Wendy Williams: Hello and welcome to Not for Podcast, Where Not for Profits Fear to Tread. I'm Wendy Williams and I’m joined by fellow journalist Luke Michael.


WW: And we are talking today about not-for-profit advocacy and whether charities feel like they can speak out on the issues that matter to them.

LM: That's right. And Pro Bono Australia in collaboration with the Human Rights Law Centre and academics from the University of Melbourne have actually just released a report called Civil Voices, which takes a look at the state of not-for-profit advocacy in Australia.

WW: So with this podcast we're going to dig into some of the findings, the main one being: are charities self-silencing? So Luke, what's coming up?

LM: Coming up we speak to one of the report's authors Sarah Maddison about what the report tells us about the current state of advocacy and how charities are feeling at the moment. We also talk to Community Council for Australia CEO David Crosbie about whether some of the sector's fears are being realised. And also we have the former president of the Human Rights Commission Gillian Triggs talking to us about the dangers of silencing the charity sector and what we can do to make sure that organisations are not silenced out.

WW: So lots to get through. But first, let's talk about Civil Voices. So we surveyed the not-for-profit sector, our audience, and we got 1,463 respondents, which was a great response for us and I think showed us that this is an area that the sector really cares about. I think advocacy is an issue that's been discussed around the water cooler a lot recently. We've heard a lot of anecdotal stories, we've seen stories in the media about not for profits feeling that their advocacy is under threat or fears that the government is moving to silence the sector. And I think that was one of the drivers behind this initiative. So I feel almost really thrilled to take part in this project. And the idea was really just to get that data or get an evidence base to really back up what we were hearing. And I think we found some really interesting things out of this report, actually.

LM: Yeah, definitely. And some of the key takeaways for me were that more than 50 per cent of respondents believe that NGOs were pressured to amend public statements to be in line with government policy, and 58 per cent believe that those who dissented from current government policy were not valued as part of a robust democracy.

And also two thirds of the respondents said it was easier to be heard five years ago than it is now. The most cited reasons for the downturn in perceptions of being heard included cuts to funding of NGOs, less access to participation in policy making processes than in the past, fewer resources available for
advocacy, and restrictions such as clauses limiting their public commentary and government funding agreements.

WW: And I think they were all really, really interesting points. I mean the main one, really the key message that emerged from the report was that not for profits are on a path of what you are kind of going to call quiet advocacy. So to a greater or lesser degree, civil society organisations are engaging in various forms of self-silencing. So that’s really kind of treading carefully in their advocacy work lest they risk financial security and political retribution, really.

So a total of 40 per cent of respondents directly linked the airing of dissenting viewpoints as a threat to their DGR status. And what’s interesting is if you compare that with another finding that 83 per cent of respondents said they had DGR status and they regarded it as essential to their financial well-being, you can really bring those facts together and see that it’s not insignificant.

The other thing, and this definitely speaks to that self-silencing message that we’re really getting from the report is that 12 per cent of the respondents actually perceived internal pressure, so that’s coming from their board or their management, to do things quietly. And you really get a sense of that from some of the comments that came from the respondents directly that said they were, for example, a benign organisation or not politically active, or that they were not into lobbying in potentially controversial areas.

LM: And yeah, it’s obviously a really big issue for the sector. And when I spoke to the co-author of the report, Associate Professor Sarah Maddison, she really drove home that the stand out finding for her was this notion of self-silencing. So let’s take a listen to her now.

Sarah Maddison: Such a pleasure.

LM: So what did the Civil Voices report tell us about the current state of advocacy?

SM: Well, it told us that there’s a lot going on in the state of civil advocacy in Australia. We have a huge number of organisations attempting to be active in this space. One of the things that’s changed quite dramatically since the 2004 survey is, of course, the emergence of social media. And Australian civil society organisations are making their good use of new media for connecting with their members but also communicating with the wider public. So there’s some good news in that. But I think the most concerning finding is what we’ve described in the report as an emerging trend of self-silencing among these organisations.

So if we compare 2017 to 2004, what we could see in 2004 was a very hostile political environment in which non-government organisations were being actively silenced by government who essentially delegitimised their participation in public debates. What we’re seeing now is that some of those silencing strategies have actually crept into the way that organisations are managing themselves in the advocacy realm, and I think that’s pretty worrying.
LM: And so what impact do you think that this self-silencing is having on these charities?

