



Dissenting report – Liberal Members of the committee

Introduction

The Australian Charities and Not-for-Profits Commission Bill 2012 and the Australian Charities and Not-for-Profits Commission (Consequential and Transitional) Bill 2012 would establish a new independent statutory office, the Australian Charities and Not-for-profits Commission (the “ACNC”) which will be the Commonwealth level regulator for the not-for-profit (“NFP”) sector. The exposure draft also establishes a new regulatory framework for the NFP sector.

The objects of the Bill are to maintain, protect and enhance the public trust and confidence in the NFP sector and to support and sustain a robust, vibrant, independent and innovative NFP sector¹. Although the Government has claimed the creation of the ACNC will reduce red tape and avoid duplication², Liberal members of the Committee are concerned that the ACNC will instead add another layer of regulation to the operation of most not-for-profit charities, many of whom are already struggling with the regulations currently imposed by Commonwealth and State agencies. These concerns have been born out in the evidence presented to the Committee.

Moreover, the Liberal members of the Committee remain concerned that the Government has failed to establish any mischief which would necessitate the government to legislate to “protect and enhance the public trust and confidence in the NFP sector”. Indeed, it is the view of the Liberal members of the Committee

¹ Exposure Draft, p. 14.

² Exposure Draft, p. 13.

that the penalties proposed in the draft Bills are excessively onerous, short-sighted, and will serve to deter future involvement in the voluntary sector.

As many elements crucial to practical the operation of this legislation have been left to the Minister to determine by Regulation, the Liberal members of the Committee share the sector's concerns in relation to the lack of certainty this provides for charities.

It is the view of the Liberal members of the Committee that the Government has failed to establish how the ACNC will interact with other State and Federal Government agencies to reduce the duplication of regulation across the sector. The Government has failed to satisfy the Liberal members of the Committee that any progress has been made with key agencies such as the Department of Education, Employment and Workplace Relations in relation to this process, or with the State governments through COAG. The Liberal members of the Committee are convinced that if agreement in this space is not reached, these Bills will result in an additional layer of bureaucracy and regulatory burden for not-for-profit agencies already struggling to meet the current demands of government.

The Liberal members of the Committee are concerned of the real risk that these Bills may lead to erosion of the privacy of Private Ancillary Funds, which will serve to discourage family investment in these endeavours to the detriment of the general community.

Liberal members of the Committee are concerned that the Government has failed to adequately respond to and address the matters raised by sector agencies throughout the consultation process for these Bills. Moreover, the Liberal members of the Committee believe the consultation process has been rushed, with the sector being provided as little as nine working days in some cases to make submissions throughout the drafting process.

The Liberal members of the committee have taken the opportunity to highlight in this dissenting report a number of serious concerns with the bills and, based on the reasons outlined, recommend they not be passed in their current form.

Regulatory burden

The Liberal members of the Committee have formed the view that these Bills will add a further burdensome layer of regulation to the operation of not-for-profit agencies, many of whom are already struggling with the current framework, described by Martin Jacobs, Principal Adviser in the Philanthropy and Resource

Tax Division of Treasury as imposing *“a considerable compliance burden on entities, which can unnecessarily hamper their valuable work.”*³

It was made clear during the course of the public hearings that duplication and overlap between Commonwealth and State and Territory laws governing the work of not-for-profit agencies was a key contributor to the compliance burden currently borne by sector agencies. The Gillard government argues that the ACNC will *“reduce red tape through processes to avoid or minimise duplication where possible.”*⁴ However, as Susan Pascoe, Head of the Australian Charities and Not-for-Profits Commission Implementation Taskforce stated, full red-tape reduction could only be achieved *“with the involvement of the states and territories”*⁵. These comments were further supported by the Chair of the Not-for-Profit Sector Reform Council Linda Lavarch, who stated:

*“Removing the current regulatory duplication and providing a one-stop shop for not-for-profits can only be achieved through a collaboration between the Commonwealth, state and territory governments.”*⁶

Following the evidence presented to the Inquiry, the Liberal members of the Committee believe that any significant reduction in red tape is only going to be realised once there is an agreement in place between the Commonwealth and the States and Territories to harmonise their laws in relation to the not-for-profit sector. No such agreement is currently in place.

