



CIVIL VOICES

AN INITIATIVE BROUGHT TO YOU BY PRO BONO AUSTRALIA
IN COLLABORATION WITH THE HUMAN RIGHTS LAW CENTRE

Contents	PG
Speaker Notes	2
Slides and Transcript	3
Chatbox	26
About Pro Bono Australia	28

Presented by



Marc Purcell

ACFID CEO

Marc has more than 25 years' experience in the community, international development and human rights sectors in Australia. He worked as Oxfam Australia's National Advocacy Manager and was Executive Officer for the Catholic Commission for Justice Development and Peace Executive.



Murray Baird

ACNC Assistant Commissioner, General Counsel

Murray joined ACNC after a career as a private legal practitioner practising in not-for-profit and charity law and governance. As well as advising, writing and presenting on not-for-profit legal issues, Murray has acted in several leading cases in the field of charity law.



Krystian Seibert

Philanthropy Australia Advocacy & Insight Manager

Krystian has broad experience in public policy development, and an in-depth awareness of government, legislative and political processes. He has particular expertise in not-for-profit sector policy and in regulatory reform.

Facilitated by

Emily Howie

Human Rights Law Centre Director of Legal Advocacy

Emily has worked with the HRLC since 2009 protecting human rights in Australian foreign policy, defending democratic freedoms such as the right to vote as well as anti-racism and minority rights issues.

Slides and transcript



Chloe Tucker: Hello and welcome to Pro Bono Australia's Civil Voices Webinar. I'm Chloe Tucker, Communications Coordinator at Pro Bono Australia, and I'll be moderating the webinar today. Just a few notes from me before we start. We'll be sending out a post webinar pack with recordings, slides, and webinar book in the coming days, so please keep an eye out on your inbox for that. Also, later in the session there'll be time for Q&A with the panel, so please feel welcome to type any questions you have into the chat box and we'll endeavour to answer them towards the end of the session.

Slides and transcript

Facilitator

Emily Howie
Human Rights Law Centre
Director of Legal Advocacy

Emily has worked with the HRLC since 2009 protecting human rights in Australian foreign policy, defending democratic freedoms such as the right to vote as well as anti-racism and minority rights issues. She also works on accountability for Australia's actions overseas such as border protection measures and military cooperation, including Australia's involvement in the US drone program.

Chloe Tucker: Now, to introduce you to our facilitator, Emily Howie. Emily is director of Legal Advocacy at the Human Rights Law Centre. Emily has worked with the Human Rights Law Centre since 2009, protecting human rights in Australia, foreign policy, defending democratic freedoms such as the right to vote, as well as anti-racism and minority institutes. So with that introduction, I'll throw over to you, Emily, and let's begin.

Emily Howie: Okay, thanks very much, Chloe, for that introduction, and to Pro Bono Australia for getting this webinar together, and thanks to everybody who's joining the webinar now. The reason that we've all come together at this moment is because of a really important report that was released yesterday called Civil Voices.

Civil Voices

An initiative researching not-for-profit advocacy

Survey:

How public debate and advocacy have evolved over a decade and how NGO perceptions of their capacity to participate in public debate had changed
1,462 survey respondents

Findings:

State of debate in Australia remains poor
A culture of self-silencing pervades the not-for-profit sector
Real fears that speaking out will have financial implications

Civil Voices provides really important findings from the latest research that's been carried out by academics from the University of Melbourne and that examines how public debate and advocacy have evolved over the last decade in Australia, and in fact how NGO perceptions of their capacity to participate in public debate has changed. So it's really getting an understanding of how the not-for-profit sector feels about its own freedom to speak out.

The report was produced, was written by Sarah Maddison and Andrea Carson from the University of Melbourne, and was produced in partnership with Pro Bono Australia and the Human Rights Law Centre. Sarah Maddison, who many of you attending may well know, was one of the report's authors. Sarah previously worked on Silencing Dissent over 10 years ago with the Australia Institute. For those of you who haven't heard of that work, it was, again, a survey that was

conducted over 10 years ago of the not-for-profit sector and the extent to which the Howard Government policies of the time were gagging that sector.

So yesterday's Civil Voices report presents findings of a very similar nature of another survey of the not-for-profit sector as the one that was conducted by Sarah over 10 years ago. In fact, the survey itself reflected many of the same questions that were previously put, and so the findings that we have are actually showing the evolution of NGO advocacy over time.

Over 1,400 people responded to the survey, and most of them were very senior in the not-for-profit sector: 30% of their respondents were in fact CEOs.

The findings of the report are definitely worrying. In short, the report finds that a string of government policies and practises have created a culture in which

charities in Australia are self silencing for fear of risking their financial security or otherwise attracting political retribution. This is something that many of us have known anecdotally, but now the report provides strong evidence that this is the case.

At the Human Rights Law Centre, we've been very concerned about policies of the government that seem to be having a silencing effect. These are policies such as gag clauses in funding agreements or clauses in agreements that dissuade organisations from speaking out. There's also the constant stream of attempts to remove deductible gift recipient status from certain groups, in particular environmental organisations. As recently as last week, we saw yet another attempt to silence the sector, and that was a new bill introduced by the government that would ban international funding to many Australian organisations for 'political advocacy.'

Civil Voices

An initiative researching not-for-profit advocacy

Survey:

How public debate and advocacy have evolved over a decade and how NGO perceptions of their capacity to participate in public debate had changed
1,462 survey respondents

Findings:

State of debate in Australia remains poor
A culture of self-silencing pervades the not-for-profit sector
Real fears that speaking out will have financial implications

The strong message that we see the government is sending is that advocacy by the not-for-profit sector is unwanted, and that if you speak out, you will risk your financial security, but we know that democracy requires a range of voices and our concern really is while government may find criticism of it inconvenient and uncomfortable, and we understand that, but actually that's just part and parcel of a good democracy. In Australia, we should expect to have that kind of robust discussion, and we know that charities and not-for-profit organisations have an enormous amount to contribute. They don't just run homeless shelters, they don't just plant trees, but they use their expertise and experience gained on the ground in order to advocate for improvement to public policy. That is why I think the findings in this report are really very worrying, and I'll summarise them very quickly.

