



2003 Charities Bill
Submission by NAPCAN

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CONTENTS

CONTENTS	2
1. NAME & CONTACT DETAILS	3
2. DOMINANT PURPOSE OF NAPCAN.....	4
3. WORKABILITY OF 2003 CHARITIES BILL	5
4. ADMINISTRATIVE IMPACT OF 2003 CHARITIES BILL	8
5. FLEXIBILITY TO DEFINITION OF CHARITY	9
6. PUBLIC BENEFIT TEST & ALTRUISM.....	10

1. Name & Contact Details

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2. Dominant Purpose of NAPCAN

NAPCAN's Constitutional objects are:

1. To form a national Association with affiliated Associations in each State and Territory of Australia and, if deemed appropriate, to associate with other similar incorporated international bodies.
2. To work for the prevention of all forms of child abuse and neglect.
3. To assist children and families where there is a risk of child abuse or where child abuse has occurred.
4. To work for greater community awareness of the consequences of child abuse and neglect in all its forms as a major national issue, requiring adequate support and resources for prevention and treatment.
5. To promote national uniformity of laws in relation to child abuse and neglect.
6. To promote coordination and cooperation between all agencies involved in the identification, protection, and treatment of the victims of child abuse and neglect.
7. To provide a voice and an avenue for communication with members of Parliament throughout Australia and abroad.

NAPCAN is a volunteer based Australian charity working to promote the well-being of children and to prevent child abuse from happening in the first instance.

NAPCAN believes that every child has the right to be loved and cared for and to feel safe, in and out of the home environment.

Established in 1987, we work nationally, coordinate National Child Protection Week, distribute millions of resources across Australia and work with organisations to maximise benefits for children.

As awareness of child abuse and neglect has grown, NAPCAN has evolved its role to meet community needs. Our work takes place both at the general public level and directly with communities and families.

We believe that protecting children is everyone's business and requires a whole-of-community approach. NAPCAN facilitates close relationships and collaboration with and between government, practitioners and the wider sector, corporations, communities, families, carers and children.

It is by working together in collaboration and cooperation that we can achieve the greatest impact for all children.

3. Workability of 2003 Charities Bill

In the main we welcome the Bill as a national initiative. NAPCAN is of the view that a national framework for charities would greatly improve the clarity, transparency, consistency, and efficiency of the charity sector in Australia.

NAPCAN has a 'federal' structure with national, state, and territory associations. This means we work with every State and Territory legislative framework, as well as the federal legislation.

There is one specific concern that, in our view, will undermine the 'workability' of the Bill. This concern centres on Clause 8, Disqualifying Purposes, and more specifically on Clauses 8.2.a and 8.2.c.

(2) *Any of these purposes is a disqualifying purpose:*

(a) *the purpose of advocating a political party or cause;*

(b) *the purpose of supporting a candidate for political office;*

(c) *the purpose of attempting to change the law or government policy;*

if it is, either on its own or when taken together with one or both of the other of these purposes, more than ancillary or incidental to the other purposes of the entity concerned.

The Macquarie University Australian Dictionary defines the words 'advocacy' and 'lobby' as follows:

Advocacy – *VERB* If you advocate something, you are for it or in favour of it. *NOUN* If you are an advocate of something, you are for it or in favour of it. Eg. *He's a great advocate of children's rights.*

Lobby – *VERB* If you lobby someone to do something, you try to persuade them to do what you want. Eg. *They lobbied the government to increase educational funding.* *NOUN* A lobby or lobby group is a number of people who try to influence the government or other authorities to act in a particular way. *The anti-smoking lobby wants the Government to ban cigarette advertising in sport.*

The pertinent difference between these two terms is that 'advocacy' is acting *for* something, whereas 'lobbying' is acting *for* someone else to *do* something. In NAPCAN's case, we advocate for children's right to be safe from abuse and neglect. Part of the safety mechanisms for children include legislation, though it is important to understand that NAPCAN in the first instance is advocating children's safety, not legislation. Legislation may be a strategy for achieving children's safety, not the other way around.

While both terms have a common element of working with a particular cause, they differ in where legitimacy is drawn from to achieve that goal. Advocates draw legitimacy from their cause, lobbyists from the government and politicians they seek to influence. This difference is critical and lies at the heart of the workability of the Bill as it is currently drafted, or rather its unworkability.

