

**Submission on Charities Bill 2003**  
**Responding to specific questions from the Tax Board**

**1. Name and contact details:**

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**2. Dominant purpose of both organisations:**

**SDN:** exists to foster and develop active citizenship, and foster positive social and democratic change, by directly assisting particular 'self-starter' individual citizens to crystallise social issues of concern to them, and with others learn the action steps and skills needed to build constructive and inclusive community responses to those issues. Members are free to raise any issue which calls for an altruistic citizen response which is of public benefit.

In seeking to advance the general public interest, we may often assist learning and action to help minorities with specific needs; but we avoid commitment to particular political parties or candidates for public office. Our issues are defined by deliberative and informed dialogue and general consent among all affected participants, in accord with our principles and aims. These social issues are believed to emerge constantly from the many unpredictable trends in society over time. Whereas some wealthy individuals can often be active as altruistic citizens without assistance, this is not the case for the bulk of citizens. The issues are mostly complex and we assist each other to develop our abilities to engage with and systemically understand them. The SDN is a grassroots self-help organisation of citizens who need and desire mutual support in being active as citizens. It is open to all, and run and funded by its members.

**The NED Foundation** is an ongoing facilitator and research agency for maintaining and supporting the SDN into the future, and for launching additional similar self-help citizen organisations with related but possibly more specific socially developmental purposes. Its Board is made up of volunteer long-term SDN members. It is operating as a 'feedback loop' or network, emerging from, representing, and linking local SDN groups, networks, specialised panels and projects. Seed funds help SDN members launch projects.

**3. Principal reasons for making a submission:**

**Recommendation 1.:** The Bill should be amended to provide for a charitable purposes tribunal, analogous to existing administrative appeals tribunals, industrial conciliation and arbitration tribunals, arts councils and other supervisors of public funding for charitable purposes. Ideally the tribunal's members should be appointed by parliament from a panel chosen by a representative convention of existing charities. (See draft revised Bill attached below, Part 4, highlighted in italics.)

**Recommendation 2.:** The Bill should be amended to include new wording in Part 3, Section 8 2.(a) and 8 2 (c) (See draft revised Bill attached, Part 3, with suggested changes highlighted in italics.)

- Social developer citizen work is essentially non-party political in nature, and yet we fear that this role function - which we see as vital for a society which hopes to adapt itself successfully within processes of constant change - may exclude our NED Foundation from the category of not-for-profit, public benefit organisations.

Historically, the abolition of slavery or the abolition of the death penalty were non-party political issues in their day which required citizen effort to raise. They were ultimately enshrined within the principles of our kind of society.

But unofficial citizens normally had to take action over an extended period to get such reforms incorporated formally. In their day, these proposals were '*contrary to public policy*'. Likewise in the case of the independent rule of law, and such principles as habeas corpus. The extension of the vote to women, to Aboriginal people, extending the rights of homosexuals, and establishing the unacceptability of paedophilia and sexual abuse or domestic violence are other examples. Establishing new remedial methods such as restorative justice conferencing or circle sentencing are others. The right to die well and in dignity has yet to be established. The right as an employer to legitimately and straightforwardly sack unsatisfactory employees - while equally protecting employees from exploitative, unfair employers - has yet to be achieved. An appropriate national Australian water-management and overall soil-and-environmental management policy has yet to be implemented. Effectively integrated bushfire forecasting-minimisation-management-and-response-policies are not yet in place. The list of issues is endless and constantly evolving.

[The League of Nations and the UN organs adopted principles of universal neighbourliness among nations which were insisted on by peace-building non-official bodies of citizens such as the Red Cross, Red Crescent, Women's International League for Peace & Freedom, Amnesty International, and movements for civil liberties, industrial democracy and environmental accountability.]

In our over-adversarial and traditionally polarised Australian system, ‘political football’ responses have constantly to be transcended. This is the unavoidable and essential task of citizen social developers. Wherever they can succeed, the nation gains benefits in its ‘triple bottom line’. This means that social and ecological impacts globally will then be routinely considered alongside short term economic gains for influential enterprises, strong lobbies or incumbent authorities.

