

2010-2011-2012-2013

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

Not-for-profit Sector Freedom to Advocate Bill 2013

No. , 2013

(Finance and Deregulation)

A Bill for an Act to prohibit Commonwealth agreements from restricting or preventing not-for-profit entities from commenting on, advocating support for or opposing changes to Commonwealth law, policy or practice, and for related purposes

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1 **A Bill for an Act to prohibit Commonwealth**
2 **agreements from restricting or preventing**
3 **not-for-profit entities from commenting on,**
4 **advocating support for or opposing changes to**
5 **Commonwealth law, policy or practice, and for**
6 **related purposes**

7 The Parliament of Australia enacts:

8 **1 Short title**

9 This Act may be cited as the *Not-for-profit Sector Freedom to*
10 *Advocate Act 2013*.

1 **2 Commencement**

2 This Act commences on the day after this Act receives the Royal
3 Assent.

4 **3 Definitions**

5 In this Act:

6 **agency** means an entity mentioned in paragraph (a), (b), (c), (d),
7 (e), (f) or (h) of the definition of **agency** in subsection 6(1) of the
8 *Privacy Act 1988*.

9 **Commonwealth agreement** means a legally binding agreement
10 between an agency (on behalf of the Commonwealth) and a
11 not-for-profit entity.

12 **confidential information** means information, the disclosure of
13 which:

- 14 (a) would found an action for breach of confidence; or
15 (b) would disclose:
16 (i) trade secrets; or
17 (ii) any other information having a commercial value that
18 would be, or could reasonably be expected to be,
19 destroyed or diminished if the information were
20 disclosed; or
21 (c) would be a disclosure of information likely to prejudice
22 national security (within the meaning of subsection 17(1) of
23 the *National Security Information (Criminal and Civil*
24 *Proceedings) Act 2004*).

25 **not-for-profit entity** means:

- 26 (a) an entity that is entitled to be registered under the *Australian*
27 *Charities and Not-for-profits Commission Act 2012*; or
28 (b) a non-profit body (within the meaning of the *Electronic*
29 *Transactions Act 1999*).

30 **prohibited content** has the meaning given by section 5.

1 **4 Agency not to include prohibited content in Commonwealth**
2 **agreement**

- 3 (1) An agency must not include prohibited content in a
4 Commonwealth agreement.
- 5 (2) If, apart from this subsection, a Commonwealth agreement
6 includes prohibited content, that prohibited content is void.

7 **5 Prohibited content**

- 8 (1) ***Prohibited content*** is any requirement that restricts or prevents a
9 not-for profit entity (including staff of the not-for-profit entity)
10 from commenting on, advocating support for or opposing a change
11 to any matter established by law, policy or practice of the
12 Commonwealth.
- 13 (2) However, the requirement is not ***prohibited content*** to the extent
14 that it restricts or prevents a not-for profit entity from disclosing
15 information that:
16 (a) is confidential information; or
17 (b) is personal information (within the meaning of the *Privacy*
18 *Act 1988*).

19 **6 Compensation for acquisition of property**

- 20 (1) If the operation of this Act would result in an acquisition of
21 property from a person otherwise than on just terms, the
22 Commonwealth is liable to pay a reasonable amount of
23 compensation to the person.
- 24 (2) If the Commonwealth and the person do not agree on the amount
25 of the compensation, the person may institute proceedings in the
26 Federal Court of Australia for the recovery from the
27 Commonwealth of such reasonable amount of compensation as the
28 Court determines.
- 29 (3) In this section:
30 ***acquisition of property*** has the same meaning as in
31 paragraph 51(xxxi) of the Constitution.

Section 7

1 *just terms* has the same meaning as in paragraph 51(xxxi) of the
2 Constitution.

3 **7 Application**

4 (1) This Act applies to a Commonwealth agreement entered into
5 before, on or after the commencement of this Act.

6 (2) Despite subsection (1), subsection 4(1) applies to a Commonwealth
7 agreement entered into on or after the commencement of this Act.

8 (3) Subsection (4) applies if, immediately before the commencement
9 of this Act, a Commonwealth agreement includes prohibited
10 content.

11 (4) Despite subsection (1):

12 (a) subsection 4(2) has the effect that prohibited content in the
13 Commonwealth agreement becomes void on the
14 commencement of this Act; and

15 (b) paragraph (a) does not affect any right, privilege, obligation
16 or liability acquired, accrued or incurred under the prohibited
17 content before the commencement of this Act.