SM: Well, the main impact that it’s having is that organisations are muted in their advocacy. So there is a sense among organisations that they need to tread a bit carefully, that they need to not be too assertive and definitely not aggressive in their communications with government. That maintaining good relations with government is essential to their work. So that’s a pretty significant divergence for a lot of those organisations from their roots, which are much more in an activist tradition. And when they formed, some of them decades ago, they would have had boards or committees of management that were in fact peopled by activists then people who were in those roles specifically to engage in policy contestation with government for the benefit of their client or consumer groups.

What we’re seeing now is that a lot of board and committees of management tend to be peopled by people engaged in marketing and communications and lawyers, so the message to the organisations and to staff in those organisations is to tread carefully, to manage what they say, to not alienate government, to stay in government’s good books rather than take the political fight up to them.

LM: And what does this trend say about the state of Australian democracy at the moment?

SM: Well I think if we take this longitudinal look, which we’ve had the opportunity to do with this survey, is that we can see a number of impacts slowly eroding Australian democratic capacity in the civil society space. So the 2004 survey documented the impacts of hostile government silencing tactics. Other research has also pointed to the impact of broadly neo-liberal trends in public sector management that have also impacted on the sector.

And so what we see at the time is civil society playing less of a role in public advocacy, in public debates. And the concern, of course, when that happens is that government hears less and the wider public hears less about some of the most vulnerable groups in our community. So the reason that civil society advocacy is important is because it’s most often those organisations that are at the grassroots, on the front lines, on the streets working with people who are poor, who are marginalised, who are trying to access a range of public and government services. If government doesn’t hear that feedback about how their policies and programs are impacting on those people, then our society as a whole is worse off and those groups, in particular, are considerably disadvantaged.

Another interesting finding related to the capacity for advocacy was that a lot of organisations felt that philanthropists are more interested in funding specific services and programs rather than advocacy. So I guess most people who’ve engaged with philanthropists understand that people giving money want to see a specific outcome or specific impact from their giving. But I think that that is also something for the philanthropic sector to have a think about.

LM: And so given that the philanthropic sources are kind of hesitant to give to advocacy and government funding cuts have happened in that sector space as well, does that mean that advocacy from charities and not for profits is at risk of falling on deaf ears?
SM: Well I think the ears are there. I think people are willing to listen. The challenge is really for organisations to get their message out if they don’t have the resources to support that work. So a lot of government funding contracts either explicitly preclude advocacy or is solely for the delivery particular programs or projects and doesn’t expand to advocacy work. We’ve also seen a lot of turmoil and change in the regulatory sector affecting charities and not for profits, which is adding to this anxiety.

And the bottom line is this work doesn’t cost nothing. Organisations that want to engage in advocacy invest considerable time and resources even if it’s to attend a government consultation. There are travel costs, there also research and staff time costs. It’s a significant investment by organisations, and if they don’t have the support to do that they can’t do it well or they can’t do it at all. So I think the ears are there, I do think the Australian public and I would hope the media are still interested in telling these stories. But we are reliant on civil society organisations to be able to get these messages out. And they need giving support, they need public support to be able to do that.

LM: Yeah, well you’ve given us a lot to think about, but we’ll have to leave it there, Sarah. Thanks again for joining us on the podcast.

SM: Thanks.

WW: As Sarah laid out there, I mean, charities are self-silencing. They’re cautious in their advocacy and that's having a real impact. And I guess taking that is a starting point. The next question that we really kind of need to ask is whether charities are right to be afraid. So to help with that data in context Luke, you spoke to David Crosbie from the CCA to get a sense, I guess, of whether the threats are real.

LM: Yeah, definitely. And it was really great to speak to David because he knows this society inside-out. And he was kind of telling me about what the main threats facing advocacy were at the moment. And he made the point that Australia actually has some really strong protections for the right of charities to advocate, but he did caution that those rights really need to be defended.

We're joined by the CEO of the Community Council for Australia, David Crosbie. David, thanks so much for coming on the podcast.


LM: Now, you know the not-for-profit sector as well as anyone, so how real are the current threats to advocacy?

DC: Well there’s always been a kind of threat to advocacy, but it’s often linked to your engagement or non-engagement with government. So the usual way in which governments exercise some level of control over public voices is through their funding. They chose to fund programs that are run by organisations that appear to be sympathetic to a particular policy position or government. And so it creates a kind of fear amongst some not-for-profit leaders that if they’re not supportive of the government they won’t get government funding.
LM: And one of the findings from Civil Voice was fear over losing DGR status. So what are kind of the issues surrounding this?

