

About ACTCOSS and SACOSS

ACTCOSS acknowledges Canberra has been built on the land of the Ngunnawal people. We pay respects to their Elders and recognise the strength and resilience of Aboriginal and Torres Strait Islander peoples. We celebrate Aboriginal and Torres Strait Islander cultures and ongoing contribution to the ACT community.

The ACT Council of Social Service Inc. (ACTCOSS) is the peak representative body for not-for-profit community organisations, people living with disadvantage and low-income citizens of the Territory.

The South Australian Council of Social Service (SACOSS) is the peak body for the social and community services sector, people living with disadvantage and low-income citizens of South Australia.

ACTCOSS and SACOSS share a vision: to live in a fair and equitable community that respects and values diversity and actively encourages collaborations that promote justice, equity and social inclusion.

ACTCOSS and SACOSS are members of the nationwide COSS network, made up of each of the state and territory Councils and the national body, the Australian Council of Social Service (ACOSS).

The membership of the Councils includes the majority of community based service providers in the social welfare area, a range of community associations and networks, self-help and consumer groups and interested individuals.

ACTCOSS receives funding from the ACT Government.

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Dr Angie Bletsas
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Acronyms

ACNC	Australian Charities and Not-for-Profit Commission
ACT	Australian Capital Territory
ACTCOSS	ACT Council of Social Service Inc.
ANZTSR	Australian and New Zealand Third Sector Research Network
CEO	Chief Executive Officer
NACCHO	National Aboriginal Community Controlled Health Organisation
NDIS	National Disability Insurance Scheme
NFP	Not-for-profit
NGO	Non-government organisation
SA	South Australia
SACOSS	South Australian Council of Social Service Inc.

Executive Summary

This report sets out the findings of a research project investigating the meaning of independence in the community not-for-profit (NFP) sector. While frequently independence is a central concept in debate on the NFP sector, the meaning of independence is taken for granted. Object 2 of the *Australian Charities and Not-for-profits Commission Act 2012 (Cth)*¹ is: ‘to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector.’ Yet independence is not defined in the legislation and no work has been undertaken investigating the meaning of independence among representatives of the NFP sector. This project addresses that gap.² It highlights that there are a range of ways in which independence is defined and understood in the ACNC Act, in policy debates, and by sector representatives. It also highlights that independence continues to be considered of vital importance to and by the NFP community sector.

Specifically, the project examines how independence is understood in the legislative documents creating the Australian Charities and Not-for-profits Commission (ACNC), among ACNC staff, and in the NFP community sector more widely. A key focus of this project is whether, and to what extent, independence as defined in the ACNC Act and the practices of the ACNC maps on to, or is consistent with, sector understandings of independence. On this point, a key finding of the project is that the ACNC Act is, in comparison with the sector interviews, somewhat circumscribed in its definition of independence.

As the project is exploratory in nature it does not draw boundaries around how independence *should* be defined or in determining the issues most pertinent to independence. Instead, it identifies these from the primary research. The project applies discourse analysis of legislative texts, a series of in-depth semi-structured interviews with ACNC staff, and interviews with representatives of the NFP sector undertaken in South Australia (SA) and in Canberra to identify and compare definitions of independence. Three key definitions of independence are identified. They are: *freedom of voice* or independence as freedom to publicly advocate on policy and practice issues; *financial independence* – interpreted generally as organisations having multiple funding streams rather than as not being in receipt of government funding; and *organisational autonomy*.

The ACNC Act defines independence primarily as organisational autonomy and freedom from undue and unnecessary intervention. The Act establishes clear limits around when the autonomy of NFP organisations can be intruded upon. Unless clear criteria are met the autonomy of NFP organisations is to be preserved. This understanding of independence establishes a fairly narrow understanding of freedom from intervention as the intervention imagined is of direct, conscious and deliberate action. However, Section 5.40 of the Revised

1 Hereafter referred to as the ACNC Act.

2 Searches carried out on databases EBSCOHost and Google Scholar find no such published work. This is not to discount the significant work on the state of NFP advocacy in Australia, and threats to it, some of which is reviewed in Chapter 2. The difference between that body of work and the current project is that work on the state of NFP advocacy focuses on one particular definition of independence: freedom of voice. This project asks a prior question: how is independence defined and understood?

Explanatory Memorandum highlights that while the definition of independence and of intervention is fairly narrow, a wider concern informs it. That concern is the capacity of NFP organisations to maintain their freedom of voice.

Organisational autonomy and freedom of voice are also fundamental to how independence is defined by sector representatives. However, interviews with the ACNC staff and sector representatives identify a third definition of independence: financial independence. Moreover, interviews with sector representatives highlight that threats to organisational autonomy are not limited to conscious and deliberate acts of interference.

There is, therefore, continuity in the way that the ACNC legislation and the sector understand independence. However, the conceptualisation of independence in the ACNC legislation is circumscribed as compared to the wider understandings and concerns of the sector. Despite this difference, there are a range of practices and areas of work identified by ACNC staff, by NFP representatives, and through broader analysis, that do have a role in sustaining and supporting the independence of the sector and that do fall within the remit of the ACNC and they are discussed in Chapter 6 of the report.