First of all, the report finds that the

state of debate in Australian democracy remains poor, and that remains poor since the last survey that was conducted over 10 years ago. 65% of state based NGOs feel restricted in what they can say publicly because of their funding agreements, and 42% of national organisations feel the same. 83% of respondents have DGR status and regard it as essential for their financial wellbeing. 40% of respondents directly link their airing of dissenting viewpoints, viewpoints that are different to the government, are a threat to their deductible gift recipient status. 92% of NGOs believe that economic power and strong vested interests are major drivers of government policy in Australia. That is that if you have the money, you have the influence. 53% believe NGOs are pressured to amend public statements to be in line with government policy, and 69% of organisations believe that dissenting organisations who speak out with a different view to that of the government risk having their funding cut. Finally, 58% believe that those who

dissent from government policy are not valued as part of a robust democracy.

For those of you on the webinar who haven't had a chance yet, I would highly recommend reading the Civil Voices report in full. It's not particularly long, but it provides such important empirical data from which we can much better understand the extent to which the Australian not-for-profit movement is very much being dissuaded and silenced by this string of government policies.

Today we've got a really great opportunity to speak with three very expert people about their views on the report and the issues that it raises, and what we'll do is we'll have a 10 minute presentation by each of our three speakers, and then we'll have the opportunity for a Q&A session for about 20 minutes. You can all provide your ideas for questions through the webinar link. So I'll just briefly introduce each of our speakers and then I will hand over to

Civil Voices

An initiative researching
not-for-profit advocacy

Survey:

How public debate and advocacy have
evolved over a decade and how NGO per-
ceptions of their capacity to participate in
public debate had changed
1,462 survey respondents

Findings:

State of debate in Australia remains poor
A culture of self-silencing pervades the
not-for-profit sector
Real fears that speaking out will have finan-
cial implications

the first one.

Slides and transcript

Panellists

Marc Purcell
ACFID

Marc Purcell has headed the Australian Council for International Development (ACFID) since 2009. Marc has 25 years' experience in the community, international development and human rights sectors in Australia. He worked as Oxfam Australia's National Advocacy Manager and was Executive Officer for the Catholic Commission for Justice Development and Peace Executive.

Our first speaker will be Marc Purcell who is the CEO of the Australian Council for International Development, he's been in that role since 2009. For those who don't know, ACFID is the peak body for around 140 Australian organisations working in international development, and ACFID operates the code of conduct for Australian development NGOs.

Burma. Marc is currently a director of the Community Council for Australia and the Campaign for Australian Aid Executive Committee. Wow. So that's going to be our first speaker.

Marc has 25 years' experience in the community, international development, and human rights sectors in Australia. He previously worked as Oxfam Australia's National Advocacy Manager, and was Executive Officer for the Catholic Commission for Justice and Peace Executive. He has also worked as Country Programme Manager for Africa at Australian Volunteers International, and worked with the UNHCR in Nepal assisting with Tibetan refugees. Marc also researched China's global rise and impacts on developing countries for Oxfam Hong Kong and has written about refugee and human rights in

Slides and transcript

Panellists

Murray Baird
ACNC

Murray joined ACNC after a career as a private legal practitioner practising in not-for-profit and charity law and governance. As well as advising, writing and presenting on not-for-profit legal issues, Murray has acted in several leading cases in the field of charity law.

Second up we've got Murray Baird. Who is an Assistant Commissioner at the Australian Charities and Not-For-Profits Commission, the ACNC, and General Council. Murray joined the ACNC after a career as a private legal practitioner, practising in not-for-profit and charity law and governance. He was previously senior partner and leader of the not-for-profit group at Moores Legal in Melbourne.

director of the Australian Charity Law Association and the Appeals Officer for the Australian Council for International Development Code of Conduct.

As well as advising, writing and presenting on not-for-profit legal issues, Murray has acted in several leading cases in the field of charity law. Murray also has practical experience of not-for-profit issues through a number of leadership roles in the sector. He has been chairman of Ansvar Insurance, which is a specialist insurer in the not-for-profit sector; chairman of First Samuel Limited, an investment adviser and manager for many of us in the sector; and the chairman of the National Housing Company, which is engaged in affordable housing. Murray has also served on boards of schools, church, and community organisations. Murray was formerly a

Slides and transcript

Panellists

Krystian Seibert
Philanthropy Australia Advocacy and Insight Manager

Krystian has broad experience in public policy development, and an in-depth awareness of government, legislative and political processes. Prior to joining Philanthropy Australia, Krystian was an adviser to a former Australian Assistant Treasurer. In this role he was responsible for the delivery of major not-for-profit sector reforms.

Our third speaker is Krystian Seibert, the Philanthropy Australia Advocacy and Insight Manager. Krystian also has a very broad experience, he's in public policy development, and he has an in-depth awareness of government, legislative, and political processes. Krystian has particular expertise in not-for-profit sector policy and regulatory reform.


Prior to joining Philanthropy Australia, Krystian was an adviser to a former Australian Assistant Treasurer. As many of you know, in this role, he was responsible for the delivery of major not-for-profit sector reforms including the establishment of Australia's first independent charities regulator, the ACNC, and the passage of Australia's first comprehensive statutory definition of charity, the Charities Act 2013. Krystian is an Adjunct Industry Fellow at the Centre for Social Impact at Swinburne University of Technology, and is a Board Member of Mental Health First Aid Australia. He regularly writes about

matters relating to philanthropy, the not-for-profit sector, and public policy; with his contributions featuring in both sector news and peer-reviewed publications.

As you can tell from those introductions, we are incredibly lucky to have these three panellists with us today to share their experiences. So each is now going to speak for 10 minutes or so each, and then we'll move to a Q&A. So first up I'd like to introduce Marc Purcell, the CEO of ACFID.

Slides and transcript

Marc Purcell
ACFID CEO



Thinking Advocacy

Clarity of purpose: what is the outcome you wish to achieve? Why? How would you know a outcome was being achieved?

Clarity of analysis: Why has the change not occurred? What are the impediments to change? What motivates blockers/those indifferent?

Power mapping: Who has Power to make the changes you want to see? What types of power are at play? Formal power; informal power (old boys club) and 'invisible power' (social norms, the attitudes and beliefs that inspire or hold people back)

Marc Purcell: Thanks very much Emily, and thanks also to Pro Bono for hosting this cool webinar. When we look around modern society, we see aspects of society that are the products of advocacy. For example, the right to vote for women came about through political activity in the late 19th century. More recently, the ongoing struggle to get equal pay for women, which was first recognised back in 1972 by the Arbitration Commission, but again was the result of advocacy. More recently, you've got the Franklin Dam decision some 30 years ago; that was a landmark in how we perceive the environment. Over the last 10 years, a government programme to narrow the gap between Indigenous and non-Indigenous Australians in health, called Close the Gap, was actually an initiative of a broad alliance of groups, Indigenous and non-Indigenous organisations, advocating together.