The Liberal members of the Committee are concerned that no real progress is being made by the Government in its attempts to have the states come on board. At present, it seems there is only a ‘belief’ by Government that the states and territories will follow course and amend their laws in line with these Bills⁷ with no real evidence to support this conclusion. However, as stated by Bill Daniels, Executive Director of Independent Schools Council of Australia:

*“There has been no discussion whatsoever with the states or, indeed, with the Commonwealth department that I am aware of that has involved the independent sector on any reduction in reporting requirements.”*⁸

³ Mr Martin Jacobs, Treasury, *Committee Hansard*, Canberra, 26 July 2012, p. 2.

⁴ Exposure Draft, p. 13.

⁵ Ms Susan Pascoe, Australian Charities and Not-for-Profits Commission Implementation Taskforce, *Committee Hansard*, Canberra, 26 July 2012, p. 15.

⁶ Ms Linda Lavarch, Not-for-Profit Sector Reform Council, *Committee Hansard*, Canberra, 26 July 2012, p. 17.

⁷ Mr Chris Leggett, Treasury, *Committee Hansard*, Canberra, 26 July 2012, p. 4.

⁸ Mr Bill Daniels, Independent Schools Council of Australia, *Committee Hansard*, Canberra, 26 July 2012, p. 29.

Moreover, the Liberal members of the Committee believe that until such time as an agreement between the Commonwealth and the states is in place, the ACNC will add an additional layer of regulation to the operation of most not-for-profit charities. Indeed, Chris Leggett, Manager of the Philanthropy and Exemptions Unit of Treasury, conceded that:

“There will be further time when there will be some overlap (of regulation) with the states and territories⁹”

A number of not-for-profits also expressed concerns about the additional red tape being imposed by these Bills in their submissions to the Inquiry.

Catholic Health Australia submits that *“the effect of the Bills would be to add additional regulation to the operation of most not-for-profit organisations.¹⁰”*

The Uniting Church in Australia writes that:

“It is important to recognise that the introduction of any new reporting obligation on congregations, no matter how minor, will be another layer of legislative obligation and reporting for local members who are generally neither skilled nor trained for this burden.¹¹”

Dr Ted Flack states:

“For those registered as charities under State fundraising legislation and those funded through State Government agreements³, the establishment of the ACNC will substantially add to the compliance burden of Australian charities and not reduce them.¹²”

The Housing Industry Association submits that *“Some of the proposed provisions will increase regulatory costs and compliance without any public or private benefit.¹³”* They further state:

“HIA considers that it is conceptually difficult to reduce red tape by adding red tape, which is what adding new Commonwealth regulation on top of existing State regulation

⁹ Mr Chris Leggett, Treasury, *Committee Hansard*, Canberra, 26 July 2012, p. 6.

¹⁰ Catholic Health Australia, *Submission 1*, p. 1, from the House of Representatives Standing Committee on Economics, Inquiry into the Australian Charities and Not-for-profits Commission Exposure Draft Bills.

¹¹ Uniting Church in Australia, *Submission 2*, p. 2, from the House of Representatives Standing Committee on Economics, Inquiry into the Australian Charities and Not-for-profits Commission Exposure Draft Bills.

¹² Dr Ted Flack, *Submission 4*, p. 3, from the House of Representatives Standing Committee on Economics, Inquiry into the Australian Charities and Not-for-profits Commission Exposure Draft Bills.

¹³ Housing Industry Association Ltd, *Submission 5*, p. 4, from the House of Representatives Standing Committee on Economics, Inquiry into the Australian Charities and Not-for-profits Commission Exposure Draft Bills.

will do. Only if States vacate the field is there any hope of reducing the administrative burden on Charities and NFPs.¹⁴

The Conservation Council of South Australia writes “[Whilst there is] a national “one-stop-shop” and a “report-once, use-often” process, there remains a major problem in that at this stage state regulation will continue to apply.¹⁵”

Surf Life Saving New South Wales makes the comment that:

“Reducing red-tape by reducing duplication of reporting requirements and assisting the efficiencies of the sector...will not occur without the involvement of the states and territories to align reporting requirements with the ACNC reporting framework.¹⁶”

