



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



**HOUSE OF REPRESENTATIVES**

**COMMITTEES**

**Corporations and Financial Services Committee**

**Report**

**SPEECH**

**Monday, 10 September 2012**

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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## SPEECH

**Date** Monday, 10 September 2012  
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**Questioner**  
**Speaker** Fletcher, Paul, MP

**Source** House  
**Proof** No  
**Responder**  
**Question No.**

**Mr FLETCHER** (Bradfield) (12:14): by leave—I am pleased to speak on the report of the Joint Committee on Corporations and Financial Services into 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. The purpose of these bills is to establish the Australian Charities and Not-for-Profits Commission, to establish the office of the commissioner and to make provisions for the not-for-profit sector's eligibility for tax concessions.

The Corporations and Financial Services Committee has held a hearing and conducted other inquiries into the bills. I must say that the conclusion reached by coalition members on the committee was different to the conclusion reached by government members, which has just been described to the House by the chair of the committee. Coalition members did not find evidence of overwhelming support for these bills. On the contrary, coalition members were struck by the degree of concern in the charities and not-for-profit sector about the extent of additional red tape and additional regulatory compliance burdens which these bills would, if passed into law, impose upon the sector.

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.

Coalition members of the committee reject the fundamental premise that the current Commonwealth regulatory system applicable to charities and not-for-profits, based upon the activities of the Australian Securities and Investments Commission and the Australian Taxation Office, is broken. We do not believe that the premise of the need for this new regulatory megastructure in the charities and not-for-profit sector has been made. We, therefore, do not recommend supporting the creation of another regulatory body that will add to the red-tape burden for charitable organisations and, in practical terms, in many ways duplicate the existing state and territory regulations.

One of the themes in our report is that there is a difference between good intentions and the likely results of a package of legislation based upon detailed, careful analysis of its provisions. Based upon detailed and careful analysis, we have reached the conclusion that this package of legislation is going to significantly increase the regulatory burden faced by charities.

We are particularly concerned that smaller charities, which rely on the active participation of volunteers, will be overcome by the approach that this package of bills adopts. The sheer volume of this legislative package is profoundly daunting for smaller entities, those which do not find themselves in a position to employ professional compliance officers. The coalition wishes to encourage volunteers. We think volunteers have a very important role in the not-for-profit sector. In our dissenting report we indicate our concern that community members might be discouraged from participating in their local charity, in their local religious group or in another important organisation because of the fear of legal action that they might face as a director of a not-for-profit entity.

In the minority report we note that, unless and until there is a harmonisation of the various Commonwealth and state and territory laws governing the charity and not-for-profit sector, the proposed Australian Charities and Not-for-Profits Commission will simply add another layer of regulation and bureaucracy. We, in the committee process, asked detailed questions with a view to determining whether any state or territory government has agreed to vacate the field so as to allow for exclusive Commonwealth regulation of the sector. The evidence suggests that, at present, no state or territory government has proceeded beyond, at the highest, expressing support for the concept of reducing red tape. The evidence the committee received was that no state or territory government has

yet entered into a memorandum of understanding with the Commonwealth to participate in the new regulatory arrangements.

The evidence provided to the committee about the scope for efficiencies at the Commonwealth level was also unpersuasive. The smooth functioning of the Australian Charities and Not-for-profit Commission in reducing duplication and red tape at the Commonwealth level will depend upon cooperation by a large number of Commonwealth departments and agencies—for example, to take as read information which has been lodged on the register by charities and not-for-profit organisations which have provided that information to the Australian Charities and Not-for-profit Commission.

The evidence that was given as to the mechanisms that will ensure that other Commonwealth departments and agencies do take actions necessary to, amongst other things, take as read the information which is on the register, was unpersuasive. Independent schools indicated particular concerns in this area, including a requirement that they may need to lodge with the Australian Charities and Not-for-profit Commission much information which they already report to a range of Commonwealth and state authorities.

The committee also heard evidence from a number of witnesses as to important gaps in the bills—for example, evidence from the Institute of Chartered Accountants regarding gaps concerning governance requirements and the reporting framework.

In conclusion, coalition members of the committee are unable to support the passage of these bills, because the mischief that the main bill seeks to address has not been adequately identified and we do not support the imposition of an additional costly compliance regime on a sector which is already heavily burdened by red tape.