



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



**HOUSE OF REPRESENTATIVES**

**BILLS**

**Australian Charities and Not-for-  
profits Commission Bill 2012, Australian  
Charities and Not-for-profits Commission  
(Consequential and Transitional) Bill 2012**

**Second Reading**

**SPEECH**

**Tuesday, 18 September 2012**

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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## SPEECH

<b>Date</b>	Tuesday, 18 September 2012	<b>Source</b>	House
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<b>Questioner</b>		<b>Responder</b>	
<b>Speaker</b>	Pyne, Christopher, MP	<b>Question No.</b>	

**Mr PYNE** (Sturt—Manager of Opposition Business) (13:36): I rise to speak on the Australian Charities and Not-for-profits Commission Bill 2012 and the Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012. These bills provide for the establishment of a new independent statutory office, the Australian Charities and Not-for-profits Commission, which would be the Commonwealth-level regulator for the not-for-profit sector. The ACNC is proposed to commence operations on 1 October 2012.

As highlighted by the federal member for Menzies—the Hon. Kevin Andrews, the shadow minister for families, housing and human services—the coalition opposes the government's plan for a great big new regulator for charities and not-for-profits for four main reasons: firstly, it will not reduce red tape; secondly, it treats the sector as untrustworthy and the people involved in it as tainted; thirdly, it will hinder the activities of charities and not-for-profits; and, fourthly, it will discourage involvement in civil society. The coalition has not come to these conclusions lightly. We have undertaken extensive consultation with the sector from when the discussion paper on the ACNC was first released right through to the present moment.

Following significant concerns from the sector regarding the tight turnaround time for the start of the ACNC, and given the number of concerns raised with the draft proposal, the government in March decided to delay the commencement of the ACNC until 1 October 2012. In July 2012, the government released a revised ACNC Bill and the terms of reference for the House of Representatives Standing Committee on Economics inquiry into the bill. They gave the sector only nine working days to respond and to make public submissions to the inquiry.

Throughout the course of the inquiry by the House economics committee, and throughout our discussions with stakeholders, we have noted that no real progress has been made by Labor in its attempts to have the states and territories agree to harmonise their laws. In fact, the states have not agreed to hand over any of their powers with respect to charities and not-for-profits to the Commonwealth, such as their powers with respect to incorporated associations and fundraising. So the new regulator will be an additional layer of red tape. Furthermore, based on our discussions with relevant state ministers, we do not believe it is likely that they are going to submit to handing over their powers in this space to the Commonwealth in the near future.

The government claims it would consult further on the content requirements of financial reports and implement these through regulations. Registered entities would be required to prepare their first financial reports for the 2013-14 financial year, with the first financial reports due by 31 December 2014 unless a substituted accounting period applies. Members on this side of the House know only too well that any such commitment to consult is worthless. At best the government will bungle the consultation; at worst it will be much like their approach to a range of legislation: a total facade.

While the member for Menzies spoke at length about the precise details of the bill and how representatives of the various charities have responded, I wish to focus specifically on how it will impact on schools. All groups of schools—Independent and Catholic schools—will be classified as large charities and therefore be subject to the highest level of accountability and reporting requirements under the ACNC. This is the last thing that schools need. Schools are already subject to a high level of public accountability through the provision of ongoing detailed financial reporting to both Commonwealth and state agencies. As highlighted in the National Catholic Education Commission's submission into the review of funding for schooling, there are currently 19 pieces of Commonwealth legislation to which the non-government school sector is required to adhere, not counting state and territory legislation, which amounts to approximately 50. Some examples of relevant Commonwealth legislation are the Schools Assistance Act, the Schools Assistance Regulations 2009, the Australian Curriculum, Assessment and Reporting Authority Act, the Disability Discrimination Act, the Disability Discrimination Amendment (Education Standards) Act, the Corporations Act, the Privacy Act, the Copyright Act, the Copyright Amendment (Digital Agenda) Act, the Education Services for Overseas Students Act, the Migration Act, the A New Tax System (Goods and Services Tax) Act, the Skills Australia Act, the Family Law Act, the Racial Discrimination Act, the Sex Discrimination Act, Australian Human Rights Commission Act, Affirmative Action

(Equal Opportunity for Women) Act, the Fair Work Act, the Australian Sports Anti-Doping Act, the Social Security (Administration) Act.

Over and above the Commonwealth legislative framework I have just described that non-government schools are expected to comply with, state and territory governments have a major role in the regulation of schools. There are myriad legal and other accountability requirements and interventions at state and territory level. Schools must participate in all national student assessments and in the preparation of detailed reports such as the National Report on Schooling in Australia, which is produced each year on behalf of the Standing Council on School Education and Early Childhood. Non-government schools already collect and provide extensive information relating to their students to the Department of Education, Employment and Workplace Relations and the Australian Curriculum, Assessment and Reporting Authority. The department of education's financial questionnaire and My School website require all non-government schools to provide relevant financial information, including income and expenditure. All school accounts and documents must be available to department of education officers in return for funding and be provided, if needed, to other agencies, such as the Auditor-General. As some independent schools are companies limited by guarantee or are incorporated associations they are also accountable to the Australian Securities and Investments Commission.