Perhaps the most significant contribution of this project is to furnish a broad conversation on independence in the NFP community sector. It is apparent in the interviews with sector representatives that independence is a key concern. Research participants speak at length about concerns they have regarding policy settings impacting on the sector and many identify the current period as marking particular tensions that go to the very identity of the sector. Concerns around contracting arrangements, the competitive tender system, and the implications of ever decreasing government funding on sector relationships are uppermost among the issues identified as impacting independence in the interviews. The dual roles organisations in the sector perform – as actors in civil society and as providers of government-funded services – are at the centre of tensions identified by research participants. This is because the pressures involved in competing for and delivering government contracts in the field of human services frequently, and increasingly, challenge the capacity of the sector to maintain its role in civil society. As elaborated more fully in Chapter 4, this tension is related to independence in two intersecting ways: it undermines capacity for independent voice; and it undermines organisational autonomy.

The competitive tender setting is seen to undermine the capacity for independence of voice where it leaves organisations feeling vulnerable to reprisal if they speak out against government. Several research participants note instances where organisations have lost funding or have been threatened or had intimations that funding could be lost if they speak publicly against government policy or decision making. But the erosion of independence, defined as freedom of voice, does not require direct threats. The feeling of vulnerability in a competitive system also erodes freedom of voice:

I guess depending on the nature of the work, like refugee work is so politically sensitive that you start to get paranoid whether you can say anything about it to anybody really, even internally! [...]

So there are things that are happening now that I think are totally appalling around the whole notion of theoretically sending unaccompanied minors to

the likes of Nauru or Manus. [...] It's just appalling and there should be a huge public outcry about it. It's complete silence because every single provider in the country is waiting to hear the outcome of the tender. Everything was put up to tender. So, you know, it is interesting. That is sad and I guess there's enough self-interest organisationally that no one's going to be the first one to stick their neck out and maybe lose all their business.

Importantly, while some research participants point to areas where they feel free voice is not being exercised, other participants point to examples where freedom of voice is being prioritised above all else in making decisions regarding the pursuit of funding and the delivery of government-funded services.

A second way in which the dual roles of sector organisations – as actors in civil society and as providers of government-funded human services – impacts on independence is on independence defined as organisational autonomy. Many NFP sector research participants identify government contracting requirements and obligations as unnecessarily prescriptive and as eroding the autonomy of organisations:

In the contract, in the work plan [we have with government], there are some deliverables around resources, so, we're meant to be producing resources or updating resources or being a resource for. But there's no quantity [that we are required to produce].

But they've then thrown in on top of that a resource approvals process which is about [...] it's not about process, it's about scare and it's about votes. So, as soon as our funding is tied to our voting we've lost independence because it's all the risk management that government do and that's about votes. [...]

So, we get, 'You have to put your resources through us so that we can make sure nothing controversial ends up on the Minister's desk, unannounced.' And that's all it's about.

In exploring definitions of independence the project has aimed to be sensitive to the diversity of the community sector and, in particular, to explore whether there are different issues regarding independence for large as compared to small organisations. While in general there was no consensus on this broad issue, competitive tendering and the tensions that it creates are seen to have a particular significance for the independence of smaller organisations. Small organisations are typically seen to be less able to sustain their organisational autonomy in the current operational setting. This issue is pursued in Chapter 5.

The project findings are consistent with existing research on the NFP sector. Australian research since the 1990s has indicated that the policy settings which govern NFP community organisations are impacting upon the nature of the relationship between government and the community sector and between government and the users of community services (for example Sidoti *et al* 2009). Research projects have looked into the implications of this for advocacy (for example Onyx *et al* 2008; Maddison, Denniss and Hamilton 2004) and, most recently, concerns have been raised that the agglomeration occurring within the community sector is having an impact on the very nature of the sector

(for example Nicholson 2014). Chapter 2 provides a brief overview of some of these debates as context for the project.

Key themes in the interviews with sector representatives

- Sector representatives describe independence as being 'crucial' to the NFP sector and to organisations working within it.
- Independence is typically defined in one of three ways, with research participants mentioning one or several of these definitions as important: freedom of voice/advocacy; organisational autonomy; financial independence (not being reliant on a single funding source).
- Several research participants state that they have experienced threats to their independence through direct comments or comments inferring that they could lose funding if they speak against government policy and/or service delivery objectives.
- There is no consensus as to whether smaller or larger organisations are better equipped to maintain their independence, however;
 - There is a consistent view expressed across the sector that there is a trend of small organisations closing or being absorbed by larger organisations.
 - Community-of-interest, specialist and Aboriginal community-controlled organisations face unique issues in the context of the competitive environment and the trend towards smaller NFP organisations losing funding.
- Many participants identify a tension for the sector in terms of the dual role as providers of government-funded services and as civil society actors connected to local communities/communities of identity and of interest.

The key themes arising from the interviews with sector representatives are consistent across the two jurisdictions, SA and Canberra.

Despite their concerns about independence, many organisations are not well acquainted with the ACNC. Despite the lack of deep knowledge of the ACNC, many of the concerns identified by the sector representatives involved in this project fall within the remit of the ACNC. Chapter 6 makes recommendations as to how the practices of the ACNC could be strengthened to support and sustain an independent NFP sector in line with Object 2 of the ACNC Act.

Recommendations

- Clear advice about the existence and the future of the ACNC should be widely distributed to the sector with a particular emphasis on reaching small and/or largely volunteer-run organisations.