So all of these features of modern society that some are still works in progress, but have come about because citizens have

come together to advocate. By advocacy, we're not talking about in general legal advocacy in the main, although that can be part of it. I think of it as persuading and influencing to try and achieve an outcome. There are many, many different ways that you can do that, and often people default to thinking that protests or being very critical of government in the media is the main way it's done. They are legitimate tactics, but as we'll be discussing today, there's a whole range of strategies that you might follow to persuade and influence people to achieve an outcome.


Why is this relevant to not-for-profit organisations? I mean, it's very obvious that as not-for-profits and charities, we have missions, and our missions will often be delivered through programmes, which includes services, but often to get a systematic change in dealing with improvements to society, to really tackle the problem that your organisation is set up to respond to, it's not simply a matter of providing a service. That needs to be complimentary with advocacy that seeks

to look at social changes, policy changes, political changes that help reduce the problems that your organisation is dealing with.

So when we're thinking about advocacy and influencing, there's some steps that we utilise. I'm conscious that I may be telling you all how to suck eggs, but bear with me because it's really just how we approach it in our organisation, so I wanted to share that with you because it may be of some interest and use. Some of the steps are very, very obvious, and yet sometimes in an organisation, programmatically advocacy is not done systematically. The steps that we use is being really clear about the outcome we wish to achieve and is it aligned with our purpose. That may seem blindingly obvious, but often it needs some thinking through.

Often the scale of the problem that not-for-profits are dealing with, they seem huge, and there's a cycle in many

Marc Purcell
ACFID CEO



Thinking Advocacy

Clarity of purpose: what is the outcome you wish to achieve? Why? How would you know a outcome was being achieved?

Clarity of analysis: Why has the change not occurred? What are the impediments to change? What motivates blockers/those indifferent?

Power mapping: Who has Power to make the changes you want to see? What types of power are at play? Formal power; informal power (old boys club) and 'invisible power' (social norms, the attitudes and beliefs that inspire or hold people back)

cases. So you need to break it down into bite sized chunks. So in addition to the broader social or political change you may be trying to achieve, and the outcome you want to get, you probably want to have some indicators or intermediate outcomes that you could recognise we're having some wins along the way: we can see that we're making progress. In order to do that, you really need great clarity of analysis. Not just research about the problem, but analysis in thinking about why is the change that you want not occurred? What are the impediments to it? And those impediments could be many, because there could be institutional interests that you're coming up against that are simply opposed, which may be government policy of the day, for example. Equally, it simply could be just a lack of awareness of the problem and ignorance about it. Then the associated problem of the resources that you need to actually muster to get societal awareness about the issue.

When we come to tackling outcomes and problems that we want to change, we often do what we call a power map, and that's identifying who has power over the situation and to make changes that you want to see. That power map might identify both positive, or potentially positive agents who could be beneficial to remedying the situation, and it will also identify negative ones that are blockers. When we're talking about power, there's a number of different aspects to it. So there's, of course, formal power, which will be demonstrated, for example, through the political system and the government structures, and there are formal channels that you can input into policy to influence both political parties and government thinking. Then there's also informal power, which could be, inside those structures who's really exercising dominance? That can be networks, so the infamous old boys club.

Then there's finally what we know as invisible power where are social norms.

So until 1972, until the late '60s and early '70s, as I mentioned earlier, it was a social norm that women should retire from the workforce when they wanted to start having a family. It was a social norm that their work was valued less than me, and that latter issue is still an issue. So these attitudes and beliefs can both hold people back or can be tackled to inspire people to take action.

Marc Purcell
ACFID CEO

A power map will identify those people, both in their formal roles and their informal roles, so you have to do a brainstorming session to identify all of these people, but it will identify them and then you need to think about what will influence those particular individuals or groups, and people will be influenced differently. Sometimes you won't know how to get to them or what might persuade them, but that's where you

Once you've done your mapping, you're then looking at; okay, we know who we might want to reach that has influence over the situation, but then we need to look at all the different networks, contacts, and resources we might bring to bear the problem. What we call that in our organisation is a theory of change. So how would you apply all of those resources, those networks to the situation as a theory of change? What interventions would you make? How would you leverage your relationships to influence those that hold power over the issue you wish to get change on? And you describe it in a theory of change. That thinking around the power mapping, the clarity of analysis, the power mapping, the theory of change,


then that is all the precursor to simply doing your plan.

Slides and transcript

Marc Purcell
ACFID CEO

Planning: Overall outcomes, key objectives to be attained along the way; strategies to support them; indicators of progress & Monitoring and evaluation so you are leaning and adapting as you go; resources – people and \$; time frames and roles and responsibilities.

Example: <http://australianaid.org/2017/12/12/what-do-the-belong-candidates-think-about-australian-aid/>



It sounds quite elaborate, but that thinking process at the beginning is really, really key to developing a good plan, and you're all familiar with planning I'm sure, sets out your outcome, your objectives, the strategies, indicators of progress, the resources you're going to bring to it, who's leading on what, your time frame, etc.

The importance of doing this, I think, is that often organisations or alliances jump to advocacy, or jump to particular strategies, such as going to the media or doing a piece of research, but without having sorted through the larger context of how they're going to utilise research to persuade, or who they're going to persuade, and how the research might be received. Ditto, sometimes going public is not the most effective way to bring about change. Sometimes it is useful to go and have conversations behind doors, brief people, word them up, and see how far you can get pursuing those tactics. Then, if there's still resistance, that's when going to

the media and raising awareness, and if there's still resistance, mobilising campaigning tactics to get public support to bolster your case can be helpful.

So advocacy, I believe, is essential to modern organisations. I don't believe we should be scared of doing it. I believe it is core to our missions because it flows naturally from our experience and knowledge in working with people or issues to improve people's lives, or the environment, or whatever the issue may be, but the influencing and the persuasion, I think, is critical to a modern democracy in helping apply that knowledge and experience that not-for-profits and charities have to bring about broader improvements in society. I think that's what we're all about, so I think it's an obligation of a modern not-for-profit and charity to do this work, and noting Emily's introduction that there are some constraints, or there can be pressures on organisations not to engage fully in advocacy. I think if you look internally

and align your persuasion and your influencing to your mission, you'll find that it comes naturally and it's actually a lot of fun to do as well. Thank you.

