independent schools.

- There are limited avenues for philanthropy in Australia.
- The proposal would likely disadvantage low SES communities and small schools which have limited to capacity to fundraise.
- DGR status would lead to additional compliance.
- Enhancing wellbeing is more effective when everyone takes responsibility. This is a critical area for schools and one which governments have a responsibility to support. Schools should not have to rely on fundraising to support students in this area.

Related to the last point is another concern that was repeatedly raised which was whether this proposal would result in a cessation of existing government pastoral care and other well-being support to Independent schools, such as the National School Chaplaincy Program (NSCP).

4. FUNDS AND CHARITY REGISTRATION

1. Are there drawbacks or concerns with targeting the DGR categories to funds?

The use of a fund as opposed to an institution will substantially broaden the eligibility for DGR establishment, affording many providers the opportunity to set up a fund. This was supported.

The proposal to limit DGR status to funds operated by registered charities or an Australian government entity was also broadly supported as it is consistent with other, existing DGR arrangements and would also go some way in allaying any concerns around governance and compliance.

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5. PASTORAL CARE

2. Are there drawbacks or concerns with relying on the ordinary meaning of pastoral care services in this way?

The consultation paper states that the “the ordinary meaning of pastoral care services in the context of school students refers to the provisions made to advise students about personal wellbeing and their moral and ethical concerns” and goes on to list areas of activity that would be covered by the definition, including activities currently undertaken within the NSCP.

It was noted that the definition of ‘pastoral care services’ in the context of school students requires additional clarification as it does not necessarily match all the activity that is currently going on in schools in the provision of pastoral care. However, a broad definition is supported.

It was also noted that the proposed definition of ‘pastoral care services’ does not extend to providing clinical assessment, diagnosis or treatment of students, or formal case management of students’ health concerns and that this seems restrictive – particularly combined with the requirement for pastoral care to represent the majority of a person’s time.

Many Independent schools employ qualified psychologists and/or counsellors who may carry out one or more of these functions as part of a broader role. These functions would appear not to meet the proposed definition of ‘pastoral care services’ and therefore, would likely not be captured by the new DGR category.

Ideally, the definition of ‘pastoral care services’ should be extended to capture a broader range of services. For instance, would outdoor education be considered a pastoral care/wellbeing activity? And where a religious school provides support to students, it is not clear where is the line between a wellbeing purpose and an ‘ordinary religious purpose’ to the activity?

3. How does the proposed definition of pastoral care services apply to existing wellbeing programs and initiatives that are currently in place?

The government has indicated its intention for the NSCP definition of pastoral care to fit within the DGR category’s definition.

The proposed DGR category definition for pastoral care is “advising students about personal wellbeing and their moral and ethical concerns.”

Under the NSCP pastoral care refers to looking after the personal needs of students, not just their academic needs, through the “provision of general spiritual and personal advice”.

The use of terms moral and ethical should result in the DGR category definition being broader and therefore encompassing a wider range of activities when compared to the NSCP definition however this may require further examination to ensure this is the case. A broader definition, as noted above, is an advantage rather than a concern and is supported.

6. ACTIVITY TEST

4. Are there drawbacks or concerns with establishing an activity test for this DGR category?

There was general support for the purpose test, wherein deductible donations may be used to support a wider array of activities to support students’ personal, emotional or social wellbeing. Rather than facing a comprehensive but limiting list of activities, this would enable the school, within broad guidelines and parameters, to establish whether the aim of a particular activity was consistent with the intent of the legislation.

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Further, the use of the purpose test may provide a more stable base of eligibility for the DGR category. The activities undertaken by an organisation may change over time, but the overall purpose of the organisation is likely to remain the same. Therefore, if an organisation is in compliance with its overarching purpose, DGR eligibility can be more easily maintained regardless of its activities.

Another reason for preference being given to the purpose test is that it may allow pastoral care service providers more flexible service delivery options which may include new or innovative approaches, which the activity test may prohibit.

