



NATIONAL ETHNIC DISABILITY ALLIANCE

# **Draft Charities Bill, 2003**

**Submission to the Board of Taxation from  
the National Ethnic Disability Alliance**

October 2003

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## INTRODUCTION

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The *Charities Definitions Inquiry* (CDI) was established by the Government to investigate the 500 year old definitions of charity used in tax law based on British legislation. The Inquiry released its report in June 2001 and its recommendations were broadly accepted by the charitable sector (see Attachment 3 for the CDI's summary of recommendations).

In August 2003 the Government released the draft *Charities Bill 2003*, to define what 'charity' meant for taxation purposes.

Whilst the Bill does modernise the definition of charity in a number of positive ways by:

- clarifying the list of charitable purposes to include 'advancement of social or community welfare' and of the 'natural environment'
- acknowledging that child care services are charitable
- acknowledging that self help organisations may be charitable, provided they are open and non-discriminatory in their membership

it also contains a number of unnecessary restrictions, particularly in relation to the advocacy and lobbying work of charities.

The National Ethnic Advocacy Alliance (NEDA) is the peak advocacy body in Australia representing the rights and interests of people from a NESB with disability and their families. It has been estimated that 19 per cent of the Australian population have a disability.

This submission will consider the key recommendations of the CDI against the draft Bill and calls on the Government to implement the recommendations of its own Inquiry.

NEDA also supports the submission put forward by the Australian Council of Social Services (ACOSS) and concurs with the recommendations in that submission.

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# RECOMMENDATIONS OF THE CDI

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It is NEDA's position that the Government should implement the recommendations of its own Charity Definitions Inquiry. Below are what we consider to be the key recommendations and issues.

## Public Benevolent Institutions

### **Recommendation 21**

That in the recommended definitional framework, the category of public benevolent institution be replaced by a subset of charity to be known as Benevolent Charity, that is a charity whose dominant purpose is to benefit, directly or indirectly, those whose disadvantage prevents them from meeting their needs.

The Government's current proposal to leave the current arrangements as they are and provide exemptions for some health and harm prevention services will not address the urgent need to modernise the definitions relating to tax incentives for charitable giving (gift deductibility status).

There are many organisations that should be considered worthy of this status, for example peak bodies such as NEDA and the other disability peaks, who continue to be denied Public Benevolent Institution status on the grounds that their primary focus is not direct service delivery.

Peak bodies such as NEDA focus on securing basic rights and essential services for marginalised and disadvantaged communities and receive a relatively small amount of government funding (in relation to the size of their respective constituencies). NEDA is an agency that works to secure equitable outcomes and basic rights for people from a NESB with disability, their families and carers who are perhaps one of the most disadvantaged communities in Australia (see Attachment 2 for more information).

If peak, and other such agencies, were able to receive PBI status this would encourage private donations. A point worth noting is that as a condition of the national disability peaks funding, agencies must demonstrate that they have tried to secure resources separate from government. Eligibility for PBI status would certainly assist peak bodies in achieving this outcome.

NEDA supports the solution put forward by the Inquiry to replace PBI status with a new classification of "Benevolent Charity" comprising charities whose dominant purpose is to assist the most disadvantaged in society.

## Independent Body

### **Recommendation 25**

That the Government seek the agreement of all State and Territory Governments to establish an independent administrative body for charities and related entities, and to the legislative changes necessary for its establishment.

### **Recommendation 26**

If an independent administrative body is not established:

- That the Government set up a permanent advisory panel, including members from the charitable and related sector, to advise the Australian Taxation Office on the administration of the definitions relating to charities and related entities, and to advise the Government on the definitions of charity and related terms.
- That the endorsement processes currently undertaken by the Australian Taxation Office be extended to include the endorsement of charities and related entities in order to access all the taxation concessions to which they are variously entitled.

It is the Taxation Office that currently decides which organisations meet the criteria to be considered as charities for tax purposes. The CDI rightly proposed that this role be handled by a separate body whose primary function was to identify and classify charities as opposed to raising public revenue. One model currently used overseas is the Charities Commission of England and Wales.

Unlike the Taxation Office, an independent body would be able to engage with service providers and community organisations and be in a position to assess trends and expectations. It could also help with the development and implementation of legislative definitions, administrative guidelines and assist in avoiding litigation and inconsistent application of new definitions.

NEDA supports the recommendation of the CDI to establish an independent body.

## Commercial Purposes

### **Recommendation 18**

That commercial purposes should not deny charitable status where such purposes further, or are in aid of, the dominant charitable purposes or where they are incidental or ancillary to the dominant charitable purposes.