And the Chamber of Commerce and Industry of Western Australia recommends:

“...That the Commonwealth address its own jurisdictional red tape with a view of reduce the administrative burden on the sector. In other words, the Bill needs to go further to support the Commonwealth’s own reform again in respect of reducing red tape and unnecessary duplication.¹⁷”

Sector agencies have also expressed concerns that the objects clause in the Bill does not make any specific mention of reducing red tape. As submitted by the Australian Council of Social Services:

“The Bill does not yet contain any provisions that make it explicit that the reduction of unnecessary compliance and regulatory burdens is a core object of the Bill, nor does it identify these kinds of reforms as policy directions or drivers of the ACNC’s purpose or activities. There must be a direct link between the reduction of red tape and the objectives and functions of the ACNC.¹⁸”

These comments are echoed by Linda Lavarch in her evidence to the Inquiry:

¹⁴Housing Industry Association Ltd, *Submission 5*, p. 5, from the House of Representatives Standing Committee on Economics, Inquiry into the Australian Charities and Not-for-profits Commission Exposure Draft Bills.

¹⁵Conservation Council of South Australia, *Submission 19*, p. 6, from the House of Representatives Standing Committee on Economics, Inquiry into the Australian Charities and Not-for-profits Commission Exposure Draft Bills.

¹⁶Surf Life Saving NSW, *Submission 23*, p. 1, from the House of Representatives Standing Committee on Economics, Inquiry into the Australian Charities and Not-for-profits Commission Exposure Draft Bills.

¹⁷Chamber of Commerce and Industry of Western Australia (Inc), *Submission 21*, p. 2, from the House of Representatives Standing Committee on Economics, Inquiry into the Australian Charities and Not-for-profits Commission Exposure Draft Bills.

¹⁸Australian Council of Social Service (ACOSS), *Submission 56*, p. 3, from the House of Representatives Standing Committee on Economics, Inquiry into the Australian Charities and Not-for-profits Commission Exposure Draft Bills.

“We are concerned that the preamble and the objects do not reflect one of the original intentions of the ACNC, which was to reduce red tape for the not-for-profit sector. The focus of the current draft does not provide any detail on how the reporting burden for registered organisations would be reduced.”¹⁹

Following the evidence presented to the Inquiry, the Liberal members of the Committee are not convinced that these Bills will contribute to a significant reduction in red tape for the not-for-profit sector. Moreover, it is our contention that these Bills will increase the regulatory burden being placed on these agencies by adding an additional layer of compliance that the sector will have to meet. The Liberal members of the Committee have formed the view, consistent with the evidence presented to the Inquiry that the states and territories must align their laws in relation to the not-for-profit sector with the Commonwealth if the ACNC is to be successful in reducing the compliance burden faced by sector agencies. The Liberal members of the Committee are not satisfied with the progress that has been made by the Government in achieving such harmonisation. It is our belief that any such agreement is a long way from being reached, and that, to introduce these Bills in the absence of such an agreement would be to the detriment of the sector as a whole, which will have to endure months, possibly years of increased regulation with scant likelihood of this ever being pared back.

Moreover, the Liberal members of the Committee are not satisfied that these Bills go far enough in making direct provisions to reduce red tape. We are particularly concerned that there is no direct link between the reduction of red tape and the objectives and functions of the ACNC.

The Liberal members of the Committee believe the reduction of red tape should be a priority issue where any reform of the not-for-profit space is concerned, and it is our contention that these Bills will have a detrimental impact on such an objective.

Harmonisation across government agencies

As previously noted, the Liberal members of the Committee are concerned that these Bills will create an additional layer of red tape to the operation of not-for-profit agencies. One of the key issues identified in contributing to this is the overlap of state and territory requirements with those of the ACNC; another key contributor as identified in the Inquiry is the overlap of regulation across Commonwealth Departments. This is of particular concern to independent schools, which will fall within the jurisdiction of the ACNC.

¹⁹ Ms Linda Lavarch, Not-for-Profit Sector Reform Council, *Committee Hansard*, Canberra, 26 July 2012, p. 17.

