

2024

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Charities Legislation Amendment  
(Promoting Certainty, Trust and  
Independence) Bill 2024**

**No.     , 2024**

(###)

***A Bill for an Act to amend the *Charities Act 2013*, the  
*Australian Charities and Not-for-profits Commission  
Act 2012* and the *Not-for-profit Sector Freedom to  
Advocate Act 2013*, and for related purposes.***

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## Contents

1 Short title	2
2 Commencement	2
3 Schedules	3

<b>Schedule 1—Amendments</b>	<b>3</b>
Part 1—Certainty (Presumption of public benefit)	3
<i>Charities Act 2013</i>	3
Part 2—Trust (Selection and appointment of the Commissioner of the Australian Charities and Not-for-profits Commission)	4
<i>Australian Charities and Not-for-profits Commission Act 2012</i>	4
Part 3—Independence (Encouraging freedom to advocate)	7
<i>Not-for-profit Sector Freedom to Advocate Act 2013</i>	7

### ***A Bill for an Act to amend the Charities Act 2013, the Australian Charities and Not-for-profits Commission Act 2012 and the Not-for-profit Sector Freedom to Advocate Act 2013, and for related purposes.***

The Parliament of Australia enacts:

#### **1 Short title**

This Act is the *Charities Legislation Amendment (Promoting Certainty, Trust and Independence) Act 2024*.

#### **2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with

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column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	The day after this Act receives the Royal Assent.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### **3 Schedules**

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments**

### **Part 1—Certainty (Presumption of public benefit)**

#### *Charities Act 2013*

##### **1 After paragraph (e) of Section 7**

Insert:

- (f) the purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country, if:

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- (i) in the case of promoting a change—the change is in furtherance or in aid of one or more of the purposes mentioned in paragraphs 12(1)(a) to (k); or
  - (ii) in the case of opposing a change—the change is in opposition to, or in hindrance of, one or more of the purposes mentioned in paragraphs 12(1)(a) to (k).

## **Part 2—Trust (Selection and appointment of the Commissioner of the Australian Charities and Not-for-profits Commission)**

### *Australian Charities and Not-for-profits Commission Act 2012*

#### **2 Section 300-5**

Insert:

*merit-based:*

- (a) an assessment process for an appointment to office of the Commissioner is *merit-based* if the assessment is made of the comparative suitability of the candidates for the performance of the functions and powers of the office of Commissioner, using a competitive selection process; and
- (b) the assessment is based on the relationship between the candidates' skills, expertise, experience and knowledge and the skills, expertise, experience and knowledge required to perform the functions and powers of the office of Commissioner.

#### **3 Section 115-5**

Repeal the section, substitute:

- (1)The Commissioner is to be appointed by the Governor-General by written instrument on the recommendation of the Minister.

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(2) Before the Minister makes a recommendation to the Governor-General, the Minister must be satisfied that the person to be recommended for appointment as Commissioner was assessed by a panel established under subsection (3) as suitable for the appointment through an assessment process that:

- (a) was merit-based; and
- (b) included public advertising of the position; and
- (c) complied with the requirements (if any) prescribed by the regulations.

Note: Public advertising of the position of Commissioner should include, at a minimum, advertising in the national media, such as in national or other broad-reaching newspapers, as well as on government websites.

#### *Assessment panels*

(3) The Minister must establish a panel to assess the suitability of candidates applying for appointment as Commissioner.

(4) The assessment panel must include at least one representative of the charity and not-for-profit sector who is not an employee of an Australian government agency.

(5) The regulations may make provision for and in relation to assessment panels.

(6) Without limiting subsection (5), and subject to subsection (4), the regulations may make provision for and in relation to the following:

- (a) the establishment of assessment panels;
- (b) the composition of assessment panels;
- (c) the operation and procedures of assessment panels;
- (d) the methodology to be used by assessment panels in assessing candidates for appointment as a member;
- (e) the provision of assistance by the ACNC to assessment panels, including secretariat services and clerical assistance.

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*Qualification for appointment*

- (7) A person must not be appointed as Commissioner unless the Minister is satisfied that the person has appropriate expertise in one or more areas relevant to the establishment, functions and powers of the Commissioner.

*Period and basis of appointment*

- (8) Subject to subsection 115-10(1), the Commissioner holds office for a period of 5 years unless a shorter period is specified in the instrument of appointment.
- (9) A person must not be appointed as the Commissioner under section 115-5(1) for a period if the sum of the following periods exceeds 10 years:
- (a) that period; or
  - (b) any periods of previous appointment of the person as the Commissioner under that section and section 115-10(1).
- (10) The Commissioner is to be appointed on a fulltime basis.

**4 Section 115-10 (heading)**

Repeal the heading, substitute:

**115-10 Extended appointment**

**5 Section 115-10**

Repeal the section, substitute:

- (1) The appointment of a person as the Commissioner may be extended for a period of up to 1 year by written instrument made within 6 months before the end of the period specified in the person's instrument of appointment.
- (2) Paragraph 115-5(2)(b) does not apply in relation to the extension of an appointment of a person under subsection 115-10(1).

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## Part 3—Independence (Encouraging freedom to advocate)

### *Not-for-profit Sector Freedom to Advocate Act 2013*

#### 6 After Section 2

Insert:

##### 2A Objects of this Act

The objects of this Act are to ensure:

- (1) the Commonwealth respects the not-for-profit sector’s independent participation in lawful public policy debate and development; and
- (2) that Commonwealth agreements are not used by the Commonwealth to suppress participation in lawful public policy debate and development by not-for-profits.

#### 7 Section 4

Insert:

- (3)A Commonwealth agency or officer must not engage in or use prohibited conduct during the negotiation, tender, management, extension or renewal of a Commonwealth agreement.

Note 1: Agreement management refers to all the activities undertaken by an agency, after a Commonwealth agreement has been signed or commenced, to manage the performance of the contract (including any corrective action) and to achieve the agreed outcomes.

#### 8 Section 5

Insert:

- (1A) ***Prohibited conduct*** is any conduct by a Commonwealth agency or officer which directly or indirectly, either by words (whether written or spoken), by conduct or a combination of both, restricts,

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prevents, discourages, persuades or influences 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.