Ultimately, whichever test provides schools with a greater level of discretion and captures a broader range of activities and services is preferred.

7. PRIMARY AND SECONDARY SCHOOL STUDENTS

5. Are there concerns about the scope of the definition of schools for this DGR category.

It is proposed that pastoral care under the DGR category can be provided to students in the following settings:

- government and non-government schools; and
- pre-school and approved curriculum-based learning institutions (bringing kindergarten into scope).

Formal childcare, after school care, tertiary and Sunday schools are excluded.

While generally supported, it was also noted that the definition of 'primary and secondary school students' in the paper requires clarification as it is not clear if the inclusion of students in pre-school and approved curriculum-based learning institutions (but excluding formal childcare, after school care, tertiary institutions and Sunday schools) means that early childhood service providers (including those which are attached to schools) are included or excluded? If they are included, then the language would need to move away from specific references to 'primary and secondary school students.'

Under the proposal the provision of services is primarily aimed at students, but there are circumstances where others may be involved and fall under the definition, for example parents, guardians, or school staff where directly linked to the pastoral care of a student. However, it is also stated that the DGR cannot be used for services provided solely to others (for instance to parents).

This requires clarification as there are many examples where a person provides services to parents, carers or guardians that provide an indirect benefit to the children. The same would apply where the staff member or staff are undertaking professional learning to help improve student wellbeing. If an activity test is applied, would these activities be captured by the new DGR category, even though the person may not provide most of their time supporting students directly? If the DGR were to state clearly that where the activity is conducted primarily *for the benefit* of students, then it could legitimately include activities where the benefit is indirect.

8. APPROPRIATELY QUALIFIED WORKER

6. Does this approach provide sufficient certainty to wellbeing service providers? Are there examples of guidance that the ATO could have regard to when determining eligibility for the DGR category?

The consultation paper states that there is no intention of including pastoral care worker qualification requirements in legislation, leaving such matters up to the school. This approach was supported by the sector. However, the paper later states that when assessing whether funds are supporting

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appropriate services, the ATO may consider relevant qualifications required by pastoral care workers, by educational authorities at that time.

The proposal does not offer service providers sufficient certainty regarding qualification requirements. If, in fact, pastoral care workers will require relevant qualifications then providers need to know:

- what educational authorities the ATO considers relevant in assessing qualifications requirements for pastoral care workers; and
- when multiple workers are present, whether all workers are required to have appropriate qualifications or only the most senior worker present. For example, breakfast clubs with a convenor and other workers.

There are also some educational settings where there are little or no pastoral care services and reference to an appropriate educational authority may be difficult. For example, kindergarten services are unlikely to have an appropriate educational authority for pastoral care.

Schools are best placed to decide which individuals and their qualifications are most suited to deliver pastoral care programs. Therefore, for clarity and consistency, the DGR qualification requirement should be a matter for schools.

The other issue that was noted with this requirement is that it strongly implies that the only activities that could be funded are those where the person delivering the activities is an employee of the school. Schools deliver a wide range of pastoral care and wellbeing programs to students, and it is frequently more efficient and effective for these programs to be delivered by external organisations, who are hired/contracted to provide services to the school.

The terms of the DGR should be expanded to make it clear that schools can use DGR funding to implement external programs that are brought into the school specifically to address wellbeing/pastoral care issues.

9. PREDOMINANT PURPOSE AND FUNCTION OF THE WORKER IS THE PROVISION OF PASTORAL CARE TO STUDENTS

7. Are there drawbacks or concerns with establishing a predominant role test for this DGR category?

There was a concern that the predominant role test may preclude the use of funding in schools whereby a staff member has a split role, for example:

- teaching and pastoral care; or
- pastoral care, disability and inclusion.

The consultation paper does not define the terms 'worker' or 'predominant' and does not discuss the eligibility of contractors where they are delivering pastoral care and other programs within or across several schools.