DC: It’s quite a complex process, DGR. I haven’t actually heard of many organisations losing their DGR or their capacity to offer receipts that can be tax deductible for donors. But there’s no doubt that people have this fear around that.

LM: And a lot of the discussion is focused on environmental organisations, but what implications do you think it’ll have for the sector more broadly?

DC: In the current government there’s being an inquiring into the Register of Environmental Organisations which controls a lot, not all, but a lot of the DGR for environmental groups in which they’ve talked about saying that environmental groups who do not do much more than advocacy, who are more involved in, I suppose remediation, should be the ones given priority in terms of DGR, and those that are involved in advocacy should have to spend more time in remediation, in looking after the environment rather than advocating around it. So that is an issue. Whether or not the government could actually prosecute a change to DGR that would restrict the voice of charities is still debatable. But certainly there’s no doubt that the current government, particularly the liberal part of the current government, have passed unanimous resolutions with their federal executive to try and restrict the advocacy activities of charities.

LM: And so going back to this kind of overarching fear that some charities have that they could lose government funding if they speak out, do you think this is a valid concern?

DC: Oh, I think it’s a valid concern but I think we probably... and we need to work very hard to protect it. But right at the moment there are very strong protections for the rights of charities to advocate. They’re written into the 2013 definition of charity that advocacy to achieve a charitable purpose is part of being a charity. And even if all you do is advocate towards a charitable purpose you are still entitled to charitable status. So that’s very clear in the legislation.

There are some anti-gag clauses built into legislation at a national level. And in some sectors, charities can get restrictions on gag clauses. Gag clauses are clauses where the government will give you funding but the funding is conditional on you not talking about the programs and services or communities that those programs are going into. And they’ve been very restrictive in the past on the capacity of charities to make any public comments about the services they’re providing.

Those gag clauses are still a major issue for the sector, but I think still a much bigger issue than DGR or current threats to advocacy in the government, primarily because I’m not sure the government could actually successfully prosecute changes to DGR. There are more threats I think in restrictions around political activity, particularly the groups that receive international philanthropy. And I think the sector needs to be very around those issues or the current protections that we enjoy will be eroded.

And many governments would like charities not to be critical of them, and charities need to work very hard I think to raise their voices whenever their advocacy is under threat. And there’s a good chance that
before the end of the year in Australia we’ll need to do that again around political campaigning and the capacity of charities to participate in any election and talk about their particular purpose or policy issue because of restrictions that may be imposed associated with foreign donations.

LM: Yeah, and so just following on from that with the foreign donations bill. So what impact do you think that will have on charities’ abilities to advocate?

DC: Well I think if it goes through in a way that it looks like it’s been drafted, and we hadn’t seen the legislation yet, I think it’ll have one that’s described in the UK when a similar bill was introduced. I think it will have a chilling impact on the voice of charity.

So what happened in the UK is that legislation was passed where anyone involved in public advocacy during an election campaign had to basically audit the organisation to the 12 months prior to that election and show their sources of funding and the extent of their policy and advocacy activities. So it was considered to be a transparency measure, but what it did was make many charities hesitate about whether they could participate in the next election because if they did, they would then have to audit their last 12 months of income and their last 12 months of activity. So many charities just chose to be quiet during the election period so that they wouldn’t have to go through that auditing process.

And for me that’s a real concern. We don’t want to silence the voice of charities in the name of transparency. And I think charities are meant to be very strong in defending their right to participate in election campaigns.

LM: Thanks so much for joining us.

DC: Thanks Luke, and good luck to all those charities out there. My one sort of message would be, be strong and protect what we have. Because I think Australia, at the moment, is very well protected in terms of the capacity of charities to raise their public voice. But that’s a position we have to defend because in many countries around the world it’s been eroded.

WW: That was David, and I really liked his last little addition there, wishing the sector some good luck. But it’s definitely interesting, and the message is that charities have strong protections to advocate, but there’s really that sense that you can’t take your eyes off the ball.

LM: Yeah, his passion is always great to see. And I think he was kind of saying that the fears being expressed by charities are valid. And it was interesting also that he noted gag clauses were a really important issue, because it just adds another barrier to charities’ rights to advocate. But what is clear is that the issue surrounding DGR with the foreign donations bill are also very real. But I guess it’s really a question, Wendy, of how far the government can go with this.