A complaint that I receive frequently from school principals, when consulting on the issue of school funding, relates not to the types of information that governments seek from them but rather that they have to constantly give so many government departments the same information. School principals feel that they are spending more and more time filling out multiple forms to submit to government departments—often the same information but in different templates—in order to comply with various regulations.

A recent inquiry into red tape in New South Wales schools revealed, for instance, that some schools are required to report separately for up to 200 different programs. That is outrageous. Worse still, principals feel that they are spending more and more of their school's resources to employ administration staff to comply with these requirements, taking resources away from teaching and learning.

In relation to education, the impact of the ACNC will be that non-government schools will face even stricter reporting requirements than ever before. The Australian Catholic Bishops Conference's submission to the inquiry into the ACNC draft exposure bills summarises the key point made by the National Catholic Education Commission:

The outcome for schools is an unreasonable compliance burden linked to demands to respond to differing compliance requirements, definitions, regulatory and funding obligations.

The same conclusion was made by the Independent Schools Council of Australia in their submission to the draft exposure bills:

An examination of the existing and proposed regulatory structures for independent schools indicates that it would appear impossible to achieve the objective of reducing the regulatory burden on the non-government schools system through the introduction of the ACNC and its associated legislative requirements. It is far from clear that an agreement could be reached with states, territories and government agencies to remove many of the operational requirements for non-government schools already in existence".

Schools sector stakeholders have also highlighted the potential for inconsistency in application or conflict where schools are required to meet both ACNC and other Commonwealth and state statutory requirements. The example given by the National Catholic Education Commission is, for instance:

... what would be the impact on State 'fit and proper person' tests for registration of non-government schools if the ACNC made adverse findings or issued warnings or directions or even removed the head of a school or school system?

These are big issues and questions that would need to be thought through very carefully, and obviously have not been thought through carefully by this incompetent government. In addition, the schools sector is also concerned schools that are charities are required to provide an enormous range of financial information for publication by the ACNC. Again, like many other programs the government has introduced, this could lead to the creation of distorted 'league tables', particularly in instances when state schools do not have a similar level of reporting requirements imposed on them. It also appears to me that some activities that might be undertaken by the ACNC

might significantly overlap with activities that the Minister for School Education, Early Childhood and Youth, Peter Garrett, has announced he will be undertaking with state and territory education ministers. A report from the *Australian* on 3 August 2012 reported that the minister decided to take a proposal to state and territory education ministers to develop:

... stricter reporting guidelines for independent schools as well as nationally consistent definitions of 'not-for-profit', to prevent the misuse of public funds.

Specifically the minister for schools has announced that key areas of the project plan are to include the operation of not-for-profit requirement; minimum viability standards for schools; claim for, and use of, recurrent funding; joint investigations and issue management. The minister has described this project as a 'harmonisation' project and said that the objective is:

... to achieve greater consistency and clarity in the eligibility criteria of non-government schools for public funds, and the appropriate use and accountability of these funds across all jurisdictions.

I cannot help but be very sceptical of this project. When this government starts to talk about harmonisation I start to think about re-education camps. I do wonder if the minister for school education announced this project as a knee-jerk reaction to two unfortunate instances over the last 12 months, where an Islamic school in Sydney was deemed to have misused funds and the sudden closure of Mowbray College in Victoria.

Instances where non-government schools close due to poor governance arrangements leading to financial viability issues or instances where funds are misused are extremely rare. There are nearly 2,800 non-government schools in Australia and there have only been a handful that have been investigated or been forced to close due to financial difficulty over the last few years. The coalition's view is that government should not try to overregulate in response to unfortunate incidents of wrongdoing in such a way that impedes all of the others who are doing all the right things and complying with the regulatory requirements.

The federal member for Goldstein and shadow minister for finance and deregulation frequently makes mention that we have a tendency in this country to overregulate. It is almost as though governments should be responsible for preventing every single bad thing from every happening. The coalition believes that, unfortunately, sometimes bad things do happen, and society in general needs to accept that over-regulation is simply not the solution.

**Mr Keenan interjecting—**

**Mr PYNE:** I note the support from my friend the member for Stirling. I do, therefore, have my doubts about this so-called harmonisation or re-education camps plan, but I do sincerely hope that this process as it progresses through ministerial council does meet the objectives of providing more consistency and does not result in more layers of red tape. It is, at the very least, clear that the minister's so-called harmonisation plan will cut across the responsibilities of the ACNC significantly. Yet I have not yet seen the minister for schools come into this House and explain the impact of the ACNC on schools or how it relates to his so-called harmonisation project. Neither is he here explaining what effect the ACNC might have on the day-to-day operation of schools.

On top of the government's euphemistically named harmonisation project, the ACNC, the government has also announced that it will establish a national school improvement plan that all Australian schools will be expected to participate in from 2014. There is very limited information available in the government's fact sheets about the precise nature of this plan. While the coalition, of course, supports the government's objective of improving student outcomes, there is very little detail on the conditions that will be attached to schools in return for funding beyond 2014. We very much look forward to scrutinising the details of this plan so we can be sure that any new reporting requirements in return for public funding will not unnecessarily burden schools.

We envisage that this commission would be responsive to and not hinder the sector. Unfortunately, I have very grave doubts that that will be the case and, as a consequence, I strongly oppose this bill and do not commend it to the House.