- The ACNC undertake research to quantify the current administrative burden arising from the different and overlapping jurisdictions that govern the NFP sector and the impact of this on organisational autonomy. This quantitative analysis should serve as a benchmark for future changes in regulatory arrangements and improvements in administration.
- The ACNC undertake additional communication with the sector regarding the work it is doing to communicate and to clarify the governance standards.
- The ACNC explore the feasibility of developing a database of registered³ governance and professional development support providers that could be drawn on to develop state and territory specific fact sheets which list governance support providers. Fact sheets with lists of professional development services should then be made available to newly registering charities/NFPs as part of an information package upon registration.
- The ACNC engage/support further research that investigates the independence and sustainability of small NFPs in the current and emerging operating environment.
- Object 2 of the ACNC Act needs to be more clearly communicated as an integral part of the ACNC legislation and the role of the ACNC to the sector, to government, and to the public.
- The ACNC should engage in a public education campaign about the legitimate role of advocacy undertaken by the NFP sector. The campaign should facilitate greater awareness of recent legal and parliamentary decisions undertaken recognising the role of advocacy in NFP work.

³ That is, registered by a sector body like the Governance Institute, for example.

1. Background and Methodology

1.1 Background

This project was initiated in mid-2013 as one of two projects awarded an ACNC/ANZTSR Early Career Researcher Award. The awards invited research into any of the three objects of the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (ACNC Act). The project focuses on Object 2 of the ACNC Act: 'to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector.' Specifically, the project examines how independence is understood in the legislative documents creating the ACNC, in ACNC practices, and in the community NFP sector more widely. The project combines discourse analysis of legislative texts with a series of in-depth semi-structured interviews with ACNC staff, as well as interviews with senior representatives of the NFP sector undertaken in SA and in Canberra.

The project was supported by ACNC/ANZTSR by facilitating access to ACNC staff and to some ACNC data. The ACNC also supported the project by funding the transport and accommodation costs for the lead researcher to undertake the interviews of ACNC staff. While support from the ANZTSR and the ACNC was invaluable, the project was primarily funded and supported by the South Australian Council of Social Service (SACOSS), where it was first conceived, and the ACT Council of Social Service (ACTCOSS), where it was completed. The project is a collaborative SACOSS/ACTCOSS endeavour.

1.2 Specific research questions

- How is independence constructed in the ACNC legislation and in ACNC organisational practices?
- How is independence understood within the NFP sector and does independence intersect with organisation size?
- Are there additional ways in which the ACNC can support and strengthen the independence, broadly understood, of the NFP sector?

1.3 Methodology

The project applies a mixed methodology incorporating:

- A discourse analysis of ACNC legislation and selected texts to identify the way independence is conceptualised.
- Interviews with ACNC staff to understand the work currently being done to support and sustain independence in the sector and to understand the way(s) in which independence is understood by ACNC staff.

- Interviews with senior representatives of community sector NFP organisations undertaken in SA and Canberra to investigate meaning(s) of independence.

The methodology was designed to allow comparisons to be drawn between the way independence is constructed at the level of government legislation (discourse analysis of ACNC legislation and supplementary texts), in the work of the ACNC (discourse analysis and ACNC staff interviews) and representatives of the sector (interviews).

1.3.1 Discourse analysis of ACNC legislation and select texts

The discourse analysis was undertaken as an iterative process. Select key policy texts were read for the way they explicitly and implicitly construct and define independence. These texts are: *Australian Charities and Not-for-profits Commission Act 2012* (Cth); 'Australian Charities and Not-for-profits Commission Bill 2012'; 'Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012 Supplementary Explanatory Memorandum' (Cth); 'Australian Charities and Not-for-profits Commission Bill 2012 Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012 Revised Explanatory Memorandum' (Cth); 'Commissioner's Policy Statement: Compliance and Enforcement' (ACNC 2013); 'Australian Charities and Not-for-profits Commission Statement: Regulatory Approach' (ACNC nd).

1.3.2 Interviews with ACNC staff

Interviews with relevant staff from the ACNC were carried out at the ACNC office in Melbourne in November 2013. A total of 12 interviews were undertaken. Interviews were semi-structured and were both informative and exploratory in design and purpose. Specifically, the dual purpose of the interviews with the ACNC staff was to better understand the work of the ACNC in relation to Object 2 of the ACNC Act and to gain an understanding of how independence for the NFP sector is defined by ACNC staff. Participant recruitment was facilitated by the ACNC Policy and Research team.

1.3.3 Interviews with senior representatives of the NFP sector

Sector interviews were undertaken in SA throughout November and December 2013 and from February to May 2014 in Canberra. Recruitment for the interviews was carried out through the use of community and NFP sector e-notices in both SA and the Australian Capital Territory (ACT). Some targeted recruiting was also undertaken in an effort to ensure that organisations involved in the research represented the diversity of the sector with particular focus on organisation size. The project benefited from some limited respondent-driven 'snow-ball' recruiting.

Despite initial attempts to recruit organisations outside of the community sector in the first round of interviews in SA, all research participants in the SA

interviews were representatives of NFPs that operate in the community sector. In order to create continuity and consistency in the terms of the research, the project then explicitly focused on recruiting research participants exclusively from the community sector in the Canberra recruiting round. The research in this project therefore represents the experience of *community sector* NFPs and this is made clear in the language used throughout the report.