WW: That’s right. And actually on the matter of DGR, I reached out to the Minister for Revenue and Financial Services Kelly O’Dwyer and unfortunately she wasn’t able to join us on the podcast today. But a spokesperson for the minister told me that the government isn’t seeking to silence anyone. They said that, in fact, the government appreciates the great work that many charities do. But they pointed out,
in their own words, “taxpayers cannot be expected to subsidise charities with deductible gift recipient status without having a basic level of accountability in place for those organisations”. They also told me that the government had asked the treasury to consider a range of reforms to DGR, including whether DGR should be overseen by the ACNC. So I know that’s going to be something, and the sector is very interested to see what comes of that.

As you mentioned before Luke, and as David mentioned, the other big issue at the moment is really about that impending foreign donations bill. So I also tried to get Senator Cormann on the podcast. In fact, I reached out to a number of politicians for this podcast, but it has been a very busy few weeks for the government so I didn’t have a lot of luck.

But by way of background, someone from Senator Cormann’s office did tell me that the Turnbull government believes it’s important that only Australians and Australian entities can participate in our elections. And they said that since receiving the Joint Standing Committee on Electoral Matters report the government has been working on legislation to implement this. And importantly, the government has “made clear”, it said, that a ban on foreign donations must apply to all political campaigning, not just political parties. They said this is a complex matter and has been the subject of past High Court proceedings, and the Turnbull government will continue its careful approach in this area.

And so obviously that does have ramifications for the charities. I know a lot of eyes are on this bill and what it’s going to mean for the sector.

LM: Yeah, well it definitely is a complex matter and is just so still up in the air, which makes it really difficult to know what’s going to happen. But I think that leads us really well into the next part of the podcast, which is: what can we actually do to prevent charities from losing their voice?

And Wendy, you spoke to Gillian Triggs about what the dangers are if the sector is silenced, whether it’s through self-silencing, or through gag clauses, or government restrictions. What did she kind of tell you?

WW: That’s right, and she is just fascinating. And it was so great to speak to her about an issue like advocacy. I think a lot of our listeners will know that she became somewhat of a household name during her time as president of the Human Rights Commission. And I actually asked her what motivated her to speak out when she was in that role and whether there were ever times that she wanted to stay quiet. And she said that it just quite simply never occurred to her to do anything else. But let’s have a listen to her and hear what she said about advocacy when it comes to not for profits.

Thank you Gillian for being with us on the podcast today.

Gillian Triggs: It’s a great pleasure to be with you.

WW: So we’re here today to talk about advocacy. We found that there’s a lot of concern at the moment about the state of advocacy for charities. So as the human rights commissioner you became one of the most controversial and polarising statutory office holders that we’ve seen in Australia’s history, really. I mean you were lauded for your fearless advocacy by human rights groups, and at the same time you
were quite often vilified, as I’m sure a lot of people remember, by the more right-wing commentariat.

And early this year, Gillian, in your speech at the launch of the Human Rights Law Centre’s Defending Democracy report at Progress you said that an ideological assault on community advocacy was being waged by Australian governments and political leaders, that really threatened the fundamental ideals of democracy. Do you think this is still the case?

GT: Oh, I do. And I think that it’s sadly a phenomenon that this government, and in particular the attorney who is on record and not only, of course, for reducing the budgets of all of those that might otherwise be advocates, are having a chilling effect on the entire charitable organisation NGO groups, but they are on record for saying that it’s all very well to handle individual cases and to provide legal aid or advice or conciliation services in individual cases, but wrong for them to speak at the mention of advocacy.

Now, that is a very, very damaging position to take. Firstly, it’s entirely contrary to our democratic principles and freedom of speech. But it is also damaging because it’s one thing privately and quietly to look after a single case, but the only way you can achieve change for the underlying causes of the breaches of human rights is to be able to speak up. And it was that very element of advocacy that the government had been ideologically opposed to. And I think that is enormously damaging and very disappointing for, in a sense, a government committed to liberal principles to have moved so far away from those liberal principles to now challenge the right of people to speak up.

And as you may know, lawyers are now being described by the minister for immigration Mr. Dutton as un-Australians for providing legal advice to refugees and asylum seekers. And this shows you just how far we have come in denying the fundamental rights of freedom of speech and of advocacy for those less fortunate and very vulnerable in the Australian community.