Emily Howie: Thanks so much Marc. I think you've made some really important points there about the role that not for profits and charities play in terms of the importance of speaking out on issues, but also how to do that in a way that's really persuasive as well, and in fact that sometimes public advocacy may not be the best approach. Okay, so our next panellist is Murray Baird who is the Assistant Commissioner and General Council for the Australian Charities and Not-For-Profit Commission. Over to you Murray.

Slides and transcript



Murray Baird
ACNC Assistant Commissioner, General Counsel

Perspectives of a Charity Regulator

- Charity registration as gateway to concessions
- A strong coherent identity for the sector
- Robust, vibrant independent and innovative charities
- The 12 charitable purposes
- Advocacy is OK
- Avoid purposes that are unlawful, contrary to public policy or partisan
- Purposes and activities
- Freedom to advocate
- Where the wild things are

Murray Baird: Thanks very much Emily. First may I express appreciation for the work of Civil Voices project for drilling into the important issue of advocacy, and certainly I would commend the report to all who are involved in this webinar. The report's not only an important snapshot of current perceptions, but it's a helpful overview of the history of advocacy and the impacts of various streams of thought about the place of non government organisations in our society. Now, the Australian Charities and Not-For-Profits Commission only regulates charities, and I appreciate that's a segment of NGOs, but because charitable status is the gateway to various commonwealth tax concessions, the question of how much advocacy can be involved in the work of a charity becomes a central consideration. With the recent announcements of the Minister for Revenue and Financial Services, Kelly O'Dwyer, on the streamlining of DGR arrangements, charity registration will also become the gateway to most tax deductibility. So

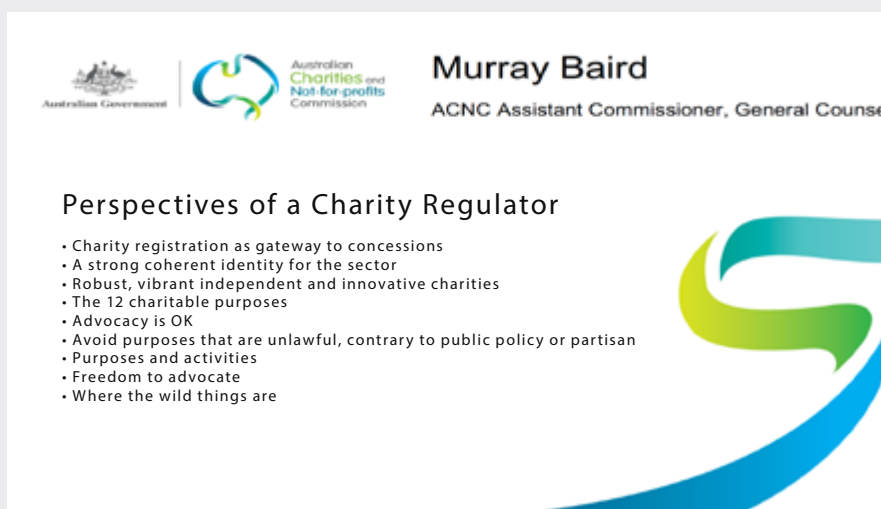
perhaps it becomes even more crucial to understand the role of advocacy.

Thanks for involving the ACNC in the conversation about advocacy. We recognise that we've got to be involved in the conversation, but we've also got to be clear in our guidance on the place of advocacy in charities. I particularly noted the comments in the Civil Voices report about the role of the ACNC as a catalyst for the sector. There's an observation that the very bringing together of the ACNC also brought together the sector in a strong coherent identity. I think this was perhaps an outcome that was unexpected on the existence of a regulator, the creation of a public register now effectively defines the extent of the charity sector, but also gives them a common identity. Then the availability of data, and the analysis and publication of that data, has also contributed to this distinctive identity.

Well, our job is to promote public

trust and confidence in charities and support a robust, vibrant, independent, and innovative charity sector. I take independence to mean that charities are not an arm of government. Sometimes their purposes will be coincidental with the purposes of government, sometimes they'll be funded by government, and in fact 47% of charity revenue come from government, but it is the directors, the governors, the committees of charities, who have to decide on their direction and control their own operations. A charity has a mind of its own and shouldn't be excluded from expressing its opinion on any matters that concern it. So charities are not excluded from the marketplace of ideas and from advocating in that marketplace.

Registration with the ACNC demonstrates that an entity is not for profit, but more particularly that it has one of 12 charitable purposes. These purposes are extraordinarily diverse and much wider than the popular conception



of charitable purposes; health, and education, and social welfare, and religion, and culture, and reconciliation, tolerance, human rights, safety, security, animal welfare, protection of the environment, but the 12th of the charitable purposes is the purpose of promoting or opposing a change to law, policy, or practise either in aid of your charitable purpose or in protection or shielding your charitable purpose. So when the ACNC comes to consider advocacy, we first look to find out what your principal charitable purpose is. Then we say that any advocacy that supports or protects that purpose is fine, and it's a legitimate activity for charitable organisations, as the authors of this report point out.

There are only three boundaries, the overriding disqualifying purposes. That is the purpose that is unlawful. Secondly, a purpose that is contrary to public policy, and then thirdly, a purpose that promotes or opposes a political party

or a candidate for political office, but when I talk of public policy I don't mean government policy. It's okay to have a purpose contrary to government policy. What we mean by public policy in this context is our system of government, the rule of law, the constitutional system, national security. Critiquing policies of government or debating policies or advancing debates is not a disqualifying purpose. So it's okay to debate ideas in the public arena, it's not okay to tip over into promoting or opposing a party or candidate, or into unlawfulness.

We see examples of this every day; an overseas aid organisation can enter into the debate on government funding of overseas aid. The educational organisations can debate school funding and curriculum. An animal protection society can advocate for animal welfare laws, and all these things are consistent with the signposts in the law of charities, and particularly those raised in recent years by the High Court. For example,

in the Word case, the court says that a purpose can be discerned from the probable outcome of the activity. So advocacy leading to a charitable outcome is fine. In Aid Watch the court says advocacy for a charitable purpose is not prohibited. In the Hunger Project case, the Federal Court says it's a legitimate chain of diverse inputs that leads to a charitable outcome being accepted. Then, more recently we have the case of Bob Brown in the state of Tasmania, where the High Court affirms the implied right of political communication, and that should not be inappropriately fettered.