Where there are bureaucratic ‘empires in conflict’, non-official citizen groups often can acknowledge what actually needs to be done and get in and do it. Individual active citizens who are supported in taking ‘the risk to organise’ can mobilise such volunteer action by other citizens. As an example, such volunteers are vital in mobilising the kind of ‘parent-to-parent support groups’ which are envisaged under the NSW Govt.’s ‘*Families First*’ program.

Thus although our Foundation is not a political advocacy body as our main function, we know nevertheless that advocacy is a core part of a functioning democracy, and will often at some stage be a required action for the citizens whom we support. Hence **our concern with Section 8 (2) (a) and (c) of the disqualifying purposes:**

*“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.”*

In due course many issues raised by our SDN citizens, and requiring attention in society, will later be taken up by one political Party or another; and under the proposed Bill this may itself further aggravate our Foundation’s ineligibility for charity status!. Hence our recommendation No. 1 above.. The Bill should be amended to provide for a charitable purposes tribunal analogous to existing administrative appeals tribunals, industrial conciliation and arbitration tribunals, arts councils and other supervisors of public funding for charitable purposes. Ideally the tribunal’s members should be appointed by parliament from a panel chosen by a representative convention of existing charities.

Pioneer citizen-run services are often needed initially, when it is found that a bureaucracy says ‘This is not the way we do things’, or ‘This is not within our legislated role’, or govt. says ‘This is not a budget priority’.

- Free speech is an important tenet of our democracy, yet we feel there is a risk that charities and not-for-profits may be prevented, under the wording of the proposed Bill, from exercising that essential function. Our social arrangements in Australia are far from perfect; and many existing policies must be routinely upgraded if our society is to evolve successfully in a changing world.

Arrangements which are appropriate at one point in time become inappropriate at another time, as circumstances change.

- The aspiration of politicians of one political party or another, when in government, to try to muzzle free speech by de-legitimising and de-funding those who fail to adhere to that government's Party line, is understandable enough - and there *are* times when public co-operation to avoid party-political squabbling can be asked for and should receive compliance - but coercion is not appropriate and the wording of this draft Bill appears to enshrine the scope for it.

**4. Is our organisation currently endorsed with the ATO as an Income Tax Exempt Charity (ITEC)?**

No. Our income at this point is below the tax threshold, in the case of both the SDN and the NED Foundation.. The former is simply funded by participants sharing costs as we go. However, under present arrangements, there is no place for the NED Foundation to achieve ITEC status, if later our income should rise, as we hope it will. We had hoped we would fit under the upgraded 2003 guidelines, but now fear that still we may not.

The statement in the 'Questions and Answers' document that '*Engaging in advocacy or lobbying would only disqualify an entity from being treated as a charity if the advocacy or lobbying activities were **more than ancillary or incidental to its other purposes***' is not reassuring, and we'd like to see some appropriate other wording placed *in the text of the Bill*.

Thus we'd like that wording recast, with the highlighted section above replaced with '***to fail the altruism test or run contrary to the dominant purpose***'. This is because there will often be occasions when - as with some of the national-type causes we've outlined in section 3, above - a major lobbying effort will be required. (See our recommendation No. 2.) We'd still then need access to an affordable non-party authority to adjudicate, free of the high costs of legal recourse.

**5. Do we think we are entitled to exemption for any other reason than as an ITEC?**

No. We aren't aware of other possible reasons.

**6. Would the Charities Bill impose any additional administrative burden?**

Hard to say. Probably not, because our principal intending donor has already had to invest substantially in developing the software, hardware and personnel skills for handling the increased complexities of the NEW TAX SYSTEM, and we expect these resources will pass across to our Foundation. However the extra work-time required each year will be an ongoing annual cost.

**7. In your opinion, does the Charities Bill 2003 provide the flexibility to ensure**

that the definition can adapt to the changing needs of society?

In general, yes, but possibly not

- because of the proposed constraints on free speech as already described; and
- because, if our NED Foundation or others like it were to be excluded from recognition as a not-for-profit altruistic organisation, we would be blocked from fostering citizen learning for the kind of non-party, socially responsive citizen activity whose fostering is our prime purpose.