Independent schools will be required to report much of the information to the ACNC that they currently report to the Department of Education and Workplace Relation (DEEWR), as well as to state education authorities. Setting aside the issue of duplication with state authorities, if an information-sharing agreement is not reached between the ACNC and DEEWR, the ACNC will effectively serve as an additional layer of regulation and red tape for independent schools many of whom are already, in the words of Dr Geoff Newcombe, “*drowning in compliance.*”²⁰

Powers and penalties

A number of sector agencies have expressed concerns that the powers and penalties contained within these Bills are heavy handed and may deter members of the public from taking up voluntary roles within sector agencies. The Liberal members of the Committee share these concerns.

Dr Geoff Newcombe, Executive Director of the Association of Independent Schools of New South Wales and Representative of the Independent Schools Council of Australia raised the issue of independent schools being captured by these Bills. Adding:

*“The commentary – it is not advice – that we have received from the AICD and our lawyers is that the proposed legislation is likely to shift the obligations from the company to the directors or, if you like, it will erode the concept of limited liability of directors.”*²¹

Dr Newcombe further stated that:

*“If that is the case and the concept of limited liability goes and liability is shifted from the company to the individual director, knowing the pressure on school boards even at the moment I think you would find many people – they are all volunteers – who would think twice about staying on school boards. It is the school board that manages the school.”*²²

Dr Newcombe raised concerns that the proposed changes would “*decimate school boards.*”²³

²⁰ Dr Geoff Newcombe, Association of Independent Schools of New South Wales and Independent Schools Council of Australia, *Committee Hansard*, Canberra, 26 July 2012, p. 31.

²¹ Dr Geoff Newcombe, Association of Independent Schools of New South Wales and Independent Schools Council of Australia, *Committee Hansard*, Canberra, 26 July 2012, p. 29.

²² Dr Geoff Newcombe, Association of Independent Schools of New South Wales and Independent Schools Council of Australia, *Committee Hansard*, Canberra, 26 July 2012, p. 33.

²³ Dr Geoff Newcombe, Association of Independent Schools of New South Wales and Independent Schools Council of Australia, *Committee Hansard*, Canberra, 26 July 2012, p. 29.

David Gonski of the Australian Institute of Company Directors expressed concerns that parts of the Bill *“in fact will not support nor sustain a robust, vibrant and independent sector,²⁴”* and further stated that the changes would not *“foster volunteerism in the sector.²⁵”*

Mr Gonski expressed concerns that:

“Directors of these [tiny organisations] ... may not want to branch out and make these not-for-profits do really well because they would be scared that they may not be able to adhere to a black-letter law approach.²⁶”

He further stated that, as a result of the proposed changes, *“we might be the first country in the world to make being on a not-for-profit as a director more onerous than being on a for-profit.²⁷”*

Ewen Crouch, Chairman of Mission Australia raised the issue of the scope and exercise of the ACNC’s powers, stating:

“I do believe that the information-gathering, monitoring and sanctioning powers, including the ability to remove a director, are very heavy-handed. I would think they would be quite problematic from a regulator's perspective. It is not something that any other regulator in Australia has any experience with and I do wonder why this regulator would want to have those powers and whether they would know how to use them.²⁸”

Eve Brown, Senior Policy Manager of Trustees at Financial Services Australia raised the issue that:

“With regard to the reporting requirements, the governance standards and the ACNC enforcement powers, we point out that these provisions are inconsistent with or overlap the common law of trusts and state and territory trustee legislation, inconsistent with or overlap the Corporations Law and ASIC's regulatory role, inconsistent with or overlap the ATO's guidelines on public and private ancillary funds, and are possibly inconsistent with the Australian Constitution and inconsistent with the overarching purpose of the ACNC draft legislation.²⁹”

CEO & Managing Director of the Australian Institute of Company Directors, John Colvin, questioned the need to *“have a system in Australia, which would make us a laughing-stock around the world, of having liabilities for volunteers greater than those for for-profits.³⁰”*

²⁴ Mr David Gonski AC, *Committee Hansard*, Canberra, 27 July 2012, p. 13.

²⁵ Mr David Gonski AC, *Committee Hansard*, Canberra, 27 July 2012, p. 16.

