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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

*Presented and read a first time*

**EXPOSURE DRAFT**

## **Charities Bill 2003**

**No.     , 2003**

*(Treasury)*

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

**EXPOSURE DRAFT**



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

3     The Parliament of Australia enacts:

4     **Part 1—Preliminary**  
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6     <sup>^</sup>**1 Short title**

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

8     <sup>^</sup>**2 Commencement**

9                     This Act commences on 1 July 2004.

Section ^3

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1     **^3 Definitions**

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

3                     **advancement** includes the meaning given by subsection ^10(2).

4                     **advancement of social or community welfare** includes the  
5                     meaning given by section ^11.

6                     **disqualifying purpose** has the meaning given by section ^8.

7                     **dominant purpose** has the meaning given by section ^6.

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

10                    **government body** means:

11                       (a) the Commonwealth, a State or a Territory; or

12                       (b) a body controlled by the Commonwealth, a State or a  
13                       Territory; or

14                       (c) the government of a foreign country; or

15                       (d) a body controlled by the government of a foreign country.

16                     **not-for-profit entity** has the meaning given by section ^5.

17                     **open and non-discriminatory self-help group** has the meaning  
18                     given by section ^9.

19                     **public benefit** has the meaning given by section ^7.

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

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

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## **Part 2—Charities**

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### **^4 Core definition**

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(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.

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(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.

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### **^5 Not-for-profit entities**

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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

Section ^6

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- 1 (b) it does not distribute its profits or assets to particular persons,  
2 including its owners or members, either while it is operating  
3 or upon winding up.

4 **^6 Dominant purpose**

- 5 (1) An entity has a *dominant purpose* that is charitable if and only if:  
6 (a) it has one or more purposes that are charitable; and  
7 (b) any other purposes that it has are purposes that further or are  
8 in aid of, and are ancillary or incidental to, its purposes that  
9 are charitable.
- 10 (2) An entity has a *dominant purpose* that is for the public benefit if  
11 and only if:  
12 (a) it has one or more purposes that are for the public benefit;  
13 and  
14 (b) any other purposes that it has are purposes that further or are  
15 in aid of, and are ancillary or incidental to, its purposes that  
16 are for the public benefit.

17 **^7 Public benefit**

- 18 (1) A purpose that an entity has is for the *public benefit* if and only if:  
19 (a) it is aimed at achieving a universal or common good; and  
20 (b) it has practical utility; and  
21 (c) it is directed to the benefit of the general community or to a  
22 sufficient section of the general community.
- 23 (2) A purpose is not directed to the benefit of a sufficient section of the  
24 general community if the people to whose benefit it is directed are  
25 numerically negligible.
- 26 (3) Subsection (2) does not limit the other circumstances in which a  
27 purpose is not for the benefit of the general community or to a  
28 sufficient section of the general community.



1     **^8 Disqualifying purposes**

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

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

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

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

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

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

12     **^9 Open and non-discriminatory self-help groups**

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

14                 (a) it is an association of individuals that has an open and  
15                     non-discriminatory membership; and

16                 (b) it is established for the purpose of assisting individuals  
17                     affected by a particular disadvantage or discrimination, or by  
18                     a need that is not being met; and

19                 (c) it is made up of, and controlled by, individuals who are  
20                     affected by the disadvantage, discrimination or need; and

21                 (d) all of its criteria for membership relate to its purpose; and

22                 (e) its membership is open to any individual who satisfies the  
23                     criteria.

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## Part 3—Charitable purpose

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### ^10 References to charitable purpose

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

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(a) the advancement of health;

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(b) the advancement of education;

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(c) the advancement of social or community welfare;

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(d) the advancement of religion;

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(e) the advancement of culture;

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(f) the advancement of the natural environment;

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(g) any other purpose that is beneficial to the community.

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(2) *Advancement* includes protection, maintenance, support, research and improvement.

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### ^11 Advancement of social or community welfare

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

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(a) the care of, and the support and protection of, children and young people; and

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(b) in particular, the provision of child care services.

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### ^12 Religion

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(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:

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(a) whether the ideas and practices involve belief in the supernatural; and

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(b) whether the ideas relate to people's nature and place in the universe and their relation to things supernatural; and

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- 1 (c) whether the ideas are accepted by adherents as requiring or  
2 encouraging them to observe particular standards or codes of  
3 conduct or to participate in specific practices having  
4 supernatural significance; and  
5 (d) whether, however loosely knit and varying in beliefs and  
6 practices adherents may be, they constitute one or more  
7 identifiable groups; and  
8 (e) whether adherents see the collection of ideas and/or practices  
9 as constituting a religion.
- 10 (2) This section does not limit the matters to which regard may be had  
11 in determining whether particular ideas, practices and observances  
12 constitute a religion.