



MARIST BROTHERS
Province of Australia

Towards the Bicentenary of the Institute | 2015 Montagne | 2016 Fourvière | 2017 La Valla

REGISTERED POST

28 September 2016

Review of Local Government Rating System
Independent Pricing and Regulatory Tribunal
PO Box K35
HAYMARKET POST SHOP NSW 1240



Dear IPART,

TRUSTEES OF THE MARIST BROTHERS ("THE BROTHERS") SUBMISSION ON "REVIEW OF THE LOCAL GOVERNMENT RATING SYSTEM" DRAFT REPORT AUGUST 2016 ("REPORT")

We thank you for the opportunity to make our following submission in response to the above mentioned report.

Who we are

The Marist Brothers is an international Religious Institute of the Catholic Church founded by St Marcellin Champagnat, in 1817. Members of the Institute ("Members") give themselves to following Christ as Mary did, through the vows of poverty, chastity and obedience. This religious commitment is lived in community and expressed in service, especially to the young. The mission given by St Marcellin to his followers was to "make Jesus Christ known and loved". This has been achieved over the last two hundred years by educating, forming and caring for young people. Schools have been a favoured arena for the Brothers' apostolic work.

We have a long established tradition of serving the people of New South Wales. In 1872, four Brothers arrived from Europe to form the first Australian community and established St Patrick's at Church Hill in Sydney (The Rocks) that same year. By 1900, the Brothers had further established St Benedict's Broadway (1875), Parramatta Marist High School (1875), St Joseph's Hunters Hill (1881), St Francis Haymarket (1883), Sacred Heart Darlinghurst (1883), Villa Maria Hunters Hill (1883), Marist College North Shore (1888), St Vincent's Westmead (1896), All Saints College Maitland (1898), and St Francis Xavier Hamilton (1898). The basic administrative unit of the Institute is a Province, and the current Province of Australia was formed when the Melbourne and Sydney Provinces of the Marist Brothers amalgamated in December 2012 under the Trustees of the Marist Brothers.

As of today, we have 51 schools nationally. In New South Wales alone we have 16,354 children enrolled in our 21 schools, and we hope to maintain and grow these numbers in continued service of the NSW community in both the near and distant future.

Additionally, Marist Youth Care ("MYC") is a not-for-profit organisation established in 1896 and still operated across Australia by The Brothers. MYC's programs and services are focused on helping young people at 'risk' and their families by giving young people a chance to learn new skills through education, training and community involvement. In NSW, after the State Government, MYC is one of the largest provider of residential care for at risk young people. MYC's services are heavily concentrated in Western Sydney in support of vulnerable young Australians and their families and include Aboriginal Specific Services, Asylum Seeker Services, Community and Family Engagement, Education Services, Employment and Training Services, Homelessness Services, and Out of Home Care Services. Each night, in NSW, we accommodate over 150 young people in our Residential and Settlement & Asylum Seeker Services.

Our model

Educational and religious instruction in our schools and youth care centres is provided by Members supplemented by lay teachers. Our Administration team is similarly composed, and is supplemented by lay persons where particular administrative skills are required that are not to be found amongst our Members at the time.

Our teaching and administrative team Members do not draw a salary, and must rely upon the Institute to provide their basic needs including food, clothing and accommodation. This structure is absolutely fundamental to the mission and teaching of The Brothers. Further, The Brothers are responsible for providing the training and formation needed by our teachers in order to deliver high quality religious and scholastic education with a heightened focus upon supporting the community; our end goal is that we produce good citizens with a heightened sense of social justice.

Our lands

The 21 schools and 11 residential care facilities established by The Brothers in NSW are conducted upon land that has been acquired over time by The Brothers, largely through gifts and charitable donations received from members of the public. All of our operations are run on a strictly not for profit basis.

In keeping with the Marist tradition described above ("*Our model*"), The Brothers provide accommodation to Members who engage either as teachers, youth workers or administrators. This accommodation is provided on private residential land owned by The Brothers at no cost to the Member, who receives no salary and is therefore unable to pay rent. Without the provision of this

residential accommodation without cost to Members, The Brothers would not be able to provide these vital services to the NSW community. The Brothers also provide accommodation to lay Headmasters and Boarding Masters whose presence on or near school grounds 24/7 is a matter of absolute necessity to ensure the safety and welfare of boarding students, and to properly discharge the schools' duty of care in this same regard.