²⁶ Mr David Gonski AC, *Committee Hansard*, Canberra, 27 July 2012, p. 18.

²⁷ Mr David Gonski AC, *Committee Hansard*, Canberra, 27 July 2012, p. 13.

²⁸ Mr Ewen Crouch, Mission Australia, *Committee Hansard*, Canberra, 27 July 2012, p. 18.

²⁹ Ms Eve Brown, Financial Services Council, *Committee Hansard*, Canberra, 27 July 2012, p. 15.

³⁰ Mr John Colvin, Australian Institute of Company Directors, *Committee Hansard*, Canberra, 27 July

Dr Matthew Turnour further expressed concerns that the outcome of the Bills would be to discourage volunteerism in Australia, stating *“every time you introduce more regulation, you discourage more volunteers. It really can be very hard to get people to volunteer when they know that there is potentially personal liability attached.”*³¹

Dr Tessa Boyd-Caine, Deputy Chief Executive Officer of the Australian Council of Social Service flagged concerns regarding the enforcement powers contained within the Bills, particularly with regard to revocation of registration:

*“Because there is no capacity to stay a decision in that area, we see potential for organisations to be deregistered in advance of capacity for appeals, in advance of administrative review of decision making that might well overturn a decision. The consequences of that on a charity are incredibly significant, not least including the withdrawal of charity concessions, which in some cases will undermine a charity's capacity to continue operating.”*³²

Dr Boyd-Caine also expressed concerns regarding the proportionality and appropriateness of some of the sanctions included within the Bill:

*“What we fear at the moment is a skew in the bill towards a series of administrative penalties that are more significant than they ought to be in terms of maintaining proportionality with other regulatory frameworks but also with the risks that this sector presents.”*³³

Liberal members of the Committee are of the view that the Gillard Government has failed to establish the mischief which would necessitate a new set of powers and penalties of the scope of which are provided for in this Bill being introduced for the not-for-profit sector. As stated by Martin Laverty, CEO of Catholic Health Australia:

*“Our principal concern is that we have not yet seen what problem actually exists that requires the establishment of a new body of law – a new principle at law – to oversee public trust and confidence. It is our view that the Corporations Act currently provides like capacity for government to regulate those circumstances – few and far between as they are – that might give rise to the potential for such a power to have been created.”*³⁴ (p. 21)

The Liberal members of the Committee believe the powers and penalties contained within these Bills are heavy handed, unnecessary and excessive, and we are concerned that they will have a detrimental impact on Australia's culture of

2012, p. 16.

³¹ Dr Matthew Turnour, *Committee Hansard*, Canberra, 27 July 2012, p. 22.

³² Dr Tessa Boyd-Caine, Australian Council of Social Service, *Committee Hansard*, Canberra, 26 July 2012, p. 36.

³³ Dr Tessa Boyd-Caine, Australian Council of Social Service, *Committee Hansard*, Canberra, 26 July 2012, p. 36.

³⁴ Mr Martin Laverty, Catholic Health Australia, *Committee Hansard*, Canberra, 26 July 2012, p. 21.

volunteering. The Liberal members of the Committee are of the view that the Government has failed to satisfactorily make out the mischief which would justify the adoption of such powers and penalties where the consequences of adopting such provisions are potentially dire for the ongoing strength and vibrancy of the not-for-profit sector.

Lack of certainty

A number of submissions to the Inquiry have raised the issue that the Bill creates uncertainty with regard to what is required of sector agencies and the directors of these agencies. Dr Mark Shying, Senior Policy Adviser in the External Reporting division of Certified Practising Accountants Australia outlined these concerns as follows:

"We believe that the legislation and the regulations must provide certainty as to the obligations and responsibilities of both the entity and those charged with governance of the entity, and at present we believe that that certainty is not there. In particular, we are concerned about certainty from the point of view of the financial reporting requirements – that is, the requirements of the financial report are not presently specified and the requirements of those charged with governance in respect of those financial reports are not specified....We believe it is not appropriate to leave that unknown whilst we have entities that need to consider what their responsibilities are as they go forward and whether or not they need to make small changes or significant changes to what they currently do."³⁵