Research participants involved in the interviews represent a wide range of specialisations working within the umbrella category of the community NFP sector including homelessness and accommodation services; disability services; peak bodies; aged care services; NFP health services; services to women; Aboriginal community-controlled services; community centres; and youth services. Research participants included one sector consultant (still working in the sector) and two former Chief Executive Officers (CEOs) who had long histories of employment in the sector and responded to the recruitment advertisements. Research participants were drawn from regional and urban areas and included large, medium and small NFPs.

Flexibility in the format of interviews was adopted in order to accommodate the preferences of research participants. In South Australia a total of 20 interview sessions were undertaken with a total of 24 different organisations represented and 30 research participants involved.⁴ While the majority of interviews were undertaken as one-on-one interviews, some multi-participant interviews were also undertaken. In Canberra 16 interviews were undertaken representing 15 different NFP organisations. All of the Canberra interviews were single-participant interviews.

The issue of how organisations are characterised into small, medium and large organisations was a confounding issue in the research. The ACNC defines organisations in terms of their annual revenue: with small organisations defined as having an annual revenue of less than \$250,000; medium organisations as having an annual revenue of more than \$250,000 but less than \$1million; and large organisations as having an annual revenue in excess of \$1million.⁵ For ease of purpose this definition was initially adopted in recruiting research participants – and it is the case that research participants represent a cross section of small, medium and large organisations as characterised in this way, though a majority of participants are clustered in the medium-large category. However, it quickly became apparent that this characterisation was not one that the sector itself supported. Among the research participants organisations receiving less than \$1million are typically seen to be small. Indeed, as one research participant put it: *'I'd say that's microscopic'*.

4 Including more than one representative from an organisation occurred in very few instances. However, where potential research participants responded to advertisements and had broad sector experience they were not precluded from participating if another member of their organisation had already participated in the research. More often, in some interviews more than one representative attended the interview – sometimes a CEO attended together with a Finance Manager, in two instances Senior Program Managers were interviewed as well as CEOs. This provided a depth of insight across organisational roles and positions.

5 See ACNC Factsheet 'Charity Size and Revenue':
<http://www.acnc.gov.au/ACNC/Pblctns/Factsheets/ACNC/FTS/Fact_CharSize.aspx>.

There was no clear consensus on what counts as a small, medium, or large organisation across the interviews – nor was there any consensus about whether it is appropriate to characterise size simply in terms of annual revenue. Some research participants defined themselves as large on the basis of their social impact or as small on the basis of their workforce size. Because of this difficulty around definition, excerpts from the interviews reproduced in this document are not identified in terms of organisational size.

To preserve the anonymity of the research participants no identification of any kind is provided where quotes appear. However, all of the sector representatives interviewed in the course of the project are quoted in the report.

2. The research context: independence as a shifting concept

2.1 Introduction

Jeffrey Johnson-Abdelmalik notes that one of the underlying ideas that the Australian NFP sector is predicated upon is that ‘to be effective, non-profit organisations require independence’ (2011: 16). Australia is not unique in its valuing of independence. In the United Kingdom concern about independence of the NFP sector eroding in recent years has led the Baring Foundation, a philanthropic fund which provides grants to NFPs and voluntary organisations⁶, to establish what is known as the Panel on the Independence of the Voluntary Sector. Over a four-year period the Panel has been producing an annual assessment of the state of independence in the sector and what can be done to strengthen it. While independence may be considered a foundation concept for the NFP sector it seems that its realisation is not always assured.

What is more, the meaning of independence is rarely clarified or explicitly articulated. This chapter highlights that independence is frequently at the core of local debates on the NFP sector. It surveys some of those debates in order to provide a background to the themes that emerge in the interviews and to highlight that independence can, and is, conceptualised in more than one way.

Three distinct definitions of independence in contemporary debates and literature on the NFP sector are identified in the chapter. The first definition of independence is freedom from intervention that limits the capacity of the NFP sector to advocate, or *independence as freedom of voice*. The second definition is of NFP organisations being *financially independent*, either by not relying on government funding or, more typically, by having multiple funding streams and therefore not being dependent on any one *particular* funding stream. The third way independence is defined concerns smaller, specialist, or niche organisations remaining sustainable and *independent of* larger organisations in the context of the competitive tender process and limited funding opportunities that characterise contemporary policy settings.

Given the breadth and diversity of literature on the NFP sector, it is unlikely that these are the *only* definitions of the term ‘independence’. However, the discussion below is not intended to be an exhaustive literature review of the use and definition of independence in NFP literature – that task is beyond the scope of this project. Instead, the point is to provide the contextual background for the project, to highlight that independence can be defined in more than one way and to draw attention to the ways that independence informs some of the contemporary debate and literature on the NFP sector.

⁶ For details see: <<http://www.independencepanel.org.uk/>>.

2.2 Independence as freedom of voice

Perhaps the most noted area of debate on NFP independence in Australia in recent years is debate over gag clauses. Gag clauses are confidentiality clauses in contracts and service level agreements between government and NFP organisations that make it a condition of funding that organisations receive government approval of any public commentary. Confidentiality clauses became part of debate on the NFP sector in the 1990s. This period marked a shift in the relationship between government and the NFP sector as government began to tender out human and social services and programs that had traditionally been provided by the public sector. The NFP sector became a provider of many outsourced human and social services and, as a consequence, entered into new contractual relationships with government. In some instances the new contractual relationships included confidentiality clauses prohibiting public commentary, including making criticism of government policy (Thomas and Knowler 2013: 5).