I want to make some comments about purpose and activities. A purpose is the reason for being an organisation, it's true character. Activities don't always give a conclusive indication of purpose. So if you run a cake sale, we understand it's to raise funds for your charity, so the true purpose is still charitable. In a similar way, an activity found to be



be unlawful does not necessarily amount to a purpose illegality. What would be an example? So if the president of a charity speeds in their car on the way to a committee meeting, that is not an act of charity or a purpose of the charity, but if the chairman announced to the media that the charity had motivated, trained and equipped its members to break the law that it regarded as unjust, that might amount to an unlawful purpose. So the mere activity does not equal a purpose. Thus, the scope for involvement in political process, falling short of illegality, or part of some support or insurrection is really quite extensive.

Again, charities are not excluded from advocacy, and I think the figures on compliance at the ACNC bear this out. In the five years of operations at the ACNC only one charity has been removed from the register over an advocacy issue. I just want to briefly mention one of the acts in the Suite of Charity Regulation Reform that took place five years ago.

That was the Not-For-Profit Sector Freedom to Advocate bill, or Act, of 2013. It bans the use of gag clauses in Federal Government contracts with the not-for-profit sector. So there is, in fact, an explicit reference to no gagging clauses in those agreements. So the legal framework for regulation of charity advocacy is permissive, but I see that there's still a climate of fear amongst charities about advocacy, and the climate is said to have a high chill factor. The factors contributing to this fear appear to be outside the current charity regulatory arrangements and so I'll leave others to comment on those matters, but I just want to emphasise advocacy is okay. Thanks.

Emily Howie: Thanks so much, Murray. I think it's fantastic to have the involvement of the regulator in today's panel, and also to confirm for all of us that charities have a really important role to play in speaking out on issues that we're not expected to be an arm


of government. Charities should have a mind of their own and I really like the way you put it in terms of charities not being excluded from the marketplace of ideas. It's something, I think, that is very, very important to the effective work of charities, but also, as you say, it has much bigger implications for our democracy and is something that the High Court has even made comments on. So thank you very much for that presentation.

Now we'll move to our final presenter, Krystian Seibert, who is the Philanthropy Australia Advocacy and Insight Manager, Krystian.

Krystian Seibert Philanthropy Australia

About Philanthropy Australia

Philanthropy Australia is the peak body for philanthropy in Australia
 Our vision is A more giving Australia
 Our purpose is Serving the philanthropic community to achieve more and better philanthropy
 We are a strongly believe that advocacy by charities and not-for-profits is vital to our community and essential to our democracy
 How do we act on this belief?
 We work with our partners to ensure that government law, regulation and policy supports rather than inhibits advocacy by charities
 We work with our Members to raise awareness about the benefits of funding advocacy



Krystian S: Thanks very much, and just before I start, I wanted to acknowledge the traditional owners of the land on which I am speaking. I'm in Melbourne, so it's the Wurundjeri People of the Kulin Nation, and pay my respects to their elders, past, present, and future. I also wanted to thank Pro Bono Australia and the Human Rights Law Centre for showing the initiative to produce this report, it's a critical contribution to a very important debate about the role of advocacy in our democracy, and how charities and other not-for-profits feel about that role in the current climate and in the current environment. It's an excellent report, I do commend it to everybody to read, and once again, thank you to Pro Bono Australia, Human Rights Law Centre, and the University of Melbourne, and also the funders that made it possible, Leslie Falkiner-Rose in particular.

So I'll tell you a little bit about Philanthropy Australia briefly and then I'll

get onto some more substantive things that I want to talk about. So we're the big body for philanthropy in Australia, so our vision is a more giving Australia, and our purpose is serving the philanthropic community to achieve more and better philanthropy. So we strongly believe that advocacy by charities and not-for-profits is vital to communities and essential to our democracy, and we act upon this belief in two ways: we work with our partners to ensure that government law, regulation, and policy supports, rather than inhibits, advocacy by charities. Some examples of that are the work we did around DGR reform earlier this year opposing some of the particularly concerning proposals around remediation requirements for environmental DGRs, having to do sort of 25% of your activities in terms of planting trees and things like that. We're now working as part of a coalition of various organisations, peak bodies, and charities who are opposing the changes to foreign donations, which could restrict the flow of international philanthropy to

charities in Australia, particularly for their advocacy activities.

We don't only oppose things, we also set out proactive agendas for reform, and what we also do is we work with our members to raise awareness about the benefits of funding advocacy. One of the interesting findings from the Civil Voices report, and I thank Pro Bono Australia for including this question in the report, was about how survey respondents perceive philanthropy's attitude to funding advocacy. Traditionally philanthropies have been a bit reluctant, or maybe not even just a bit reluctant, been quite reluctant to fund advocacy by charities, and there's a variety of reasons for that: cultural reasons, legal reasons, there's a number of different reason. The report does find that three quarters of respondents in the survey on which the report is based believe that philanthropists would still rather fund service delivery over advocacy activities by charities. Look, there's always going

Slides and transcript

Krystian Seibert
Philanthropy Australia

About Philanthropy Australia

Philanthropy Australia is the peak body for philanthropy in Australia
Our vision is A more giving Australia
Our purpose is Serving the philanthropic community to achieve more and better philanthropy
We are a strongly believe that advocacy by charities and not-for-profits is vital to our community and essential to our democracy
How do we act on this belief?
We work with our partners to ensure that government law, regulation and policy supports rather than inhibits advocacy by charities
We work with our Members to raise awareness about the benefits of funding advocacy



to be a different role for different types of activities, charities have different ways that they achieve their purposes, but what we do try and do is work with our members to inform them about the benefits of funding advocacy. In the slide there, there's a picture of a document that we've prepared and launched in September trying to raise awareness with our members about the benefits of funding advocacy.

Krystian Seibert Philanthropy Australia

The Importance of Advocacy

The Civil Voices report has many concerning findings – so here's my pep talk
 The law in Australia does not just say that advocacy by charities is only 'tolerable' or 'acceptable'
 It says that advocacy is essential to our system of democracy – that's what the High Court held in the Aid/Watch case in 2010, which was legislated in the Charities Act 2013 (Cth)
 Is we want to have better public policies which benefit our community – we need charities to advocate, to be a voice for the voiceless
 We need philanthropy to support charities in this work – something we at Philanthropy Australia are working on
 The public interest has few friends whilst vested interests have many – John Daley, The Grattan Institute
 Charities advocate for the public interest – they should feel confident in this role, it is their calling

So that's a little bit about what we do. What I want to talk about in the few minutes that I've got remaining is really about the importance of advocacy. Marc's done a fantastic job talking about sort of the strategy elements of how to advocate. Murray's laid out the law, and I think that what I want to do is a little bit of a pep talk because if you do read the report, if you read the media release, you might feel a little bit down. You might think a lot of people are afraid to undertake advocacy, the climate isn't really good for it, that's impacting upon our democracy. You might feel a little bit down. So I want to give everyone a little bit of a lift, so here's my pep talk.

