

AUSTRALIAN COUNCIL FOR THE DEFENCE OF GOVERNMENT SCHOOLS

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STATE AID TO WEALTHY RELIGIOUS SCHOOLS THAT IS NEVER QUANTIFIED – BECAUSE THEY ARE CHARITIES

The direct grants to religious schools in Australia amounting to almost \$20 billion are in fact the tip of the subsidisation iceberg. Every so often research is done into another source of State Aid to religious schools - the taxation expenditures. These are billions of dollars of exemptions provided to religious organisations by virtue of the fact that they were labelled ‘charities’ in an English House of Lords case - Lord Macnaghten’s definition of Charity in the Pemsel case of 1891.

According to the Business Review Weekly of March 24-30 2005 for example, ‘charities’ constituted a \$70 billion third sector of the Australian economy. The use of the common law rather than statutory definition of ‘charitable’ in taxation legislation has been considered a problem by various Law Reform Commissions and some members of the judiciary such as Justice Kirby. The ‘legal’ definition of ‘charitable’ is a ‘transplanted category,’ a concept imported into taxation law from trust law.

In the early years of this century there was unrest about this matter, and DOGS refer readers to a book published by Max Wallace of the Secularist Society entitled *The Purple Economy* and research done by one of their members at <http://www.austlii.edu.au/au/journals/ANZLawHisteJl/2006/9.pdf>

As a result of turn of the century unrest, a Charities Commission was set up by the Labor Government in 2012. But its powers are limited and, if anything, the problem has escalated.

David Hardaker from Crikey has blown the whistle for the next generation . This is one of four articles he has written for Crikey :

[God’s business: how the big religions scripted a massive tax handout](#)

Organisations like the Australian Catholic Bishops' Conference, a registered basic religious charity, are largely free from accountability.

[David Hardaker](#)

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This is part one of a four-part series on charities in Australia. [Read the series here.](#)

The Australian Catholic Bishops' Conference supports the work of Australia's most senior clergy, operating from an office in Canberra with more than 40 full-time staff. It is also a registered charity, and as such is eligible for a series of tax breaks on income, FBT and GST.

But different rules apply to the Catholic Bishops' Conference compared to other charities. It does not need to declare its income or any of its financial details to the regulator or to the broader public. It is exempt from the governance standards the government enforces on other charities. And even if it did have to comply with those standards, the regulator — the Australian Charities and Not-for-profits Commission (ACNC) — could not remove any office holder, no matter what they had done.

It adds up to a near total immunity from accountability.

bodies like the Bishops' Conference being subsidised by the taxpayer. How generous that subsidy is, we don't know.

That's life as a basic religious charity, a BRC. It's been this way for 10 years, ever since the Labor government did a deal with the religious lobby in order to pass its legislation to establish the ACNC in 2012.

The Bishops' Conference is not the only large, well-heeled organisation in receipt of such favours. The Anglican Investment and Development Fund, a creature of the Anglican Church, is also a BRC. So is the umbrella body for Australia's Pentecostal churches, Australian Christian Churches (ACC). Hillsong, naturally, is in the BRC club too.

All up, 10 years on from the passing of the ACNC legislation, 17% of Australia's 46,500 registered charities in Australia are BRCs. That equates to around 8000 charities operating in near total secrecy and largely beyond the reach of the charity regulator.

There has never been any sound policy basis for the BRC dispensation, in the view of charity and taxation law specialists.

Successive Coalition governments have refused to abolish the special arrangement and the secrecy has remained intact, despite evidence from the McClelland royal commission into child sex abuse that found that lack of transparency in church-run organisations was fundamental to their poor culture.

The Pell carve-out

The special deal for religious charities is a political scandal that flew under the radar for the life of the Coalition government.

It came about principally through the lobbying of the Catholic Archdiocese of Sydney, then under the control of Cardinal George Pell. *Crikey* understands that Pell's powerful consigliere, Danny Casey, led the one-to-one lobbying effort in Canberra.

The church is exceptionally good at persuading politicians to its view. In 2012 it was ruthlessly effective.

Labor governed in a minority and didn't control numbers in the Senate. Lining up with the Catholic Church, the opposition under Tony Abbott was against any form of regulation for charities, even though the case for a regulator had been well made over a series of inquiries. The opposition's spokesman, Kevin Andrews, promised an Abbott government would abolish the ACNC altogether.

The first draft of the ACNC bill in 2012 had no special BRC carve-out. According to Professor Ann O'Connell of Melbourne University Law School, the BRC category only appeared in a later version of the bill as a result of lobbying by established religious entities. "It would appear that the inclusion of the exemptions and the breadth of the exemptions were matters that were negotiated in private consultation with various churches," wrote O'Connell, a tax specialist appointed to a working group that advised on tax concessions for the not-for-profit sector in 2012.

"The exemptions serve no logical purpose."

From little things big things grow

Religious bodies made the case that under the constitution the government had no right to tread into religious territory. The religious interests that lobbied for the BRC exemption also argued it was all too hard for small, volunteer-run church organisations to comply with the reporting demands of the regulator.

Ultimately, while the traditional churches pushed the image of the struggling congregation up the road providing scones and tea to make ends meet, the laws that finally passed had no limit on size.

What's it led to?

A detailed analysis of ACNC charities data from 2020 carried out by Dr Phil Saj, a senior visiting lecturer at University of Adelaide's Adelaide Business School, has found that close to 300 charities with BRC status are classified as large and conduct enterprises including investment and development funds, property trusts and income-generating activities (such as funerals).

Saj's examples include:

- The Anglican Investment and Development Fund

- According to [its website](#) the Anglican fund manages more than \$10 million in assets, providing services similar to a bank or a building society. Last year it reported an operating surplus of \$912,789
- Australian Christian Churches
 - The ACC represents Australia’s Pentecostal churches. It runs a financial services company covering insurance, lending, investment and risk management to churches, schools and ministries. Its parent company reported total assets of more than \$34 million and a liability for debentures issued of more than \$33 million.

Saj also noted that the Australian Catholic Bishops’ Conference had issued a 2020 annual report — the first time it had done so — in which it published a single-line disclosure of \$11 million in revenue for the preceding 12 months. “The issue is whether or not the ACNC laws on BRCs are being applied in a way that meets not just the letter of the act, but the purported intention of legislators that small unincorporated religious communities with limited resources, and which are not engaged in significant economic activities, should not be unduly burdened with reporting requirements,” Saj said.

Will the Albanese government act?

As Scott Morrison’s secret ministries saga demonstrates, Australia is still learning about the profound impact of a decade of highly partisan government, when once independent bodies came to be treated as the political property of the Coalition.

But will Labor — now back in control of the agency it created — take on the powerful vested interests that have benefitted from a decade of special treatment?

An earlier version of this story said that Assistant Minister for Competition, Charities and Treasury Andrew Leigh had not responded to our request for comment. We wish to clarify that due to an emailing error Leigh’s office did not receive our request before publication. The minister has undertaken to look into the issues raised by our story.

About the Author

[David Hardaker](#)

Investigations Editor [@d_hardaker](#)

David Hardaker has an extensive career as a journalist and broadcaster, primarily at the ABC where he worked on flagship programs such as *Four Corners*, *7.30*, *Foreign Correspondent*, AM and PM. He spent eight years reporting in the Middle East and can speak Arabic.

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