NAPCAN advocates for initiatives that prevent Australia's children suffering abuse or neglect. NAPCAN also advocates for initiatives that promote the well-being of Australia's children. NAPCAN learns about the needs of children from children, practitioners, parents and carers, research, from the wider community, and many other factors that directly influence children's lives. We then share, or advocate, and communicate, what, in our judgement, children need to protect them from abuse and neglect.

Our legitimacy comes from Australia's children. Our strength draws from our commitment to children. Once Australia's children are safe from abuse and neglect, NAPCAN will have achieved its vision and will be dissolved.

In contrast, lobby is the reverse paradigm. Where to advocate is to present or promote what is best for Australia's children, lobby is to influence others to do something towards this end. To advocate in a sense draws upon the strength that comes from the justness of the cause being represented, Australia's children's needs – whereas to lobby is draw strength from other power holders – legislators, politicians, or bureaucrats who develop policy or legislation.

The United Nations Convention on the Rights of the Child specifies that:

1.1.1.1 Article 19

2. *States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*

Further, it states:

2.1.1.1 Article 12

1. *States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*

NAPCAN has a legitimate role to promote both articles by advocating for the experiences of children's abuse to the wider public and community groups to prevent child abuse and neglect.

It is our view that restrictions on NAPCAN's right, or ability, to advocate, would significantly diminish our capacity to prevent Australia's children from abuse and neglect, and to promote their well-being. This right is diminished with, or without, the qualifying terms that the act is acceptable if it is 'ancillary' or 'incidental'.

NAPCAN recommends that the Bill further distinguish between the roles of 'advocacy' and 'lobby'. It is our view that charities have a fundamental right to 'advocate' that should not be curtailed and the Bill needs to reflect this. It is also NAPCAN's view that further investigation of these terms will provide the government with a clear distinction between what activities are a fundamental right of charities, and what activities may be quasi-political in their nature.

Everything that we determine is a just and valid need for children needs to be shared, and communicated, with a view to people understanding the justness of what's best for children and changing their behaviour out of reason and their commitment for children's well-being. This is advocating. If our right to advocate is curtailed, our role is diminished to that of a quiet 'service provider', unable to voice what we believe to be right and just for Australia's children.

This brings us to our second and more fundamental concern: the possible restrictions this Bill poses upon Australia's civil society.

It is NAPCAN's view that one of the greatest strengths Australia has is its strong civil society. Civil society plays an important role of enabling freedom of speech, which in turn plays an important role in having a strong, active, participatory democracy.

While democracy at a simple level provides opportunity for free elections of politicians and political parties, the bulk of democratic participation takes place between elections. Charities' advocacy work forms a valuable, essential, and rightful role in Australia's democratic and civil society.

Clauses 1.e and 8.1 appear to place boundaries around the 'civil' role performed by charities. NAPCAN does not understand why this particular clause is required in the Bill. The issue of illegality and offences is appropriately dealt with in criminal and civil law and is only muddied by inclusion here.

It is greatly concerning that the Bill impinges upon civil rights of charities. We are unaware of similar legislation curtailing the advocacy or lobbying by corporations, and it NAPCAN's view that the Bill may be unjust in equity law in this regard.

The final point we would like to make on the workability of the Bill rests with the government body appropriate to administer it. It is NAPCAN's view that the Australian Taxation Office is not an appropriate body, though there is certainly a role to be performed by the ATO with respect to taxation issues for charities (GST, ITEC, DGR, etc).

Australia has in excess of 100,000 not-for-profit organisations. It would be ideal to have a government body specialised in administering this Bill, with an appropriate appeals mechanism in place.

4. Administrative Impact of 2003 Charities Bill

If the Bill is passed in its current form, maintaining records to demonstrate NAPCAN's compliance with Clauses 8.2.a and 8.2.c would require an additional administrative burden.

As a volunteer-based organisation this requirement would be particularly difficult to quantify. The actual expenditure spent by NAPCAN on advocacy would be minimal as most of the time spent by people (NAPCAN's directors, volunteers, and staff) is volunteered. Should this require measurement it would require cumbersome, and potentially unworkable, systems by volunteers.

5. Flexibility to Definition of Charity

With the exception of the reservations we have outlined above at 3, NAPCAN believes the Bill provides sufficient flexibility to ensure the definition of charity can adapt to the changing needs of society.

It is NAPCAN's view that the definition of a charity in part includes a right to advocate. This right to advocate is currently curtailed by the Bill. This needs to be rectified.

6. Public Benefit Test & Altruism

NAPCAN agrees with the inclusion of altruism into the public benefit test.