A concern with this requirement is that smaller schools, where dual roles are common, may be placed at a disadvantage. School staff (particularly, but not solely in smaller or rural schools) play many roles, including providing pastoral care services to students, but it may be difficult to categorize that as their 'predominant role'.

For instance, it is common for a trained psychologist to be employed by a school to provide both direct, proactive mental health services and to undertake a broader, wellbeing/pastoral care focus. Schools have confirmed that it is quite possible for schools to define a specific time fraction for the different elements of the role of these staff.

Under the NSCP, if the worker qualification requirements are met, chaplains can undertake dual roles within the school, with funding allocated to the chaplaincy portion of the role.

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AISs suggested that it would be of most use to schools if a school can define a designated time fraction for a staff member to deliver pastoral care services, and that this time fraction be supported through the DGR, even though the time fraction may not represent at least 50% of the staff member's time.

If a pro-rata approach is adopted, the term predominant will not need to be defined. Without a proportionate approach, the term predominant will need further clarification as it is subject to interpretation.

This would also go some way to addressing the concern that given that the donations can be used to fund the cost of teaching staff where their predominant role in the school is to support the delivery of pastoral care services to students, that some schools may seek to take advantage of this ambiguity and use funds collected through this avenue to pay salaries of teachers and support staff. Using a pro rata approach would clarify would proportion of staff time is able to be funded through the DGR category.

As noted above, it should also be clarified if funds can be used for contractors who may meet all criteria except the predominant role test. It is not clear if it is the intention of the DGR category to exclude all contractors or whether there are their circumstances where contractors will be permissible.

10. WORKER WHO IS AVAILABLE IN THE SCHOOL ENVIRONMENT

8. Are there any concerns with the proposed reference to 'the school environment'?

The intent of the DGR category is that pastoral care services are provided in person on school grounds during school activities. Exceptions include:

- Where external factors inhibit in-person support and electronic communication is necessary e.g., natural disaster, pandemic; and
- in limited circumstances where pastoral care services are provided to families at home to assist with a student's needs that were identified at school.

The consultation paper does not provide a definition of 'school environment.' It is not clear if this includes activities that take place within the school context, but do not take place on school grounds (for example, camps, excursions, swimming carnivals etc.).

It was also queried whether the provision of pastoral care to distance education students would be within the scope of the funding. There is continuing growth in the number of students enrolling in distance education programs and the provision of pastoral services to school students is increasing. It is therefore it is important that distance education providers who have pastoral care workers be within the scope of the funding.

11. CONCLUSION

9. Are there any additional factors that should be taken into account?

As noted above, while the current intention is for the DGR category to be complementary with the NSCP, there is a concern that in the future, the government may add remove access to or create needs-based eligibility criteria to the NSCP. If this were to occur, a school with a DGR fund for pastoral care, may no longer be able to access NSCP funding. This is of significant concern to those schools currently accessing the NSCP.

10. Are there further considerations relevant to the implementation of this DGR category?

It was asked what guidance documents will be provided by ACNC or the ATO to pastoral care providers who wish to establish a fund under the new DGR category.

12. ADDITIONAL COMMENTS

There were questions raised as to how the use of donations for this type of activity would work in practice. The hiring of pastoral care staff is a recurrent salary cost. As such, schools need to be able to generate enough income annually to be able to employ a person. Donations, however, are not usually recurrent. Schools would need to carefully plan if they intended to use these funds to employ specialist staff and be willing to supplement from other income if necessary.

It was also queried whether other DGR categories could be considered to fund the continuing growth of the independent education sector. For example, P&F associations are often a significant source of resources for independent schools, assisting with the purchase of a broad range of school items from sporting equipment to school facilities. If the P&F were a DGR category this would likely significantly increase the funding capacity of P&F associations and create an increased source of funds for school items that cannot currently be purchased using the DGR status of the school building fund.