Further, The Brothers operate a facility where Members and lay people who work as teachers, Ministers, administrators and youth workers receive training and instruction vital to the performance of their respective roles upon land owned by The Brothers. When the centre is not being used by The Brothers, it is available to be used for a nominal fee by other similar Institutes, school groups and by the general public. Use of this modern training facility is provided at cost to Members and non-Members alike, and it produces no commercial return to The Brothers; all fees are used for the maintenance and upkeep of the facility. Without this training, The Brothers would not be able to maintain the standard of their services to the NSW Community, and as a result these vital services would, in time, be discontinued.

Our concerns

The Brothers support the review and specifically the draft recommendation that rate exemptions be "directed at land uses that generate substantial public benefits for the community" (pp 1.3.2, Report). We further agree with and support the notion that "eligibility should be based on the use of the land, regardless of who owns it" (Report pp 1.3.1) on the basis that "land used mainly to deliver private benefits is not exempt from rates" (pp 6.1, Report)

However, we are very concerned by the statement that "land used for commercial or residential purposes should not be exempt" as it appears that "commercial or residential" is being used synonymously within the Report to mean land generating "private benefits" (pp6.1, Report).

We are very concerned that land classified as either "residential" or "commercial" will be automatically and strictly excluded from any exemption regardless of the exempt purpose for which the land is being used (Draft Recommendation 10, Report).

Specifically, it appears as though the use of lands by The Brothers in pursuit of their charitable purpose as described above ("Our lands"), has not been properly considered in the draft definitions of "commercial activity" (Box 6.2, Report) or "residential activity" (Box 6.3, Report).

Land owned by The Brothers used to accommodate unpaid Members, lay Headmasters and Boarding Masters, and as residential care facilities for at risk young people, although potentially "residential" according to the definitions within Report, is so inextricably linked by use to the provision of education and advancement of religion that these vital public services could not be provided by The Brothers

without it. On this basis, we submit such land should remain exempt from rates because its use is inextricably linked to the delivery of public benefits for the community, and not used to deliver private benefits.

Similarly, land owned by The Brothers used to provide training referred to above in “Our lands” is so inextricably linked to the provision education and advancement of religion that these vital public services could not be provided by The Brothers without it. On this basis, we submit such land should remain exempt from rates because its use is inextricably linked to the delivery of public benefits for the community, and not used to deliver private benefits.

Our submission

1. The core policy issue when determining whether or not a rate exemption should apply is that the public should only subsidise rates where a public benefit is generated; private interests paying for their private benefits
2. Accordingly, the “test” for determining whether or not certain land is rateable should be: “is the land used to generate a public or private benefit?” (“Public Benefit Test”)
3. Whether or not land has a residence or a training facility standing upon it is at best a poor proxy for the Public Benefit Test, and may result in incorrect assessments of rateability that have the undesirable outcome of a reduction in public benefits for the community
4. The Public Benefit Test is clearly defined and well understood by the law:
 - a. Whether land is used for religious purposes is a question of fact (*Trustees of Congregation of Marist Sisters v Holroyd MC* (1959) 4 LGRA 367);
 - b. Regard must be had to such factors as whether the use to which the land is put benefits the public as a whole and whether the use is a source of private profit (*Sydney Grammar School v Sydney CC* (1958) 3 LGRA 68);
 - c. A body or purpose that is otherwise charitable does not necessarily lose that characteristic merely because payments are made by the recipients of its benefits, and in some cases though the payments result in profits which are applied to the purpose of the charity (*MC of Sydney v Salvation Army (NSW) Property Trust* (1931) 31 SR (NSW) 585); and
 - d. A claim for exemption will almost certainly fail where what is pursued is some additional or collateral non-charitable activity whose profits are applied in aid of the charitable purpose (*Tennant Plays Ltd v Inland Revenue Cmrs* [1948] 1 All ER 506).

5. If our submissions 1-4 are not able to be adopted by IPART, we submit in the alternative that the definitions of “commercial activity” and residential activity” be modified to exclude situations where residential or commercial land is used for an exempt purpose.
6. If our submissions 1-5 are not able to be adopted by IPART, we submit in the alternative that IPART recommend The Brothers receive a private ruling that any land used by The Brothers in connection with their charitable purpose be exempt from rates.

In closing

The Brothers have provided vital public services to the NSW community over the past 144 years and counting, and wish to be able to continue, grow and develop the services we provide in response to the increased and changing needs of this community. Maintaining the rate exemption on land owned by The Brothers and used in connection with our charitable purpose is an integral part of our ability to so do, and is completely consistent with the principles of equity, commercial neutrality and the maximisation of public benefit that we understand are at the core of this reform.

We welcome your feedback and any questions you may have in relation to this submission.

Yours sincerely,



Br Peter Carroll FMS

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