

Legislative Council

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South Australia

Not-for-Profit Sector Freedom to Advocate Bill 2013

A BILL FOR

An Act to prohibit State agreements from restricting or preventing not-for-profit entities from commenting on, advocating support for or opposing changes to State law, policy, or practice; and for other purposes.

Contents

- 1 Short title
 - 2 Commencement
 - 3 Interpretation
 - 4 State agreements not to include prohibited content
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The Parliament of South Australia enacts as follows:

1—Short title

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

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Interpretation

In this Act—

confidential information means information the disclosure of which—

- (a) would found an action for breach of confidence; or
- (b) would reveal trade secrets; or
- (c) in the case of any other information having commercial value—would, or could reasonably be expected to, destroy or diminish such commercial value; or
- (d) would be likely to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004* of the Commonwealth);

government agency means—

- (a) a Minister; or
- (b) an administrative unit; or

- (c) any other agency or instrumentality of the Crown; or
- (d) a body corporate—
 - (i) comprised of persons, or with a governing body comprised of persons, a majority of whom are appointed by the Governor, a Minister or an agency or instrumentality of the Crown; or
 - (ii) subject to control or direction by a Minister; or
- (e) a person or body brought within the ambit of this definition by the regulations; or
- (f) a subsidiary of a Minister or a person or body referred to in a preceding paragraph,

but does not include—

- (g) a council or any other body established for local government purposes; or
- (h) a person or body excluded from the ambit of this definition by the regulations;

not-for-profit entity means—

- (a) an entity that is registered, or entitled to be registered, under the *Australian Charities and Not-for-profits Commission Act 2012*; or
- (b) any other entity that is not carried on for the purposes of profit or gain to its individual members and is, by the terms of its constitution, prohibited from making any distribution, whether in money, property or otherwise, to its members;

personal information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

prohibited content, in relation to a State agreement, means a requirement of the agreement that restricts or prevents, or purports to restrict or prevent, a not-for-profit entity or staff of a 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 State government or a government agency, but does not include a requirement that restricts or prevents the disclosure of confidential information or personal information;

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

4—State agreements not to include prohibited content

- (1) A State agreement (whether entered into before or after the commencement of this Act) must not include prohibited content.
- (2) A State agreement that contravenes subsection (1) is void and of no effect to the extent of the prohibited content.
- (3) However, if, immediately before the commencement of this Act, a State agreement includes prohibited content, subsection (2) does not operate so as to affect any right, privilege, obligation or liability acquired, accrued or incurred by a party under the agreement before the commencement of this Act.