**8. If the public benefit test were further strengthened** by requiring the dominant purpose of a charitable entity to be altruistic (ie., **characterised as ‘a voluntarily assumed obligation towards the wellbeing of others or the community generally’**, as presented in the *Report of the Inquiry into the Definition of Charities and Related Organisations*) would this affect your organisation? If so, how?.

No. It would not. The Nurturing Evolutionary Development Foundation would be very happy to operate within this definition. Our concern, which is major, is only with the concept of ‘*contrary to public policy*’ or ‘*the purpose of attempting to change the law or government policy*’, which we assume means a party-political policy set in place by whatever government is in office.. Democracy implies that ‘we the people’ must be free to change our minds and change our arrangements, and open discussion is the only democratic way..

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## Proposed Bill showing suggested amendments in bold italics

### Contents

Part 1—Preliminary .....	
^1 .....	S
hort title.....	
^2 .....	C
ommencement.....	
^3 .....	D
efinitions .....	

Part 2—Charities .....	
^4 .....	C
core definition.....	
^5 .....	N
not-for-profit entities .....	
^6 .....	D
dominant purpose .....	
^7 .....	P
public benefit .....	
^8 .....	Di
disqualifying purposes .....	
^9 .....	O
open and non-discriminatory self-help groups .....	
Part 3—Charitable purpose.....	
^10 .....	R
references to charitable purpose .....	
^11 .....	A
advancement of social or community welfare .....	
^12 .....	R
religion .....	
<b>Part 4—Appeals</b> .....	
^13 .....	C
<b>Charitable Appeals Tribunal</b>	

A Bill for an Act to define charities and charitable purpose, and for related purposes

The Parliament of Australia enacts:

### **Part 1—Preliminary**

#### 1 Short title

This Act may be cited as the *Charities Act 2003*.

## 2 Commencement

This Act commences on 1 July 2004.

## 3 Definitions

(1) In this Act, unless the contrary intention appears:

*advancement* includes the meaning given by subsection <sup>^10</sup>(2).

*advancement of social or community welfare* includes the meaning given by section <sup>^11</sup>.

*disqualifying purpose* has the meaning given by section <sup>^8</sup>.

*dominant purpose* has the meaning given by section <sup>^6</sup>.

*entity* has the meaning given by section 960-100 of the *Income Tax Assessment Act 1997*.

*government body* means:

- (a) the Commonwealth, a State or a Territory; or
- (b) a body controlled by the Commonwealth, a State or a Territory; or
- (c) the government of a foreign country; or
- (d) a body controlled by the government of a foreign country.

*not-for-profit entity* has the meaning given by section <sup>^5</sup>.

*open and non-discriminatory self-help group* has the meaning given by section <sup>^9</sup>.

*public benefit* has the meaning given by section <sup>^7</sup>.

*serious offence* means an offence against a law of the Commonwealth, of a State or of a Territory, that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

(2) To avoid doubt, the definitions of terms in this section do not apply in any Act other than this Act.

## Part 2—Charities

### 4 Core definition

(1) A reference in any Act to a charity, to a charitable institution or to any other kind of charitable body, is a reference to an entity that:

- (a) is a not-for-profit entity; and
- (b) has a dominant purpose that:
  - (i) is charitable; and
  - (ii) unless subsection (2) applies—is for the public benefit; and
  - (c) does not engage in activities that do not further, or are not in

- aid of, its dominant purpose; and
  - (d) does not have a disqualifying purpose; and
  - (e) does not engage in, and has not engaged in, conduct (or an omission to engage in conduct) that constitutes a serious offence; and
  - (f) is not an individual, a partnership, a political party, a superannuation fund or a government body.
- (2) The entity's dominant purpose need not be for the public benefit if the entity is:
- (a) an open and non-discriminatory self-help group; or
  - (b) a closed or contemplative religious order that regularly undertakes prayerful intervention at the request of members of the public.

## 5 Not-for-profit entities

An entity is a *not-for-profit entity* if:

- (a) it does not, either while it is operating or upon winding up, carry on its activities for the purposes of profit or gain to particular persons, including its owners or members; and
- (b) it does not distribute its profits or assets to particular persons, including its owners or members, either while it is operating or upon winding up.