The use of gag clauses remains controversial. It is argued by some that gag clauses erode the independence of the NFP sector by limiting organisations capacity for public voice. Indeed, debate about confidentiality clauses is not focused on *whether* they restrict the independence of the sector, but on whether it is *appropriate* for government to restrict the independence of the sector in this way. Recent debates about gag clauses in Queensland provide a case in point.

In 2012 the Queensland Minister for Health attracted controversy over the decision to include confidentiality agreements, 'gag' clauses, in some contracts. As reported in the media, service contracts with Queensland Health for organisations that receive more than half of their funding from Queensland Health and other government departments "*must not advocate for state or federal legislative change*" (cited in Hurst 2012a). Some contracts also required that "*The organisation must also not include links on their website to other organisations' websites that advocate for state or federal legislative change*" (cited in Hurst 2012a). Journalist Daniel Hurst writes:

A spokeswoman for Queensland Health Minister Lawrence Springborg said the Liberal National Party state government wanted to spend health dollars on "health outcomes, not political outcomes or social engineering outcomes".

[...]

Mr Springborg's spokeswoman defended the gag clause in new Queensland Health funding deals.

"If an organisation's existence is based on a majority of funding from Queensland Health, then we [the LNP state government] would expect that organisation to conduct itself with the political impartiality of any other government sector, given it is majority funded by the taxpayer," she said. (Hurst 2012a)

On this perspective an organisation that supplies services to or on behalf of government and receives a majority of its funding from government is effectively *forfeiting* independence from government. In this view, organisations that rely on majority government funding and provide government services are

effectively arms of government and should, therefore, be bound to the same expectations and requirements of other government departments.

In another article on gag clauses reported on in the *Brisbane Times* a counter-view is put forward in the following way:

Queensland Council of Unions president John Battams said he had heard from a number of community organisations that they had to sign contracts that included clauses restricting advocacy.

“You can't even have any links on your website to other organisations which may do so,” he said.

“I think that's outrageous; it's not about 'being involved in politics'. It's about groups that represent often the most marginalised people not being able to publicise bad decisions of government for fear of losing their funding.”

[...]

“Community groups are there to serve their particular community but also to represent them and governments are elected to put up with criticism because decisions actually result in that from time to time,” he said. (Hurst 2012b)

In this view, NFP organisations need to be independent of government, regardless of funding, because they need to represent the voice of the community. In this debate, independence is implicitly defined as freedom of voice.

In the 1990s the controversy around ‘gag clauses’ occurred alongside ongoing debate about the role of the NFP community sector in political advocacy. Researchers Sarah Maddison, Richard Denniss and Clive Hamilton, in their discussion paper ‘Silencing Dissent: Non-government organisations and Australian democracy’, state that;

It is widely accepted that a well-functioning democracy is not limited to elections every three or four years but involves a continuing process of consultation between government and the citizenry. Non-government organisations (NGOs) serve as essential intermediaries between community and government, conveying important information about the needs and preferences of a wide range of groups in the community to governments that would otherwise remain remote and uninformed. NGOs provide a voice for marginalised groups and the means and opportunities for citizens to make claims on government between elections. NGOs are therefore an essential component of a healthy and robust democracy. (Maddison, Denniss & Hamilton 2004: vii)

Here, the argument is made that advocacy is a fundamental part of the role of NGO/NFP organisations and it is directly connected to representation and the issue of freedom of voice. In their discussion paper Maddison, Denniss and Hamilton highlight that this view is not universally held and that it is not a view that the Commonwealth Government of the time subscribed to.

The issue of NFPs and advocacy was also highlighted in the more recent High Court case *Aid/Watch Inc v Commissioner of Taxation* (2010) 241 CLR 539. The NFP Aid/Watch Inc brought forward the case when the Australian Taxation

Office (ATO) revoked its status as a charity eligible for tax concessions. As Thomas Faunce describes, the case hinged on whether Aid/Watch Inc, which engaged substantially in advocacy and did not provide other direct services, should be categorised as having a charitable purpose and thus as eligible for tax concessions:

The ATO argued that Aid/Watch was ineligible for tax concessions because its purpose was to monitor Australia's aid program, rather than deliver aid, and thus was not acting for the purpose of the relief of poverty. Aid/Watch also engaged in "political" activities, including "urging the public to write to the government to put pressure on the Burmese regime; delivering an ironic birthday cake to the World Bank; and raising concerns about the developmental impacts of the Australia–US Free Trade Agreement". Aid/Watch in its defence argued (at [46]) that "the generation by it of public debate as to the best methods for the relief of poverty by the provision of foreign aid" meant its activities were beneficial to the public – and thus charitable. (Faunce 2013: 288)

The High Court held that: "the generation by lawful means of public debate ... concerning the efficiency of foreign aid directed to the relief of poverty, itself is a purpose beneficial to the community" (as cited in Faunce 2013: 288).