The Government has signalled that it is again reviewing the tax treatment of the 'commercial activities' of charities. Charities are generally exempt from income tax and this includes their 'commercial activities'. The Government believes this may unfairly disadvantage for-profit enterprises.

NEDA understands that charities and other community organisations exist in a competitive environment against a backdrop of lower levels of government funding. In order to raise the necessary revenue to undertake their often essential services, charities need to have their 'commercial activities' exempt. Unlike for-profit organisations, revenue raised by charities is not distributed to shareholders but goes back into essential service delivery and other activities.

## Advocacy Work

### **Recommendation 3**

That a charity must have a dominant purpose or purposes that are charitable, altruistic and for the public benefit. If the entity has other purposes, those purposes must further, or be in aid of, the dominant purpose or purposes, or be ancillary or incidental to the dominant purpose or purposes.

### **Recommendation 5**

That the activities of a charity must further, or be in aid of, its charitable purpose or

purposes. Activities must not be illegal, contrary to public policy, or promote a political party or a candidate for political office.

NEDA understands this recommendation to mean that the advocacy work of charities should not be restricted as long as it:

1. furthers or aids the organisation's dominant charitable purpose
2. does not promote a political party or candidate for political office.

However, the Government has taken a very different understanding and the *Charities Bill* seeks to impose unnecessary restrictions on the advocacy and lobbying activities of charitable organisations.

Clause 8 of the *Charities Bill* seeks to exclude charitable status from organisations that have among their purpose 'changing the law or Government policy' or 'advocating a cause' unless these are 'ancillary or incidental' to the other purposes of the organisation.

NEDA is concerned that this not only adds confusion but could also mean that agencies restrict their advocacy work or are forced to 'regulate' their advocacy which is time consuming and costly and diverts resources away from where it is really needed. Of greater concern is that a number of organisations could lose their existing charitable status.

Whilst advocacy purposes generally are singled out for special treatment and regulation, the draft Bill lacks a clear definition of advocacy. NEDA is concerned that this not only adds confusion but could also mean that agencies restrict their advocacy work or are forced to 'regulate' their advocacy which is time consuming and costly and diverts resources away from where it is really needed. Of greater concern is that a number of organisations could lose their existing charitable status.

The Bill also sends a signal to charity organisations that advocacy work should be avoided or kept to a minimum yet advocacy is an effective means to achieve charitable purposes. NEDA believes that a better approach would be to recognise that charities may engage in non-partisan advocacy that is an integral part of a strategy to promote a dominant charitable purpose i.e. relieving poverty or protecting the natural environment.

In light of the above, NEDA recommends that Clause 8 of the bill is redrafted so that it is consistent with the recommendations of the CDI.

## **ATTACHMENT 1: NEDA**

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The National Ethnic Disability Alliance (NEDA) is the national consumer-based peak body for people from a non-English speaking background (NESB) with disability, their families and carers.

The overarching aim of NEDA is to advocate at a federal level, for the rights and interests of people from a NESB with disability, their families and carers

All activities undertaken by NEDA include strong consumer involvement and are based on the following Objectives:

1. Represent the rights and interests of people from NESB with disability, their families and carers.
2. Advocate on issues impacting on people from NESB with disability, their families and carers.
3. Work towards securing equitable outcomes for people from NESB with disability, their families and carers.
4. Co-ordinate policy advice to the Federal government and relevant peak bodies on the impact of policy and legislation on people from NESB with disability, their families and carers.

NEDA, because of its cross-sector role (disability and ethnicity) aims to collaborate with and work across a broad range of organisations to represent the interests of people from a NESB with disability

NEDA is governed by a Council, the majority of who are people from a NESB with disability. For more information, please log onto [www.neda.org.au](http://www.neda.org.au).

## **ATTACHMENT 2: NESB-Disability Issues**

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### General Issues

People with disability are routinely marginalised, stigmatised and dehumanised. People with disability from a NESB have been further disadvantaged because discrimination is experienced on the basis of disability **and** ethnicity. It is NEDA's experience that discrimination relating to both ethnicity and disability is interdependent and does not follow any logical order of preference

Discrimination occurs at both an individual and a systemic level. Due to the high level of social control experienced by people with disability, the discrimination faced is often institutional. People from NESB, in particular those with a disability and recent migrants, experience highly regulated environments where much of the discrimination is systemic.

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People from NESB, in particular those with a disability and recent migrants, experience highly regulated environments where much of the discrimination is systemic.