## 6 Dominant purpose

- 1) An entity has a *dominant purpose* that is charitable if and only if:
- (a) it has one or more purposes that are charitable; and
  - (b) any other purposes that it has are purposes that further or are in aid of, and are ancillary or incidental to, its purposes that are charitable.
- (2) An entity has a *dominant purpose* that is for the public benefit if and only if:
- (a) it has one or more purposes that are for the public benefit; and
  - (b) any other purposes that it has are purposes that further or are in aid of, and are ancillary or incidental to, its purposes that are for the public benefit.

## 7 Public benefit

- (1) A purpose that an entity has is for the *public benefit* if and only if:
- (a) it is aimed at achieving a universal or common good; and
  - (b) it has practical utility; and
  - (c) it is directed to the benefit of the general community or to a sufficient section of the general community.
- (2) A purpose is not directed to the benefit of a sufficient section of the

general community if the people to whose benefit it is directed are numerically negligible.

- (3) Subsection (2) does not limit the other circumstances in which a purpose is not for the benefit of the general community or to a sufficient section of the general community.

## 8 Disqualifying purposes

(1) The purpose of engaging in activities that are unlawful is a *disqualifying purpose*.

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

- (a) the purpose of advocating a political party *or non-altruistic 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, contrary to the primary altruistic purposes of the entity concerned. Engaging in advocacy or lobbying would only disqualify an entity from being treated as a charity if the advocacy or lobbying activities were to fail the altruism test or run contrary to the dominant purpose.*

## 9 Open and non-discriminatory self-help groups

An entity is an *open and non-discriminatory self-help group* if:

- (a) it is an association of individuals that has an open and non-discriminatory membership; and
- (b) it is established for the purpose of assisting individuals affected by a particular disadvantage or discrimination, or by a need that is not being met; and
- (c) it is made up of, and controlled by, individuals who are affected by the disadvantage, discrimination or need; and
- (d) all of its criteria for membership relate to its purpose; and
- (e) its membership is open to any individual who satisfies the criteria.

## Part 3—Charitable purpose

### 10 References to charitable purpose

(1) A reference in any Act to a charitable purpose is a reference to any of the following purposes:

- (a) the advancement of health;
- (b) the advancement of education;
- (c) the advancement of social or community welfare;
- (d) the advancement of religion;
- (e) the advancement of culture;
- (f) the advancement of the natural environment;
- (g) any other purpose that is beneficial to the community.

(2) *Advancement* includes protection, maintenance, support, research and improvement. *Advancement in the categories (a) to (g) above includes promoting public discussion, citizen learning and involvement which may lead to democratic changes in laws including constitutional changes that are consistent with international laws, treaties, declarations and principles to which Australia is a party, including preambles of the UN and UNESCO charters, provided that the entity neither supports, opposes nor excludes members of any political party or candidate.*

### 11 Advancement of social or community welfare

Without limiting what constitutes the advancement of social or community welfare, advancement of social or community welfare includes:

- (a) the care of, and the support and protection of, children and young people; and
- (b) in particular, the provision of child care services.

## 12 Religion

- (1) In determining, for the purposes of paragraph ^10(1)(d), whether particular ideas, practices and observances constitute a religion, regard is to be had to:
  - (a) whether the ideas and practices involve belief in the supernatural; and
  - (b) whether the ideas relate to people's nature and place in the universe and their relation to things supernatural; and
  - (c) whether the ideas are accepted by adherents as requiring or encouraging them to observe particular standards or codes of conduct or to participate in specific practices having supernatural significance; and
  - (d) whether, however loosely knit and varying in beliefs and practices adherents may be, they constitute one or more identifiable groups; and
  - (e) whether adherents see the collection of ideas and/or practices as constituting a religion.
- (2) This section does not limit the matters to which regard may be had in determining whether particular ideas, practices and observances constitute a religion.

## **Part 4—Appeals**

### ***13 Charitable Appeals Tribunal***

*A charitable purposes tribunal shall arbitrate when disputes arise over whether particular entities fall within or outside these definitions. Analogous in function to existing administrative appeals tribunals, industrial conciliation and arbitration tribunals, arts councils and other supervisors of public funding for charitable purposes, the tribunal's members will be appointed by parliament from a panel chosen by a representative convention of existing charities.*

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