At the Commonwealth level, confidentiality clauses are now prohibited from government contracts following the introduction of the *Not-for-profit Sector Freedom to Advocate Act 2013* (Cth). Some of the states have introduced similar legislation prohibiting such clauses in contracts between the NFP sector and state governments. The rationale for such measures has been that it is not appropriate for government to curtail the independence – that is, the freedom of voice – of the sector.

The examples and debates considered above are all exemplary of one key definition of independence – as freedom to advocate, or as freedom of voice – that currently occurs in Australia.

2.2 Financial independence

Another context in which independence is defined and debated in the existing literature on the NFP sector regards funding, in particular, dependence on, or independence from, government funding. The history of NFPs in Australia, as elsewhere, is that their origins are as community based organisations, run by a volunteer workforce, with some reliance on funding from government, but with primarily small budgets drawn from fundraising and philanthropy. Indeed, in the current context it remains the case that the majority of the NFP sector is comprised of small, volunteer based unincorporated organisations (Productivity Commission 2010: xxiii, 57). However, a percentage of NFPs are considered 'economically significant' (Productivity Commission 2010: xxiii). The 2010 Productivity Commission Report into the NFP sector estimates that there are 440,000 small unincorporated NFPs while the Australian Bureau of Statistics classify 58,779 as being 'economically significant' (Productivity Commission 2010: xxvi):

These 'economically significant' NFPs employed 889 000 staff, around 8 percent of [national] employment, and contributed just under \$43 billion to Australia's GDP in 2006-2007. (Productivity Commission 2010: xxvi)

Many of the economically significant NFP organisations will be engaged in philanthropic fundraising, social enterprises, and diverse income generation streams. However, some NFP organisations, approximately 20,000, rely heavily on government funding as their sole source of income (Productivity Commission 2010: xxv). The Productivity Commission (2010: xxv) notes that many of these NFPs work in the area of human services. What this reliance on government funding means is that NFP organisations can be vulnerable to changing directions in government policy.

In existing literature on NFPs the issue of financial in/dependence is often raised in connection to New Public Management, the conceptual and governmental framework underpinning the shift to the purchaser/provider relationship between government and the NFP sector that still predominates today. Since the 1990s there has been a trend for government to no longer provide funding to NFP organisations in terms of grants or 'block' funding for organisations. Instead, the trend has been for government to offer out for (competitive) tender government designed programs and services. New Public Management is the term given to the philosophical approach underlying this outsourcing of human and social services (Sidoti *et al* 2006: 3).

New Public Management is seen to involve changed relationships between government and NFP organisations. This changed dynamic is seen by some to have created a dependence upon government, and undermined the autonomy of NFP organisations that no longer design programs of their own but primarily compete to deliver government designed and funded programs, as Sidoti *et al* state:

The introduction of 'new public management' has markedly increased the outsourcing of government services and seen dramatic changes in the relationship between government as purchase and not-for-profit organisations (NFPOs) as providers of 'government' services (HRSC 1998; Nowland-Foreman 1998; Neville 1999; DoCS 2001; Darcy 2002; Brown and Keast 2005; O'Shea 2006).

These developments have been profound. They have changed the way government works most notably perhaps in increasing the distance between government and the people using government services which are now mediated by third parties, initially, not-for-profit organisations but increasingly by for-profit companies. In the process the role of the public servants in the line agencies—such as health, education, employment and community services—has centred on program oversight and contract management. NFPOs delivering these human services have become—in many cases almost entirely—dependent on government funding that, in turn, has transformed the sector. (Sidoti *et al* 2009: 3)

Debates about financial independence do not only turn on the issue of New Public Management as informing the relationship between the government and the NFP sector. In 2006 and 2007 researcher Jenny Onyx and her colleagues undertook a study into peak NFP organisations in the context of funding cuts

and insecurity and their impact on advocacy. A report on the findings of their qualitative study undertaken with 24 NFP senior executives in New South Wales and Queensland finds that dependence on government funding erodes the independence, and sometimes the very existence, of peak bodies and the advocacy functions within sector organisations. In their analysis of the situation Onyx *et al* argue that there is a need to fund advocacy through other means in order to preserve the independence of peak bodies and other NFPs who engage in systemic advocacy:

We may conclude that all is not well in the world of systemic advocacy, and that this situation places a grave threat to the maintenance of a healthy democracy. [...] To rectify this situation alternative funding sources need to be made available for systemic advocacy, alternatives which nonetheless draw on a public purpose fund and are accountable to the state, but not to a specific service department. Such alternatives are not only possible, but already exist in some jurisdictions. Urgent action is required to support a basis for responsible autonomy within the Third Sector for systemic advocacy. (Onyx *et al* 2008: 646-647)

Mirroring the discussion from Maddison, Hamilton and Denniss, the concern here links the independence of NFP organisations to engage in public advocacy with an overarching concern about public debate and democratic politics. However, in this citation independence is implicitly defined in terms of the sector's capacity to maintain this autonomy in the context of existing funding pressures and not the kind of restrictions imposed by confidentiality clauses.