WW: Yeah. And as you say there, it’s very damaging. But can you enlighten me, what is the real danger of silencing charities?

GT: Well, part of the danger actually refers to what I was saying before and that is that the people at the coalface, if you like, on the ground, in the soup kitchens, on the street providing people with homes, helping those with mental illness get to proper resources. These charities know more about what’s actually happening, and they look into the eyes of the people who are being so disadvantaged and in many cases abused. They know more than anyone else. And if we silence that voice or have a chilling effect on their ability to speak up, then I think we are damaging the ability to ensure that the general public is better educated about these situations.

Of course, the most extreme example of what I’m talking about is, again, the same government passing laws that provide a two-year criminal sentence for teachers, public servants, social workers who speak out about the conditions in the detention centres in Australia. There are now well over a 1,000 people still in immigration detention, and the mounting number is in the Christmas Island and, of course, the tragedy of Manus and Nauru.
And I think that’s extremely dangerous for our contemporary democracy.

WW: Faced with all of that, how can community groups defend themselves? What advice would you offer them, the organisations who do feel disempowered to speak out?

GT: Well I think one thing is, and I’ve noticed this and it’s perhaps counterintuitive, but very often the government uses the weapon of providing funding to some charitable bodies and will withdraw that funding if they fail to meet the government’s demands. Now, one of the interesting things is that when a charity loses that funding they then go out into the community generally seeking philanthropic funds. And they are then much more powerful and much clear to speak honestly about what they see.

So I’m afraid I’m inclined to say that in the current political environment it is probably advisable not to tie oneself to government funding but to seek that funding in the general philanthropic community. But also I found in my own experience in the Australian Human Rights Commission terrific support from the business and corporate community. They have been very generous and they get what we talk about in terms of human rights. So strangely, one almost has to bypass government to get to the wider community, and particularly the business and corporate world.

WW: And is there any cause for optimism, Gillian, in the current situation?

GT: Well I’m always optimistic. The phrase I use is, “this too will pass.” It will pass. I think we’re in one of the most egregious periods of our recent history in terms of the willingness of a government to breach human rights. And indeed, a government I believe where members of cabinet are ideologically opposed to fundamental human rights, or they abuse the so-called right to freedom of speech and freedom of religion to oppose fundamental changes that are necessary in our society.

So I think we’re in a bad place, but I’m a 100 per cent optimistic that we will get past this and we will move back to the values that have underpinned Australian democracy and our multicultural community. I’m very optimistic that will happen. It’s just that somehow we have to stay calm, stay measured, stay evidence-based until this shocking period passes.

WW: Gillian, thank you so much for taking the time to have a chat with us on the podcast today.

GT: It’s a real pleasure to talk to you. Thank you for your questions.

LM: And that was Gillian Triggs right there. And as she said, she’s optimistic, which is a good note to finish on. But I guess the overall sense is that charities just need to be aware of their rights and know that there are times that they need to speak up, that their voices are important, and that advocacy really needs to be protected.

WW: That’s right, I think it is important. The whole idea of self-silencing is worrying because it really points to this new normal where charities are becoming not complacent, but certainly sufficiently reluctant to speak out, which is really far from ideal.
LM: Yeah, and the Civil Voices report itself made a number of recommendations in its conclusion that there is a need for reforms to ensure that the current definition of charities which recognises advocacy as a part of an organisation’s charitable purpose needs to be protected and advanced.

And how advocacy is funded has also proven to be a big issue. And we heard that from Sarah and Gillian, that there is a role for both philanthropists and the corporate world, as well. Of course, Sarah did caution that philanthropists can, at times, be hesitant to fund advocacy activities rather than on-the-ground action, which is another interesting issue and it’s something the charities really need to consider going forward.

But Wendy, I think that’s all we have time for.

WW: It is indeed. And so for anyone listening who wants to find out a little bit more about the Civil Voices initiative and what we found and also find out more about their rights when it comes to advocacy, then check out our website civilvoices.com.au. You can also keep up to date with all of the sector news by subscribing to Pro Bono Australia’s news. And feel free to get in touch with us directly if you have an advocacy story or just a story about something else.

I’m Wendy Williams and you can reach me @wendyanwilliams. Luke is @luke_michael96. Thanks for listening, bye.

LM: Bye bye.