

# Coalition Members and Senators Dissenting Report

1.1 The Committee's inquiry covered a package of three related bills: the Australian Charities and Not-for-profits Commission Bill 2012, the Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012 and the Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012.

1.2 The bills establish the Australian Charities and Not-for-profits Commission (ACNC), the role of the Commissioner of the ACNC and make provision for the not-for-profit sector's eligibility for taxation concessions.

1.3 The Coalition members of the Committee do not support passage of any of the three bills.

1.4 The Preamble to the Australian Charities and Not-for-profits Commission Bill 2012 states:

It is important that a national regulatory system that promotes good governance, accountability and transparency for not-for-profit entities be introduced to maintain, protect and enhance public trust and confidence in the not-for-profit sector.<sup>1</sup>

1.5 Coalition members of the Committee do not accept that the current Commonwealth regulatory regime, based on the activities of the Australian Securities and Investments Commission and the Australian Taxation Office, is broken, and therefore do not accept the premise for this new regulatory megastructure.

1.6 We are unpersuaded by claims that this reform will reduce the regulatory burden faced by the sector.

1.7 First, it adds a layer of Commonwealth regulation to many charities and not-for-profits which are currently regulated by State and Territory governments – and there is no agreement from the States and Territories to exit the field.

1.8 Secondly, even at the Commonwealth level alone we doubt that it will reduce red tape. In theory it is plausible that the ACNC could be a 'one stop shop' and other agencies could make grants to charities registered with the ACNC in reliance on information already provided to the ACNC. In practice, this would require a remarkable and highly unlikely change in bureaucratic behaviour.

1.9 We note that representatives of long-established, large, reputable organisations in the charity and not-for-profit sector told the Inquiry of their concerns that the promised reduction in red tape will not be delivered.

1.10 Father Brian Lucas of the Catholic Church put it very well:

Much has been said about the need for reduction of red tape. That was very much the rationale that led a number of the various government inquiries to

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1 Explanatory Memorandum, Australian Charities and Not-for-profits Commission Bill 2012, p. 8.

recommend a national regulator. You will have heard, I am sure, that there is still concern in many sectors that particular legislation that we are now dealing with does not bring about the reduction of red tape that was envisaged.<sup>2</sup>

1.11 The Coalition members support the establishment of a small Charities Commission as an educative and training body for the sector.

1.12 The Coalition, however, will not support the creation of another regulatory body that will add to the red tape burden for charitable organisations and simply duplicate the existing State and Territory regulation.

1.13 The following submissions to the Committee are indicative of the opposition to a large and intrusive bureaucracy that fails to deliver a reduction in red tape:

### **Mission Australia**

Mission Australia remains concerned that the bills as drafted are more prescriptive in certain key areas than had been foreshadowed and do not reflect that sufficient work has been done with Federal agencies and with State Governments and agencies with responsibilities in the charitable sector to reduce red tape and duplication. In addition, greater attention should be given to ensuring the independence of the charity and not-for-profit sector.

Mission Australia submits that the legislation needs further amendment to reflect clearly the Government's views and the views of the charity sector that governance standards to be established by regulation should be principles-based and not prescriptive.<sup>3</sup>

### **Australian Catholic Bishops Conference**

The ACBC is therefore sceptical about the wisdom of accepting an initial increase in red tape in the hope that it may be reduced in the future. The ACBC looks to the Commonwealth to obtain assurances from the states and territories and a published timeline committing to a reduction in red tape at the national level.

The ACBC remains concerned the legislation to be examined by the committee does not reduce red tape and in fact increases red tape for the sector. This is contrary to the stated objectives of the legislation.<sup>4</sup>

### **National and State and Territory Peak Bodies for Volunteering**

Of significant concern is the duplication and overlap between Commonwealth and State and Territory laws governing the not-for-profit (NFP) sector. This is perceived by some in the sector to be a major contributor to the compliance burden issues endured by NFP agencies.

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2 Fr Brian Lucas, Australian Catholic Bishops Conference, *Proof Committee Hansard*, 3 September 2012 p. 3.