There are many barriers facing people from NESB with disability including:

- lack of accessible information and knowledge about rights, essential services and supports
- lack of culturally appropriate services and supports
- myths, misconceptions and negative stereotypes about disability and ethnicity in both the NESB and Anglo-Australian communities
- prejudice against people with disability from both NESB and Anglo-Australian communities
- government's emphasis on 'mainstreaming' without acknowledgement of the inequities that exist in relation to ethnicity
- NESB people often do not understand concepts used to describe their situation
- ethnic communities often do not have the capacity to advocate for their needs.

### Discrimination

It has been the experience of NEDA that discrimination relating to both ethnicity and disability is interdependent and does not follow any logical order of preference.

The prejudicial attitudes and misconceptions regarding disability that are present in mainstream society are equally evident in NESB communities. Whilst there are differences in the perception of disability amongst different ethnic groups, the relative degree of stigma attached to disability appear similar across NESB and English-speaking communities.

By and large, NESB communities have missed out on education campaigns about people with disability because those conducting these campaigns have failed to seek out or consult with NESB communities. At the same time there have been consultations with people from NESB with disabilities, but those consultations have not resulted in concrete strategies.

Discrimination on the basis of ethnicity is also a reality. If ethnicity did not play a role in the provision of services to people with disability, the figures of service usage in relation to ethnicity would be comparable to those in the general community. The fact that there are so many Anglo-Australians and so few people from NESB in services shows that ethnicity does matter.

## Access to Services & Information

Objective 5 of the *Disability Services Act*, 1986 states that:

*Programs and services should be designed and administered so as to meet the needs of people with disability who experience a double disadvantage as a result of their sex, ethnic origin, or Aboriginality.*

However, in Australia, **three out of four** people from a NESB with disability miss out on receiving Commonwealth funded disability services. This is in addition to the current unmet need for people with disability in general (see NEDA website for more information).

This figure stands despite genuine efforts made by many to redress this situation. This figure points towards the need to seek systemic solutions to the whole disability services system, involving all stakeholders.

Access to information is often the first step towards people participating in the community. Access to information means, in effect, access to opportunities and therefore choices to participate in the community.

Like all people from NESB, people from NESB with disability and their families and carers experience increased difficulties in accessing services because of the lack of resources made available for interpreters and translations.

Services such as the Translation and Interpreting Service (TIS) have increasingly adopted the user pays principle, severely restricting the number of free or subsidised on-site and telephone interpreting sessions available to people and non-profit service providers.

The costs for language services are mostly unbudgeted, resulting in:

- a reduction in community services for people with disability from NESB
- the provision of inappropriate information
- the overall increase in the use of family members and other relatives as interpreters, in violation of standards such as confidentiality, dignity, privacy, etc.

## More Information

For more information about people from a NESB with disability, their families and carers please visit: [www.neda.org.au](http://www.neda.org.au).

## **ATTACHMENT 3: CDI Summary of Recommendations**

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### Principles to Define a Charity

**Recommendation 1:** That the term 'not-for-profit' be adopted in place of the term 'non-profit' for the purposes of defining a charity.

**Recommendation 2:** That the term 'entity' be adopted to describe charities, and that the definition of 'entity' include: a body corporate; a corporation sole; any association or body of persons whether incorporated or not; and a trust; and exclude: an individual; a political party; a partnership; a superannuation fund; and the Commonwealth, a State, or a body controlled by the Commonwealth or a State.

**Recommendation 3:** That a charity must have a dominant purpose or purposes that are charitable, altruistic and for the public benefit. If the entity has other purposes, those purposes must further, or be in aid of, the dominant purpose or purposes, or be ancillary or incidental to the dominant purpose or purposes.

**Recommendation 4:** That an entity be denied charitable status if it has purposes that are illegal, are contrary to public policy, or promote a political party or a candidate for political office.

**Recommendation 5:** That the activities of a charity must further, or be in aid of, its charitable purpose or purposes. Activities must not be illegal, contrary to public policy, or promote a political party or a candidate for political office.

**Recommendation 6:** That the public benefit test, as currently applied under the common law, continue to be applied; that is, to be of public benefit a purpose must:

- be aimed at achieving a universal or common good;
- have practical utility; and
- be directed to the benefit of the general community or a 'sufficient section of the community'.

**Recommendation 7:** That the public benefit test be strengthened by requiring that the dominant purpose of a charitable entity must be altruistic.

**Recommendation 8:** That self-help groups which have open and non-discriminatory membership be regarded as having met the public benefit test.

**Recommendation 9:** That where closed or contemplative religious orders regularly undertake prayerful intervention at the request of the public, their purposes be held to have met the public benefit test.

**Recommendation 10:** That public benefit does not exist where there is a relationship between the beneficiaries and the donor (including a family or employment relationship); and that this principle extend to purposes for the relief of poverty, which the common law currently regards as being exempt from the need to demonstrate public benefit.