It's really important for charities to understand they do have the law on their side when it comes to undertaking advocacy to further their charitable purpose. There are limits as to what they can do. Murray went into them in terms of you can't endorse parties and candidates, etc., but apart from that, undertaking advocacy, and there are

diverse forms of advocacy, to further your charitable purpose is allowed. And not only is it tolerable or acceptable under Australian law, the High Court in the famous Aid Watch case in 2010 actually said, or didn't say, but actually found that advocacy is actually essential to our system of democracy. There's actually a quote in the decision in Aid Watch where they talk about how the agitation that advocacy involves in terms of trying to change views, trying to create a contest of ideas, holding those in power accountable for their decisions, and views, and policies, etc., that kind of agitation is essential to the system of democracy we have in Australia. So it was a very powerful decision, and it was of course legislated in the Charities Act 2013, which I was very closely involved with in terms of the development and passage of it.

So charities in Australia, they're not just allowed to undertake advocacy under the law, their activities aren't just tolerated; their activities are essential.

They have a mandate to undertake advocacy and they should remember that, and they should use that to feel confident about what they are doing and why they are doing it. There are other reasons why they should feel confident. Charities are amongst the most trusted institutions in Australia. Recently, the ACNC released a report that it does every two years looking at public trust and confidence in charities, and it found that, I think they were fifth or sixth most trusted institution in Australia after the High Court, police, I think doctors, and nurses. Murray, you might be able to correct me a little bit later. So they are a trusted institution as well.

Also, there is now a number of sources of public polling where polling companies have gone out and asked members of the public, randomly selected, about their attitudes to charities undertaking advocacy, and the most recent polling was done about three or four weeks ago. The polling shows that the public, and these are just average members of

Krystian Seibert Philanthropy Australia

The Importance of Advocacy

The Civil Voices report has many concerning findings – so here's my pep talk

The law in Australia does not just say that advocacy by charities is only 'tolerable' or 'acceptable'

It says that advocacy is essential to our system of democracy – that's what the High Court held in the Aid/Watch case in 2010, which was legislated in the Charities Act 2013 (Cth)

If we want to have better public policies which benefit our community – we need charities to advocate, to be a voice for the voiceless

We need philanthropy to support charities in this work – something we at Philanthropy Australia are working on

The public interest has few friends whilst vested interests have many – John Daley, The Grattan Institute

Charities advocate for the public interest – they should feel confident in this role, it is their calling

the public, want charities to be speaking up, to be advocating for their charitable purposes. So I think you've got the combination there of the law, which is a mandate for undertaking advocacy, the position of charities in our society as a trusted institution, but also the fact that the public, the community, want you to do advocacy. So I think that's important to remember those things.

If we want to have better public policies which benefit our community, we need charities to advocate, to be a voice for the voiceless, and Marc went into some of those reasons in terms of addressing the causes and not just the symptoms of social and environmental problems. If you've got a factory polluting the river, you can spend a lot of time trying to clean the pollution off fish and other wildlife, or you can focus your efforts further upstream at the factory to try and stop the pollution in the first place, trying to get the laws changed that mean the pollution is not regulated properly, getting the company to change

its corporate practises. That might actually be a more effective use of limited resources because if you keep on cleaning the pollution off the fish and the factory just keeps on polluting, you're going to be there for quite a while and you're not going to see much impact unfortunately. So addressing those causes, rather than just the symptoms is a critical role for advocacy, and trying to change the system within which social and environmental challenges actually arise in the first place.

We need philanthropy to support charities in this work, and as I talked about briefly, that's something that we're working on at Philanthropy Australia. So there's a good quote from John Daily who's the CEO at the Grattan Institute, a think tank based in Melbourne, and he wrote an opinion piece on the 11th of September earlier this year where he talked about the role of advocacy, charities undertaking advocacy, philanthropy funding advocacy, and he talked about how the public interest

has few friends whilst vested interests have many. What he talked about is that when you're up at Parliament House, there are a lot of interest groups walking around meeting with politicians arguing their case. They're arguing for their private interests, a good deal for their company, for their industry, and look, it's completely their right to do that and that's what happens in a democracy. Charities and philanthropy exist for the public benefit, not for the private benefit. They're all about the public good, a better society, a better community, they are driven by purpose. So charities should feel confident in that role and understand just how critical it is in terms of balancing out the other interests that we have at play within our democracy.

Slides and transcript

Krystian Seibert
Philanthropy Australia

Values - What do our values call on us to do?

Activities - What are we already doing which could be complemented and enhanced through advocacy

Advocacy is a spectrum – there is a form of advocacy which every charity can undertake

Research and Dissemination	Raising Awareness	Community Organising	Policy Development	Lobbying	Litigation
----------------------------	-------------------	----------------------	--------------------	----------	------------

Think about what aligns with you values and mission

Advocacy doesn't have to be adversarial, and mostly isn't

Understand the law and speak with other organisations undertaking advocacy – the ACNC has some excellent guidance available, which has also been made available on the Civil Voices website

In terms of thinking about how you undertake advocacy or whether you want to undertake advocacy, I think it's important to look at your organization's values, talk to your board, talk amongst management about your organization's values. We had a guest speaker out from the United States earlier this year, he was the Executive Director of the Levi Strauss Foundation, the corporate foundation of the denim jeans company, and he talked about the value of values. They're the signposts, the lighthouse that guides us when we have difficult decisions. So really think about what your values call on you to do. Think about your activities, what you're already doing, and what could be complemented and enhanced through advocacy.

Again, it's a bit of a sort of crude example and that's a bit of a bad joke, you'll see why in a moment, with the factory polluting the river. If you're spending a lot of time trying to clean up pollution from fish and wildlife, think about what could

we do to be more effective? And you might be led to undertaking advocacy, and in that situation I would recommend that you do undertake advocacy. You'll probably realise what the joke was.

Now, it's important also to remember that advocacy is a spectrum, and Marc did touch on this. A lot of people think that advocacy is being there with a megaphone with its very adversarial conflict based, but there's a whole spectrum of different things that fall within advocacy, and it can be targeted at government, it can be targeted at business, or the community more broadly, research and dissemination, raising awareness, community organising, policy development, lobbying, and then strategic litigation, the kind of work that the Human Rights Law Centre does a lot of. So there's a whole spectrum of different activities, so you can pick and choose what might suit your organization's values, objectives, what you want to achieve.