Martin Laverty of Catholic Health Australia echoed these comments, saying *"we cannot look to the bill today and have any confidence or indeed certainty as to how in the future those organisations currently governed under the corporations law would be governed in the future."³⁶*

Mr Laverty further stated:

"The principal problem with the bill is that right now I cannot say to any of the chairs or the boards of directors of our organisations that from the time of the enacting of this bill, and indeed in the years ahead as more of the powers of commissions come to be, this is the framework from within which you will govern your organisations."³⁷

It is clear from the Inquiry that the primary cause of uncertainty in relation to the Bill relates to governance standards, which are to be enacted at a future date as

³⁵ Dr Mark Shying, Certified Practising Accountants Australia, *Committee Hansard*, Canberra, 27 July 2012, p. 14.

³⁶ Mr Martin Laverty, Catholic Health Australia, *Committee Hansard*, Canberra, 26 July 2012, p. 21.

³⁷ Mr Martin Laverty, Catholic Health Australia, *Committee Hansard*, Canberra, 26 July 2012, p. 21.

regulation. The Liberal members of the Committee are concerned that this will lead to a situation where sector agencies have limited input into decisions regarding how they are to be governed. Moreover, it exposes the risk that these standards can be subject to change frequently and at the whim of the Minister or the government of the day.

The Liberal members of the Committee believe not-for-profit agencies deserve ongoing certainty as to how they are to be governed. It is our contention that these Bills fail to achieve that objective and that this will place further burden on sector agencies going forward.

Privacy

The Liberal members of the Committee are concerned that these Bills will erode the privacy of Private Ancillary Funds (PAFs) and thus discourage these philanthropic endeavours to the detriment of the community.

In their submission to the Inquiry, the Myer Family Company raised objections to the treatment of PAFs by the ACNC:

“Clause 40-10 (2) of the legislation suggests the ACNC Commissioner will have discretion to still publish information if he/she considers it is in the public interest to do so...We strongly recommend that the Regulations state that all information relating to PAFs be withheld from the Register and that PAFs report to the ACNC in a similar fashion to their existing reporting to the ATO, as stipulated in the PAF Guidelines. PAFs could choose to be public.³⁸”

The Myer Family Company further stated:

“A significant number of existing founders of PAFs that we have spoken to are appalled at the breach of trust relating to the possibility that family foundations that were established within rules stating that they would be private, would now suddenly become public in nature. Many would simply wind up.³⁹”

Philanthropy Australia also identified the proposed treatment of PAFs by the ACNC as a point of concern which may dissuade persons from setting up PAFs:

³⁸ The Myer Family Company, *Submission 25*, p. 2, from the House of Representatives Standing Committee on Economics, Inquiry into the Australian Charities and Not-for-profits Commission Exposure Draft Bills.

³⁹ The Myer Family Company, *Submission 25*, p. 1, from the House of Representatives Standing Committee on Economics, Inquiry into the Australian Charities and Not-for-profits Commission Exposure Draft Bills.

“We cannot see any policy benefit in requiring public disclosure of private information about private trusts, particularly given this was explicitly rejected in 2009. There is a significant danger that such a change, if implemented, would cut short the building momentum of community engagement and philanthropy in Australia, because public disclosure is strongly opposed by many who of those who already have PAFs and those who have the interest and capacity to set one up.”⁴⁰

The Liberal members of the Committee share the concerns as outlined in these submissions, and believe the proposed changes to the treatment of PAFs poses a significant threat to the ongoing culture of private philanthropy in Australia.

Consultation process

The Liberal members of the Committee have serious concerns about the time frame provided to the sector for feedback on these Bills.

In many instances, sector agencies were provided as little as nine working days to make submissions on important aspects of the Exposure Draft. The Liberal members of the Committee note that in December 2011, charities wishing to make a submission were required to do so in a two-week period over the Christmas break, requiring them to divert staff away from front-line services in what is one of the busiest times of the year for service delivery.