3 Mission Australia, *Submission 12*, pp. 2- 4.

4 Australian Catholic Bishops Conference, *Submission 17*, p. 3.

The ACNC is meant to relieve these compliance burden issues by providing a 'one-stop' regulation shop. However it is argued by some that red-tape reduction cannot be achieved without collaboration between Federal and State and Territory governments. It is feared that unless the governments harmonise their laws in relation to the regulation of the NFP sector the creation of the ACNC will result in a further layer of compliance for charities.

A number of NFP agencies expressed their concern about this matter during the consultation process for the legislation and the national and state and territory volunteering peak bodies also express their concern about this matter. While we understand conversations are taking place between state and territory authorities and the ACNC taskforce, harmonisation between the two levels of government is some time away.<sup>5</sup>

1.14 Witnesses pointed to the fact that the Bill unnecessarily duplicates existing laws in key areas.

**Mrs Fletcher:** ... Here it is asking the ACNC to regulate anti-money-laundering and counterterrorism laws when the reality is that there is already a whole body that does that—in relation to everybody, not just in relation to charities. So our primary preference would be that it stays the way it is now and that the ACNC is not also required to operate in this space. Our concern is that if it does then we could end up in a situation where we have different standards and different laws operating in relation to what we have now.

**Mr FLETCHER:** So you would say that this is unnecessary regulatory duplication when there is already a regime to deal with this.

**Mrs Fletcher:** Exactly.<sup>6</sup>

1.15 There is also a concern that the smaller charities that rely on the active participation of volunteers will be overcome by the approach that the package of bills adopts.

1.16 The Government's level of engagement with and outreach to the smaller entities in the charitable sector has been called into question.

The Government in the explanatory memorandum (some 325 pages) says it will consult with stakeholders and peak bodies yet as no analysis has been done of the small organisations to see if they are represented by peak bodies.<sup>7</sup>

1.17 The sheer volume of the legislative package is overwhelming for those smaller entities that are unable to afford to pay for compliance officers.

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5 National and State and Territory Peak Bodies for Volunteering, *Submission 19*, p. 1.

6 Tanya Fletcher, World Vision Australia, *Proof Committee Hansard*, 3 September 2012, p. 43.

7 John Church, *Submission 33*, p. 2.

1.18 This point was made in a submission by reference to experience with a small ‘religion’ charity incorporated under the Associations Incorporation Act (NSW), which currently has a legislative compliance burden comprising 44 pages of legislation, in contrast with the size of the package of bills before the Committee:

The proposal in the Bill means not only does it have to comply with the NSW legislative requirement, but 152 pages additional pages of legislation and an unknown number of pages of unknown regulations. There are also some 325 pages of explanatory memorandum. It is hard to see how this leads to simplicity and clarity. ...

The end result for this small incorporated association run by volunteers rather than 44 pages of legislation and regulation it would have to add 290 pages of legislation and 465 pages of explanatory memorandum and an unknown number of pages of unknown regulations just to be sure it complied. It would also be aware that it is intended to define Charities in legislation in the future.<sup>8</sup>

1.19 The oral evidence of Dr Brian Primrose to the Community Affairs Legislation Committee makes this point as well:

The bill needs to be written in such a way that it is easy to understand for the bulk of not-for-profit leaders who are not at all sophisticated in dealing with legislation.

Around this table everybody lives and breathes legislation, but the majority of not-for-profit leaders do not. It is not in their comfort zone and they would rather not engage with it.

It is seen as being something that is technical, confusing, complex and difficult.<sup>9</sup>

1.20 The Coalition wants to encourage volunteers. It is volunteers who make the not-for-profit sector strong and effective.

1.21 We do not want to see people turning their back on their local charity, religious support group or other participant in the sector because of fear of legal action that might be assumed as a responsible entity or director of a not-for profit entity.

1.22 For this reason we say that in relation to the power to remove directors, the approach in the ACNC Bill is not ‘light touch’ as claimed. The Coalition supports World Vision Australia’s submission:

... in most instances, under the Corporations Act 2001 (Cth), ASIC must seek a court order before a director can be disqualified from managing a corporation. WVA suggests this is a more appropriate model and can see no

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8 John Church, *Submission 33*, p. 2.