Again, a lot of advocacy working with government is collaborative, it's about raising awareness, sharing views and knowledge. It's not about conflict, and I understand when organisations want to shy away from conflict. So my last point really is about understanding it's important to understand the law and what Murray was talking about. Speak with other organisations undertaking advocacy, ask them why they do it, how they do it, and look at the excellent guidance that the ACNC has available, which has actually been made available on the Civil Voices website as well. So that's everything from me.

Emily Howie: Thanks so much, Krystian. I think one of the takeaways that we have from the Civil Voices report is really how much charities are self silencing. So the more pep talks you can give for the sector, I think the better. It's really important to hear that it's not only allowed in law, within limits, but it's also encouraged, that charities are trusted

Slides and transcript

Krystian Seibert
Philanthropy Australia

Values - What do our values call on us to do?

Activities - What are we already doing which could be complemented and enhanced through advocacy

Advocacy is a spectrum – there is a form of advocacy which every charity can undertake

Research and Dissemination	Raising Awareness	Community Organising	Policy Development	Lobbying	Litigation
-------------------------------	----------------------	-------------------------	-----------------------	----------	------------

Think about what aligns with you values and mission

Advocacy doesn't have to be adversarial, and mostly isn't

Understand the law and speak with other organisations undertaking advocacy – the ACNC has some excellent guidance available, which has also been made available on the Civil Voices website

institutions, and that the community expects charities to speak out. So thank you very much for those points that were well made. We've got only a very short amount of time now for questions, and we've had a few questions from the participants. So I'll put the first one to the panellists in general. This is from Victoria, given that there are a lot of fears around advocacy, hopefully about to be dispelled by this initiative, we could hope that will happen, where do you feel that the fears about advocacy actually stem from? Does one of you want to take this question?

Marc Purcell: Krystian wants to take that question.

Krystian S: Yeah, I think they stem from a range of different places. I think that there is a climate regarding some statements that political leaders have made around the legitimacy of advocacy over the last couple of years. I've heard of situations where organisations receive

government funding and although there isn't actually a gag clause there or anything like that in their funding agreement, when they do undertake advocacy, they still do get a call from an official in the department saying, "Look, what are you doing? Pull your head in," and I think that there's just a few of these different factors that might actually add up to create some unease. Overlay that to the fact that working in the not-for-profit sector can be a challenge at times, getting resources together, running these organisations that are not always easy to find funding sources for and that do very difficult work addressing some of the most challenging social and environmental problems that we've got, which can sometimes mean that charities might sometimes be a bit risk averse, and I think that that's another factor as well.

Emily Howie: Yeah, I think that's a really good point. Murray, we took some solace from the Not-For-Profit Freedom to Advocate Act, at least in so far as it

bans the use of gag clauses in funding agreements, and yet I think some feel like there are still clauses in agreements that seem to have a similar intent. I know community legal centres are asked, for example, not to spend government money on advocating for law reform. So I wonder, do you have any comments on that? Do you think that there's room for the Not-For-Profit Freedom to Advocate Act to be strengthened, for example?

Murray Baird: Without commenting on policy, it is true to say that governments do sometimes give some project funding, which is steered away from advocacy. Sometimes on the presumption, I think, that on the ground hand-to-hand front delivery is more effective than advocacy, but as many will observe, sometimes advocacy can be the biggest lever to a charitable impact. So at the ACNC, we would take the view that advocacy is one of the tools to achieve a charitable impact.

Questions

Emily Howie: Okay, thanks for that. We've got three minutes to go, and we'll have time for one more question. This one is from Reli, they say, to what extent do you think the results of the survey reflect a sort of communal failure to us to accept and commit that there is a public interest in the public funding and dissenting voices. I think the question is really asking, do you think that there should be an acknowledgement that public funding for dissenting voices is a good in and of itself?

Krystian S: Krystian here, I might take that one. The short answer would be yes. I think that there's a few things that need to be done. I think it's essential if we think that advocacy is good for our democracy, it's essential that right from the top political leaders recognise, that make statements to that effect, but going to your previous question, Emily, I would even suggest that the Not-For-Profit Sector Freedom to Advocate Act be strengthened to provide for, not necessarily protections, but principles

or statements around the importance and value of advocacy and how the Federal Government approaches advocacy by charities. So I think that it's really important to have those kinds of statements, but I also think it's really important on the sector itself.

I think the sector itself needs to make the proactive case more about why advocacy is important and what the impact of advocacy is because we need to respond to those who might say, "We believe it's better to fund frontline services. We don't want money spent on people advocating." To be able to then respond to that and say, "But this is what advocacy actually does. It changes things for the better, and these are examples of when that's happened." So be proactive in terms of demonstrating the value and importance of advocacy. In the back of our minds knowing that the polling that I was talking about before shows that the community recognise and value the advocacy role of charities.

Emily Howie: Yeah, I think that's right. Murray, did you have anything that you wanted to add?

Murray Baird: Yeah, I think it's implicit in the reference to advocacy as a specific charitable purpose that it can be for the public benefit. So that is an invitation to say there is a wide scope, there is a permissive attitude certainly in the charities legislation towards that end.

Emily Howie: Okay, great. Well, we've reached three o'clock, which is the end of this webinar. I'd like to thank our three panellists, Marc, Murray, and Krystian, who I think have provided us with a really deep and broad understanding of where we're at in terms of charities advocacy in Australia. The Civil Voices report raises some really worrying trends, but I think what the panellists have demonstrated is that there's actually a whole bundle of legal principles and thinking that actually support charities speaking out, and hopefully that can be the main takeaway



Questions

that people can take from this webinar. So thank you very much to Pro Bono Australia for facilitating the webinar, and I'll just hand over briefly to Chloe to close.

Chloe Tucker: Thank you so much. Thank you for all your great questions and for all your great answers. We covered a lot and I hope you all go away with some new ideas and some new resources. I know we didn't get to all of the questions unfortunately, but for more information you can go to civilvoices.com.au, and there you can access the report and there's also plenty of other resources to explore there. As stated, we'll be sending out the post webinar pack in the coming days with the slides, webinar, recordings, and webinar book, so keep an eye out on your inbox for that, and one more time I'd like to extend a big thank you to Marc, Murray, Krystian, and Emily for the webinar today. Thank you.

Chatbox Transcript

Michael Austin 14:10 where is the report published?