Another context in which independence is formulated in terms of financial independence is in discussion of the future sustainability of the sector. A recent speech by Tony Nicholson, the Executive Director of the Brotherhood of St Laurence, provides one recent example. In his speech Nicholson puts forward the position that the NFP sector as it currently exists is not sustainable and he cites funding as one of two reasons why he feels this to be the case:

Will governments be prepared to meet the cost of the expansion of current service models, to meet the needs of a population predicted to expand at the rate, here in Victoria, of almost 2% per year? (Nicholson 2014: 5)

The examples above highlight debates in which independence is being defined as financial independence. In the first example the relationships with government ushered in by the New Public Management regime are seen to have created a financial dependence on the government which has undermined the autonomy of NFP organisations. In the second example financial independence from government is positioned as a necessary condition for ongoing advocacy work. In the third example financial dependence on government is seen to leave organisations vulnerable to the vicissitudes of state and federal budgets eroding their organisational autonomy and future sustainability.

2.3 Organisational autonomy: The case of smaller NFP organisations in the competitive marketplace

The current policy settings in which NFP organisations operate is complex. In a recent sector update JBWere Philanthropic Services characterise the current landscape in which NFPs operate in the following terms:

It used to be simple. Governments had a clear role, charities and non-profits had a clear role and philanthropy filled the gaps. For profits? They were there to make money, some of which they occasionally 'gave back' in the form of a cheque.

It's not so simple any more. Australia is in the midst of a paradigm shift and what was fixed is now fluid. For a long time, expectations of Governments, non-profits and for-profits were set in stone. Their roles and functions were clearly defined and distinct from each other. The way people approached them and the way they approached each other reflected this black and white view of who should do what.

The new paradigm, however, is not founded on fixed ideas and static roles. Driven by innovation and competition, it is characterised by unprecedented levels of collaboration and the breaking down of the 'silos' in which groups in our society have traditionally operated.

The result, for non-profit leaders, is that whilst they may be part of the non-profit sector they are actually working in an emerging field of social enterprise. This is a much broader, more dynamic and competitive field. The participants in this field are increasingly looking for evidence of social impact. To be successful non-profits will increasingly need to be enterprising and results-focused. Most importantly, in a rapidly changing world, they must be prepared to rethink what they need to do and how they need to look in order to achieve their mission. (Knowles 2014: 2)

The advice that the JBWere team offer is illustrative on two points. It is illustrative in characterising the sector as today defined by competition. It is also illustrative of the repositioning of the sector, or elements within it, in terms of financial markets. JBWere are a private wealth management company. While the NFP sector has always had a relationship with organisations like JBWere through philanthropic donations to and investments in the NFP sector, the relationship between the sector and the financial market has changed in recent years and this is evidenced in the increasing interest that organisations like JBWere have in monitoring trends within the sector.

A similar characterisation of the changed landscape in which the sector operates is made by Tony Nicholson in his speech, already cited above in this report. However, Nicholson frames this change in the context of institutional reform and what, in his view, are its failings to date. The relevant section of Nicholson's speech is reproduced in full here:

[The reform process] seems to be premised on the idea that voluntary community organisations are an extension of government.

With the passage of time the limitations of this approach are more and more evident. It's less about sector reform and more about associated efforts to streamline the manner in which the Department of Human

Services works - by co-ordinating service responses to people and maximising the efficiency and outcomes through economies of scale. Some, such as those known as Services Connect, seem highly desirable. Who could dismiss efforts to coordinate service delivery, to reduce fragmentation, duplication and inefficiency?

But we should not confuse this with sector reform. It could only be seen as such if you consider the voluntary community organisations making up the sector to be an extension of government, rather than an extension of community. What I find disturbing is how easy it is in this environment to begin to think that way. Our sector's willingness to embrace the process shepherded by the former head of the Commonwealth public service, to my mind, indicates that we may be at risk of beginning to lose our sense of mission and of clarity concerning identity and purpose.

So what, to date, has been the immediate fallout of this sector reform approach?

Whether intended or not, the reality is that it has created an environment that is driving many organisations to look to amalgamate to survive. This is the reality that we do not speak about.

If the trajectory of agglomeration and amalgamation of organisations is allowed to run its course over the next two decades, I fear we will see a welfare arms race in which the lion's share of government funding will go to super-sized welfare businesses, some of which will be 'for-profit' in nature, and the smaller, community-based and faith-based organisations will be marginalised or left completely undone.

[...]

My long experience in the sector suggests to me that this process of aggregation will inevitably lead to a loss of genuine local community roots from which services sprung, a lessening of local community control and sense of local ownership of those services, and a loss of voluntary community contribution to them. In the world of contract service delivery, more often than not these are considered as externalities - if they are thought about at all. For example, how else could you explain the recent defunding of smaller, long-established community organisations, providing mental health support to some of our most vulnerable citizens? (Nicholson 2014: 8-9)

These two citations provide two very different perspectives on the growth of a competitive market system in which NFP organisations operate today. However, they highlight a similar theme: the understanding of independence as organisational autonomy in the competitive setting. More precisely, that the current competitive setting is seen to undermine organisational autonomy.

The issue of organisational autonomy in the context of competitive market relations is particularly salient in relation to debates on the future sustainability of Aboriginal community-controlled organisations. Evidence shows (Alford 2014: 7) that provision of services by Aboriginal community-controlled organisations, for example, health services, serve a larger proportion of the population of Aboriginal people, yet mainstream organisations receive the majority of funding for Aboriginal programs. A recent report funded by the National Aboriginal Community Controlled Health Organisation (NACCHO) finds that:

Up to two-thirds of Aboriginal people rely on Indigenous-specific primary health care services. Yet three-quarters of all government Indigenous health expenditure is on mainstream services and nearly half (48.4%) of all expenditure is on hospitals (Alford 2014: 7)

This issue is not limited to the context of health spending. The 2014 National Commission of Audit Report states that in 2010-11 the '*total estimated expenditure on Indigenous Australians*' (commonwealth and the states and the territories) was \$25.4 billion dollars. Of this sum \$19.9 billion went to mainstream programs and \$5.5 billion to Indigenous specific programs (NCOA 2014:173).