Deputy Executive Director of the Independent Schools Council of Australia Barry Wallett made the point that his organisation had *“always been concerned about the time frame to rush this (the creation of the ACNC). From our perspective we cannot see the need to rush it.”*⁴¹

Mr Wallett further echoed the public and private concerns of many stakeholders within the not-for-profit sector, stating:

*“For us to respond in a very short time frame to legislation that could have a major impact depending on some unknowns – we do not have a definition of 'charity' yet and have not seen the regulations et cetera – it puts a burden on the organisations to get adequate feedback in the time it was done.”*⁴²

⁴⁰ Philanthropy Australia, *Submission 20*, p. 3, from the House of Representatives Standing Committee on Economics, Inquiry into the Australian Charities and Not-for-profits Commission Exposure Draft Bills.

⁴¹ Mr Barry Wallett, Independent Schools Council of Australia, *Committee Hansard*, Canberra, 26 July 2012, p. 31.

⁴² Mr Barry Wallett, Independent Schools Council of Australia, *Committee Hansard*, Canberra, 26 July 2012, p. 31.

The Liberal members of the Committee are of the view that the consultation process has been unnecessarily rushed, and that this has placed a significant burden on sector agencies. As these Bills make fundamental ongoing changes to the legal treatment of not-for-profit organisations, the Liberal members of the Committee believes the consultation process should be afforded greater time to ensure the issues as outlined above are addressed to the satisfaction of the sector. At present, we are not satisfied that this has been the case.

Conclusion

The Liberal members of the Committee believe the Inquiry has raised a number of serious issues with these Bills which lead us to conclude that these Bills in their current form will serve as a threat to the strength and vibrancy of the not-for-profit sector going forward.

Liberal members of the Committee believe these Bills will result in a duplication of regulation and red tape for not-for-profit agencies, many of whom are already struggling to meet the overlapping requirements of various Commonwealth and State agencies. The Inquiry has heard that a harmonisation of laws between the Commonwealth and the States and Territories is essential to ensuring a reduction of red tape for sector agencies, however, the Liberal members of the Committee are not satisfied that the Government has made any significant progress in achieving this. Furthermore, we are not satisfied that the Government has made progress in establishing information-sharing arrangements across Commonwealth Departments. Without these agreements in place, the Liberal members of the Committee believe the ACNC will create an additional layer of bureaucratic red tape and regulation for not-for-profit agencies, particularly for independent schools. The Liberal members of the Committee believe this additional layer of red tape will further threaten the continued operation of many sector agencies that are being increasingly forced to divert resources away from front line services and towards complying with the demands of government.

The Inquiry has also heard concerns that the powers and penalties contained within these Bills are heavy handed, and the Liberal members of the Committee share these concerns, particularly with regard to information-gathering, monitoring and sanctioning powers, and the ability of the ACNC to remove a director. We have heard the sector express concerns that these provisions will deter involvement in the sector going forward, and the Liberal members of the Committee share this view. The Liberal members of the Committee are not satisfied that the Government has made out any mischief worthy of imposing a

system of penalties which may see Australia as the first country in the world to make being a not-for-profit director more onerous than being a for-profit director.

We have heard a number of sector agencies express concerns that these Bills create uncertainty with regard to what is required of sector agencies and the directors of these agencies, particularly as a set of governance standards are yet to be agreed to and will be determined by legislative instrument. The Liberal members of the Committee believe this exposes the risk of these standards being frequently subject to change at the whim of the Minister and the government of the day. The Liberal members of the Committee believe not-for-profit agencies deserve ongoing certainty as to how they are to be governed. It is our contention that these Bills fail to achieve that objective and that this will place further burden on sector agencies going forward.

The Liberal members of the Committee believe the proposed changes to the treatment of Private Ancillary Funds will discourage these philanthropic endeavours to the detriment of the community and believe this is an unintended consequence which has been overlooked by the Government in the drafting of this legislation.

Liberal Members of the Committee believe the Government has rushed the consultation process with the sector, and that this has placed a significant burden on these agencies. The Liberal members of the Committee are not satisfied that the consultation process has been sufficiently rigorous as to address the concerns that many sector agencies have with these Bills.

For the reasons outlined above, the Liberal members of the Committee do not support the passage of these Bills.

Recommendation: that these Bills not be supported.

Steven Ciobo MP
Deputy Chair

Kelly O'Dwyer MP

Scott Buchholz MP