Carola Akindele-Obe 14:11 <https://civilvoices.com.au/>

Chloe Tucker 14:11 Hi Michael, you can access the report online for free download via the website: civilvoices.com.au

Chloe Tucker 14:11 Thanks Carola :)

dassi erlich 14:11 thanks for the link.

Michael Austin 14:11 thnx

Clare Masolin 14:13 Wow...impressive panellists, thanks Pro Bono

Chloe Tucker 14:14 Thanks Clare :)

Rewi Lyall 14:24 Rewi Lyall, Oqurum and Chair of community radio station RTRFM in Perth. My question is to Marc: How has the alignment of Australia's international development assistance with its defence and intelligence interests affected the types of advocacy projects aid organisations are prepared to undertake?

Anne Kean 14:26 Sorry I am going to have to leave the webinar-thanks- Anne K

Bec Bowman 14:26 Rewi L - Hi! I'm a presenter on RTR!

Rewi Lyall 14:26 Represent.

Ann Waithira 14:28 Thank you

Chloe Tucker 14:29 Thanks for the question Rewi :)

Patricia Kimtia 14:29 Interesting and inspiring to know that advocacy should be at the core of modern NGOs and democracy ; NGOs indeed play a key role and have an obligation to advocate for change using different strategies relevant to the issues and challenges

Marc Purcell 14:38 Most international development agencies undertaking advocacy will do so with their own funds and very mindful of the safety of their local partners in developing countries. Official policy and the degree of overt or covert alignment with defence or security interests doesn't have so much bearing on NGO aid work. In conflict areas like Afghanistan, NGOs are very careful to try to be seen as impartial and neutral from combatants

Patricia Kimtia 14:39 Encouraging words from the ACNC - regulator charities should have a mind of their own and should not be excluded from advocating

Rewi Lyall 14:39 Thanks Marc.

Charles Watson 14:4 Yes, thanks marc

Victoria Lister 14:44 A question for the panellists in general: Given there are a lot of fears around advocacy – hopefully about to be dispelled via this initiative – where do you feel these fears actually stem from?

Michael Austin 14:46 Good question Victoria

Patricia Kimtia 14:49 Charities need to be the voice for the voiceless . Well said

Rewi Lyall 14:51 Don't want to hog the questions, so by all means leave this in the interests of sharing the space. To what extent do the results of the survey reflect a failure to accept and commit to a public interest in public funding of dissenting voices as a matter of public policy in its own right?

Clare Masolin 14:52 Word on the street is that moving forward, the feds prefer to deal with NFPs whose main purpose is advocacy, OR service provision, but not a combination of both - as this may be perceived as "conflicting" (ie..advocating for better services, as well as distribution of any funding to those best able to provide those services originally advocated for). Can anyone confirm this preference by funders? And is it not so much about WHETHER you do both, but being clever about HOW it is done?

Marc Purcell 14:52 Some fear loss of donors - government or public if they are seen to be 'controversial' but a counterpoint is that advocating in accordance with your mission can be a selling point to supporters. Secondly some fear upsetting power and unspecified consequences. However government and corporations are rarely homogenous and often have people of goodwill who would like to see the chance you are wanting and can be a useful guide to help you attain it. Finally, people often default to advocacy equalling campaigning and overtly critical media, whereas these should be tactics in the toolkit rather than the default options

Patricia Kimtia 14:53 Research dissemination, community organising key to NGOs work in this domain

JULIE DAL 14:54 Interested in Clare M question too

Chatbox Transcript

Jon Mark 14:57 Has competitionad deregulation in the community sector undermined collaboration across organisations in advocacy (because we are more self interested and fearful of losing market share) and if so, how can we count on that and keep working together

Rewi Lyall 14:57 Thanks again Marc. I think that last sentence and the things Krystian has just been saying about a range of advocacy tactics are mutually reinforcing.

Elleker Cohen 14:58 I'm curious to follow on from Clare's question- in NSW, advocacy won't be funded moving forward in the disability sector. There are many advocacy orgs (that only do advocacy) that will lose funding. I'm concerned we will lose the voice of people with disability if these orgs disappear. So if advocacy is no longer funded, how is this supposed to continue and whose responsibility is it to fund it?

Victoria Lister 14:59 Really important questions...

Ann Davey 15:01 Thank you

emma rafferty 15:01 Thank you very much

Jon Mark 15:01 Thanks everyone for that. It was a good encouragement to keep speaking

Karen Walsh 15:01 thank everyone, really interesting and useful.

Michael Austin 15:01 Thanks -

Michael Jones 15:01 Thank you

Rewi Lyall 15:01 Thanks Murray, but I think there's a difference between permitting it for tax deductibility and publically funding dissent, which is what I was getting at.

Siobhan Moran-McFarlane 15:01 Thank you for the webinar and to all the presenters. :)

Wendy Scaife 15:01 Is it possible for the panelists to answer Clare's question so it is there for the recording - even if it is not vocally now but in writing? Thanks to a

Carola Akindele-Obe 15:02 Thank you. Really important to empower NFPs/Charities to advocate - have a voice.

Charles Watson 15:02 Thanks to all presenters and Redback.

Elleker Cohen 15:02 Thank you!

Fiona Goggins 15:02 Thank you, and thank you for making this webinar complimentary -

Jeff Gavin 15:02 Thank you

Lisa Milani 15:02 Thank you

Marilyn King 15:02 Thanks.

Rewi Lyall 15:02 Thanks everyone. See you at the station Bec B!

Victoria Lister 15:02 Yes, thank you.

Wilma O 15:02 Thank you all :)

Leading the way in social impact

Pro Bono Australia is one of Australia's first social businesses. Since 2000 we have provided news, jobs, education, skilled volunteering and other resources for the common good. In 2016, we helped over one million people across Australia.

We dedicate time, energy and resources to support and enable the growth of an engaged and effective social sector.

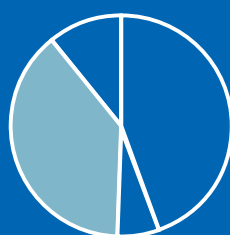
In 2015, nearly one million Australians used our services. EY estimated the value of the social impact created by our News, VolunteerMatch, Surveys and Webinars to be approximately \$6.5m*.

\$6.5m* Social Impact**\$2.8m****Pro Bono News**

\$2.8m of social value created.

**\$0.4m****VolunteerMatch**

\$0.4m of value created.

**\$2.5m****Pro Bono Surveys**

\$2.5m of value created.

**\$0.7m****Pro Bono Webinars**

\$0.7m of value created.

*Pro Bono Australia: a Performance Framework for measuring the broader value created - January 2016 - Final Report.