## Defining Charitable Purpose

**Recommendation 11:** That there be no requirement that charitable purposes fall either within the 'spirit and intendment' of the Preamble to the Statute of Elizabeth or be analogous to one or more of its purposes.

**Recommendation 12:** That the principles enabling charitable purposes to be identified be set out in legislation.

**Recommendation 13:** The Committee has considered five options for defining charitable purpose as set out in Chapter 16. It concludes that three options are viable, but recommends the following preferred option (Option 5):

Charitable purposes shall be:

- the advancement\* of health, which without limitation includes:
  - the prevention and relief of sickness, disease or of human suffering;
- the advancement\* of education;
- the advancement\* of social and community welfare, which without limitation includes:
  - the prevention and relief of poverty, distress or disadvantage of individuals or families;
  - the care, support and protection of the aged and people with a disability;
  - the care, support and protection of children and young people;
  - the promotion of community development to enhance social and economic participation; and
  - the care and support of members or former members of the armed forces and the civil defence forces and their families;
- the advancement\* of religion;
- the advancement\* of culture, which without limitation includes:
  - the promotion and fostering of culture; and
  - the care, preservation and protection of the Australian heritage;
- the advancement\* of the natural environment; and
- other purposes beneficial to the community, which without limitation include:
  - the promotion and protection of civil and human rights; and
  - the prevention and relief of suffering of animals.

(\* Advancement is taken to include protection, maintenance, support, research, improvement or enhancement.)

**Recommendation 14:** That the definition of religion be based on the principles established in the *Scientology* case, namely:

- belief in a supernatural Being, Thing or Principle; and
- acceptance and observance of canons of conduct in order to give effect to that belief.

## Application of the Principles

**Recommendation 15:** That the encouragement of sport and recreation for purposes of amusement or competition not be a charitable purpose, it being noted that the advancement of health, education, social and community welfare, religion, culture or the natural environment through the encouragement of sport and recreation would be considered a charitable purpose.

**Recommendation 16:** That the care, support and protection of children and young people, including the provision of child care services, be considered a charitable purpose.

**Recommendation 17:** That charities be permitted neither to have purposes that promote a political party or a candidate for political office, nor to undertake activities that promote a political party or a candidate for political office.

**Recommendation 18:** That commercial purposes should not deny charitable status where such purposes further, or are in aid of, the dominant charitable purposes or where they are incidental or ancillary to the dominant charitable purposes.

**Recommendation 19:** That the current approach of denying charitable status to government bodies be maintained. The Committee agrees with the principles set out in the *Fire Brigades* case and the *Mines Rescue* case for determining whether an entity is a government body, namely that the entity is constituted, funded and controlled by government.

## Other Categories in the Framework

**Recommendation 20:** That there be a definitional framework to distinguish altruistic entities from other not-for-profit entities.

**Recommendation 21:** That in the recommended definitional framework, the category of public benevolent institution be replaced by a subset of charity to be known as Benevolent Charity, that is a charity whose dominant purpose is to benefit, directly or indirectly, those whose disadvantage prevents them from meeting their needs.

**Recommendation 22:** That the framework recommended in this Report should not include the terms 'religious institution', 'scientific institution' and 'public educational institution', as altruistic entities with religious, scientific or public educational purposes and that are for the public benefit are covered by the categories in the recommended framework.

**Recommendation 23:** That there be a category, known as 'Altruistic Community Organisations', that are entities that are not-for-profit and have a main purpose that is altruistic. That is, they can have secondary purposes that are not altruistic, and that do not further, or are not in aid of, or are not incidental or ancillary to, their main altruistic purpose.

## Administering the Definitions

**Recommendation 24:** That the Government seek the agreement of all State and Territory Governments to the adoption nationally of the definitional framework for charities and related entities recommended in this Report.

**Recommendation 25:** That the Government seek the agreement of all State and Territory Governments to establish an independent administrative body for charities and related entities, and to the legislative changes necessary for its establishment.

**Recommendation 26:** If an independent administrative body is not established:

- that the Government set up a permanent advisory panel, including members from the charitable and related sector, to advise the Australian Taxation Office on the administration of the definitions relating to charities and related entities, and to advise the Government on the definitions of charity and related terms; and
- that the endorsement processes currently undertaken by the Australian Taxation Office be extended to include the endorsement of charities and related entities in order to access all the taxation concessions to which they are variously entitled.

**Recommendation 27:** That the Government commit to a comprehensive public information and education campaign to inform the charitable and related sector of any changes arising from its consideration of this Report.