



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

**TAXATION LAWS
AMENDMENT BILL (NO. 7) 2003**

Consideration of Senate Message

SPEECH

Tuesday, 14 October 2003

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date Tuesday, 14 October 2003
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Questioner
Speaker Cox, David, MP

Source House
Proof No
Responder
Question No.

Mr COX (Kingston) (4.47 pm)—I would first like to correct the member for Parramatta. These amendments to the Taxation Laws Amendment Bill (No. 7) 2003 were not amendments moved by the Democrats and supported by Labor; they were amendments that were moved by Labor and supported by the Democrats. They have a little history to them in relation to whether the government was satisfied with their drafting. Originally, I had intended that we move some amendments in this place which would remove the opportunity for the government to list deductible gift recipients by regulation. I had asked the clerks of the House of Representatives to draft the amendments, but had given them very little time to do so. It proved to be a complicated area and they were not sure that they had removed all the elements that were necessary. I said that, as long as they had removed enough to cripple the government's measure, I would be happy. We then moved those amendments in the House.

When Senator Sherry attempted to move these amendments in the other place, Senator Coonan said that her officers had looked at them and that they would do more than cripple the measure; they would cripple the whole notion of deductible gift recipients being named. So I took the amendments to the Senate clerks, who had more time at their disposal, and they redrafted them. Senator Sherry then circulated the redrafted amendments, but Senator Coonan took them away and redrafted them herself, which I assumed was an indication that she did intend to accept them. I understand that she had a meeting with the Treasurer yesterday and that he instructed her not to accept the amendments, which are perfectly reasonable and would leave in the hands of the parliament the capacity to list deductible gift recipients by name.

The Labor Party want to stop the listing of deductible gift recipients by regulation. This will ensure that the government cannot make a regulation which imposes unreasonable conditions on a deductible gift recipient, such as that they not enter into public debate about government policy. We could not stop an unreasonable condition by disallowance without also stopping the organisation getting deductible gift recipient status. The reason that the Democrats do not want this to be done by regulation—they want it to continue to be done by legislation—is that they believe the legislation offers them the opportunity to move amendments themselves, giving an organisation deductible gift recipient status.

I refer to an ancient piece of history called the 'bowerbird amendment'. When the now member for Fraser was the Assistant Treasurer he opposed an amendment put up by the Democrats in the other place to give deductible gift recipient status to the RSPCA. In his frustration with the Democrats, he eventually had to agree to the Democrats' amendment, which resulted in the RSPCA receiving deductible gift recipient status. The Democrats learnt from this that, by doing these things in the house, the parliament has some control but that, by letting them be done by regulation, there is obviously no mechanism by which a private member or a non-government party in the parliament can initiate a listing. You will find that the Democrats and the Labor Party will insist on these amendments. I do not think this will be the last occasion on which this matter is debated.

The other thing that is interesting is why the Treasurer is so sensitive about this issue. The Treasurer has a draft bill on charities. (*Extension of time granted*) This draft bill is a matter of some controversy with charitable organisations because they believe that, if the bill is enacted, it will be used by the government to silence them from criticising the government on matters of policy. They believe that they will effectively be silenced about needs in the community that require addressing.

The person who is most eloquently and most forthrightly putting that case is the Treasurer's brother, the Reverend Tim Costello. Reverend Costello had an op ed piece published in the *Financial Review* expressing his concern about the draft legislation that relates to charities. This piece of legislation here today relates to deductible gift recipients that are presently named in legislation, some of which would be charities, some of which may not be charities but for which the same issues apply. What the government cannot do by legislation at the moment, the government will attempt to do by regulation.

The Treasurer responded to his brother's op ed piece with an op ed piece the following day saying that all he was attempting to do was to simplify the situation and codify the definition of charities. The definition of

charities goes back to the statute of Elizabeth; there are 400 years of common law. If people do not think there is already clarity about what charities can and cannot do to maintain their tax exempt status, all they need do is look at the tax commissioner's ruling on this matter and they will find that there is plenty of case law and plenty of clarity. If the Treasurer is not up to something by seeking to legislate and clarify on this matter, then it is very difficult to understand what he does think he will achieve. I simply say to the House: if the Treasurer's brother does not trust him on this matter, then why should anyone else?