9 Brian Primrose, Primrose Solutions, *Proof Committee Hansard*, 4 September 2012, p. 1.

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case for why a different approach should be taken in respect of registered NFP entities.<sup>10</sup>

1.23 Unless and until there is harmonisation of various Commonwealth, State and Territory laws, the proposed ACNC simply adds another layer of regulation and bureaucracy on the sector.

1.24 At present no State or Territory government has proceeded beyond merely expressing a commitment to red tape reduction.

1.25 Indeed the evidence given to the Committee by the Interim Commissioner of the ACNC Taskforce was that no State or Territory government had yet entered into a memorandum of understanding with the Commonwealth to participate in the new regulatory arrangements.

1.26 The smooth functioning of the ACNC is also dependent on a number of Commonwealth Departments agreeing to either hand over their regulatory powers to the ACNC, or to harmonise their regulatory requirements with the ACNC.

1.27 This issue is of particular concern to independent schools, which 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.

1.28 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 drowning in compliance.

1.29 Coalition members of the Committee are mindful of the independent schools' submission:

Schools are already under a considerable reform pressure in relation to funding, curriculum and potential reporting reforms (DEEWR and ACARA).

As an already highly regulated charity, each non-government school (both independent and Catholic) must now comply with the proposed new range of ACNC regulatory reforms proposed by the Commonwealth Government. Government schools will not be required to comply with the ACNC regulatory structure.

... ISCA still has a number of unresolved legislative issues with potential impacts on non-government schools and additionally is concerned with the speed at which these proposed changes are being implemented.<sup>11</sup>

1.30 There was evidence from a number of witnesses at the Committee's hearing that there were important gaps in the Bills. The Institute of Chartered Accountants in Australia identified two such gaps: the governance requirements and the reporting framework. Since these areas of administration and process are integral to the proper

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10 World Vision, *Submission 29*, p. 15.

11 Independent Schools Council of Australia, *Submission 15*, p. 4.

functioning of the proposed new legislative arrangements the ICAA submitted that they must be clarified before the legislation commences.

1.31 The need for clarification of the reporting requirements was also emphasised by the Not For Profit Accounting Specialists who submitted:

In relation to reporting requirements, there are no details in the legislation as to what will be required – it simply refers to accounting standards, but as to whether General Purpose Financial Statements (GPFS) or Special Purposed Financial Reports (SPFR) are required, we are none the wiser. ...

If they [charities] were required to prepare full GPFS it would significantly increase the cost of reporting, and would not necessarily enhance the reader's understanding of the reports.

We would like to see the regulations clearly state which type of financial report is applicable for each type of entity.<sup>12</sup>

1.32 The Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012 Bill affects many important definitions and eligibility conditions applicable to entities that seek tax exempt status or DGR status.

1.33 The Government has undertaken insufficient preparation to have these key provisions ready for commencement from the income years following Royal Assent.

1.34 The oral evidence of Dr Matthew Turnour of legal firm Neumann & Turnour is emphatic:

... in relation to what I will call the not-for-profit definition legislation, or the 'in Australia' legislation, there is no urgency on this draft bill.

We know that the government has announced that there will be a charities definition bill coming through soon.

Why not hold off the definition of not-for-profit and deal with it as part of a charities and not-for-profit definition bill?<sup>13</sup>

1.35 In conclusion, the Coalition members of the Committee are unable to support passage of these bills because the mischief that the main bill seeks to address has not been adequately identified and the claims that it will deliver a reduction in red tape are wholly implausible. Its real effect will be to do the opposite – that is to impose an additional costly compliance regime, when the sector already faces enough red tape.

## **Recommendation:**

**That the Bills not be passed in their current form.**

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12 Not For Profit Accounting Specialists, *Submission 5*, p. 2.

13 Matthew Turnour, Neumann & Turnour Lawyers, *Proof Committee Hansard*, 3 September 2012, p. 35.

**Senator Sue Boyce**

**Senator Mathias Cormann**

**Paul Fletcher MP**

**Tony Smith MP**

