



Not-for-profit Sector Freedom to Advocate Act 2013

No. 56, 2013

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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[Assented to 13 June 2013]

The Parliament of Australia enacts:

Not-for-profit Sector Freedom to Advocate Act 2013 No. 56, 2013 1

1 Short title

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

2 Commencement

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

3 Definitions

In this Act:

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

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

confidential information means information, the disclosure of which:

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

not-for-profit entity means:

- (a) an entity that is entitled to be registered under the *Australian Charities and Not-for-profits Commission Act 2012*; or

- (b) a non-profit body (within the meaning of the *Electronic Transactions Act 1999*).

prohibited content has the meaning given by section 5.

4 Agency not to include prohibited content in Commonwealth agreement

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

5 Prohibited content

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

6 Compensation for acquisition of property

- (1) If the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.

Section 7

(3) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

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

7 Application

- (1) This Act applies to a Commonwealth agreement entered into before, on or after the commencement of this Act.
- (2) Despite subsection (1), subsection 4(1) applies to a Commonwealth agreement entered into on or after the commencement of this Act.
- (3) Subsection (4) applies if, immediately before the commencement of this Act, a Commonwealth agreement includes prohibited content.
- (4) Despite subsection (1):
 - (a) subsection 4(2) has the effect that prohibited content in the Commonwealth agreement becomes void on the commencement of this Act; and
 - (b) paragraph (a) does not affect any right, privilege, obligation or liability acquired, accrued or incurred under the prohibited content before the commencement of this Act.

[*Minister's second reading speech made in—
Senate on 13 March 2013
House of Representatives on 28 May 2013*]

(49/13)