



30 September 2003

**Child &
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Australia Inc.**

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- Child & Family
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- Child & Family Welfare
Association of Tasmania
- Child, Youth &
Family Agencies
of the ACT
- Children's Welfare
Association of
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- Children's Youth &
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- PeakCare (Qld)

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Consultation on the Definition of a Charity
The Board of Taxation
C/- Treasury
Langton Crescent
Parkes ACT 2600

Dear Sir/Madam

Please find attached a response prepared by the Child and Family Welfare Association of Australia to the Draft Charities Bill 2003.

In submitting this response, CAFWAA wishes to also reaffirm its support of the proposals included in the ACOSS submission to the Board of Taxation, dated 9 September 2003.

Yours faithfully

Simon Schrapel
Chairperson

attach.



CAFWAA

**Response to the Board of Taxation
on the
Draft Charities Bill, 2003**

The Child and Family Welfare Association of Australia (CAFWAA) is the national peak body representing non-government organisations working with children and young people at risk and their families.

CAFWAA represents over seventy-five community service organisations working with children, young people and their families, together with State and Territory child welfare peak bodies. CAFWAA's aim is to promote the welfare of children and young people in out of home care and those at risk of placement, together with their families. Member organisations, based in all States and Territories offer a range of services, including family support, out of home care and services designed to prevent child abuse and neglect.

CAFWAA welcomes the introduction of legislation that will serve to add clarity to the definition of a charity and remove some of the ambiguity and inconsistencies that currently exist. Australia requires a modern and relevant working definition that can be applied equitably and universally.

To this end, CAFWAA is broadly supportive of the Charities Bill 2003 in terms of both its intent and its workability. In particular, we welcome the inclusion of activities that have previously not been generally considered to fit within the realm of a charitable purpose. This includes child care, self-help and organisations that seek to improve the natural environment. However, the definition would be enhanced by adding that the dominant purpose of a charity should also be altruistic.

Whilst acknowledging these benefits, there are some aspects of the Bill that are of concern and are both unnecessarily discriminatory and likely to impair the workability of the legislation. These have been addressed in some detail in the ACOSS submission entitled "A Charity by Any Other Name", which CAFWAA fully endorses. In summary, CAFWAA reiterates the following issues and submits associated recommendations.

Disqualifying Purposes

. **Section 8(1)**

Although it is accepted that a charity should not have as its purpose the engagement in activities that are unlawful, this clause is considered unhelpful and superfluous. There is other Commonwealth and State legislation governing the lawful activities of organisations, its members and citizens more broadly that are sufficient in both defining and responding to unlawful activity. **It is recommended that Section 8(1) of the Bill be deleted.**

Furthermore, the exclusion in the core definition of a charity relating to conduct that constitutes a serious offence (4,(1)(e)) should also be reviewed. Given the broad definition in the Bill of what might be considered a serious offence, it is possible, under this clause, for legitimate charitable bodies to be excluded at a point in time as a result of actions such as the failure to meet Statutory Health and Safety requirements. Whilst not condoning such behaviour, it would be harsh should an organisation be stripped of its charitable status on this basis alone. It is also unclear as to whether organisations would permanently lose their qualification to be a charitable body in the event that it had committed such an offence or whether this would apply only for a time limited period. This ambiguity seriously undermines the workability of the Bill.

. **Section 8(2)**

This clause is both discriminatory and likely to be unworkable, particularly those elements relating to advocating for a cause or attempting to change the law or government policy. Such activities are legitimate and worthwhile activities for charitable bodies to undertake, whether they be ancillary or a core part of their brief. If a body is able to satisfy the definition requirements of Clause 4, and meets the public benefit test applied in Clause 7, then it should be considered to be a charitable entity. The means of achieving the body's specific aims may rightly include advocacy aimed at changing public views and ultimately government policy or legislation.

Furthermore, the use of terminology such as ancillary or incidental in Clause 8 is likely to introduce unnecessary complexity to the interpretation and administration of the legislation. **It is recommended that Clause 8(2) be amended by deleting reference to "Cause" in 2(a) and deleting 2(c) in its entirety.**

Consistent with the ACOSS submission, CAFWAA also supports consideration being given to the establishment of a Charity Commission.

The Commission would have, as one of its primary responsibilities, the administration of the legislation. This would include determining the status of organisations in line with the legislative provisions. This would remove this task from the ATO, which has a clear conflict of interest in undertaking such a responsibility, given its broader mandate.

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