



New South Wales

Non-profit Bodies (Freedom to Advocate) Bill 2019

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to prohibit and invalidate a term (*prohibited term*) in State agreements with non-profit bodies that restricts or prevents those bodies from advocating on State law, policy or practice.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 defines certain words and expressions used in the proposed Act.

Clause 4 defines *prohibited term* for the purposes of the proposed Act.

Clause 5 prohibits an agency of the State from including a prohibited term in a State agreement and also provides that where such a term has been included in a State agreement, that term is void.

Clause 6 provides that the proposed Act extends to State agreements entered into before to the commencement of the proposed Act. The clause also provides that where a State agreement contains a prohibited term immediately before the commencement of the proposed Act, the prohibited term will become void on the commencement of the proposed Act and any right, privilege, obligation or liability acquired in relation to that term is unaffected.

Clause 7 provides a regulation-making power for the purposes of savings or transitional requirements.



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Non-profit Bodies (Freedom to Advocate) Bill 2019

No , 2019

A Bill for

An Act to prohibit State agreements from restricting or preventing non-profit bodies from commenting on, advocating support for or opposing changes to State law, policy or practice.

The Legislature of New South Wales enacts—	1
1 Name of Act	2
This Act is the <i>Non-profit Bodies (Freedom to Advocate) Act 2019</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5
3 Definitions	6
(1) In this Act—	7
agency means an agency within the meaning of the <i>Government Information (Public Access) Act 2009</i> other than a court or a local authority.	8
confidential information means information the disclosure of which—	10
(a) would found an action for breach of confidence, or	11
(b) would disclose—	12
(i) trade secrets, or	13
(ii) any other information having commercial value that would be, or could be reasonably expected to be, destroyed or diminished if the information were disclosed.	14
non-profit body means a body that is not carried on for the purposes of profit or gain to its individual members and is, by the terms of the body’s constitution, prohibited from making any distribution, whether in money, property or otherwise, to its members.	17
prohibited term —see section 4.	21
State agreement means a legally binding agreement between an agency (on behalf of the State) and a non-profit body.	22
Note. The <i>Interpretation Act 1987</i> contains definitions and other provisions that affect the interpretation and application of this Act.	24
(2) Notes included in this Act do not form part of this Act.	26
4 Definition of “prohibited term”	27
(1) A prohibited term is a term that restricts or prevents a non-profit body (including staff of the non-profit body) from commenting on, advocating support for or opposing change to a matter established by law, policy or practice of the State.	28
(2) However, a term is not a prohibited term to the extent that it restricts or prevents a non-profit body from disclosing information that is—	31
(a) confidential information, or	33
(b) personal information (within the meaning of section 4 of the <i>Privacy and Personal Information Protection Act 1998</i>).	34
5 Agency not to include prohibited term in State agreement	36
(1) An agency must not include a prohibited term in a State agreement.	37
(2) If a State agreement includes a prohibited term, that term is void.	38
6 Prohibition extends to existing State agreements	39
(1) Section 5 extends to a State agreement entered into, and in force, before the commencement of this Act (an existing State agreement).	40
(2) If an existing State agreement includes a prohibited term—	42

(a)	the prohibited term becomes void on the commencement of this Act, and	1
(b)	any right, privilege, obligation or liability acquired, accrued or incurred under the prohibited term is unaffected despite the term becoming void.	2 3
7	Regulations	4
(1)	The Governor may make regulations that contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.	5 6 7
(2)	Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	8 9
(3)	To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as—	10 11 12
(a)	to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	13 14 15
(b)	to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	16 17 18