In the Northern Territory the issue of competitive tendering and its implications for organisational autonomy – and effective service delivery – has led to the development of a partnership code between mainstream NFPs and Aboriginal community-controlled organisations (see APONT *et al* 2013). The principles of the partnership code are intended to provide a framework informing practices around competitive tendering to ensure that Aboriginal community-controlled NFPs are allowed the conditions necessary to flourish and to do so independently of mainstream NFPs. The example of the Principles document is exemplary of the third definition of independence that features in debates on the NFP sector – independence as organisational autonomy in a competitive market setting. It also highlights that organisational autonomy is not simply an issue of organisational sustainability for its own sake, but in some instances has a direct correlation with service take-up and service outcomes.

2.4 Conclusion

The concept of 'independence' regularly features in debates and literature on the NFP sector. This brief review of some of the contemporary issues and debates on the NFP sector highlights that the concept of independence is fundamental, and highlights that its meaning is not often explicitly defined. While independence is taken for granted as a concept, it is also apparent that it has more than one meaning and that different definitions can intersect. The three definitions touched on here – independence as freedom of voice, financial independence and organisational autonomy – are pivotal to, and frequently intersect, a range of concerns, issues and debates about the NFP sector.

3. Independence in ACNC legislation and practices

3.1 Introduction

This chapter investigates the specific ways in which independence is constructed in ACNC legislation and official practices in order to compare and contrast this understanding with the ways in which independence is understood among representatives of the community NFP sector. The chapter finds that independence is not defined explicitly in ACNC legislative documents. Instead, independence is taken for granted as a foundation concept. While not explicitly defined, analysis demonstrates an implicit understanding of independence as (organisational) freedom from direct constraint and no, or limited, interference. This understanding of independence is evident in the ‘light-touch’ approach to regulation and the way in which respect for the sector and its autonomy is written into the legislation and related texts. Analysis of the interviews with ACNC staff, which appears in the second half of the chapter, reinforces this understanding but also draws out a slightly more expansive understanding of independence and the things that constrain it.

3.2 Discourse analysis: independence as non-interference

The term ‘independence’ actually appears few times in the ACNC legislation. The most significant appearance of the term is in Object 2 of the Act: *‘to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector’* (Australian Charities and Not-for-profits Commission Act 2012). Use of the term in this context clearly constructs independence as a foundational characteristic of the NFP sector. Despite this, independence is not explicitly defined in the legislation or in the Supplementary Explanatory Memorandum or the Revised Explanatory Memorandum that accompany the legislation. Though the term is not explicitly defined, it is possible nonetheless to trace out the *implied* meaning of the term in the ACNC Act and related documents by exploring the way that the powers of the ACNC are constructed in the legislation and accompanying texts. The section below provides this analysis.

3.2.1 A ‘light-touch’ regulator

The ACNC Act establishes fairly significant powers for the ACNC and the Commissioner, including information gathering powers and monitoring powers that allow the Commissioner to request and retain documents and, in certain circumstances, to enter, or have a representative enter, a premises to obtain documents and records. The Act also creates powers for the Commissioner to seek restraining, performance and consent injunctions where organisations fail

to comply with their obligations as created by the Act. However, provisions in the Act explicitly set up the ACNC as a light-touch regulator. This point is emphasised in the Revised Explanatory Memorandum as well as in subsequent literature produced by the ACNC. It is made clear that, in the majority of cases, the ACNC will primarily adopt an educative approach, rather than an enforcement approach, assisting the sector to understand when regulation requires organisations to do, or to not do, certain things. It is stated, for example, that:

1.75 The ACNC Commissioner will primarily achieve the objects of the Bill by providing the NFP sector with guidance and educative materials to assist the sector to understand and comply with regulatory obligations. (Revised Explanatory Memorandum: 16)

Furthermore, in relation to the sections of the ACNC Act which create the Commissioner's powers, the Revised Explanatory Memorandum notes:

1.77 Importantly, the legislation also provides for appropriate limitations on these powers and considerations for the ACNC Commissioner to consider in any exercise of these powers. (Revised Explanatory Memorandum: 17)

The ACNC Act thus clearly establishes that the role of the ACNC is primarily as a 'light-touch' regulator. In establishing a light-touch approach to regulation clear constraints around interference are established and intervention is constructed as only appropriate in instances of last resort. Strong action is also permitted in cases where the seriousness of the circumstance, for example, in serious fraud, warrants it. Overall, however, the focus is on a light-touch approach. The governance standards also reflect this 'light-touch' approach.

In establishing the governance standards the ACNC Act adopts a principle-based approach rather than a prescriptive approach. The ACNC Act draws on powers of the Governor General to set governance standards to which all charities registered with the ACNC will be required to comply. In the Revised Explanatory Memorandum the following statement is made about the governance standards:

5.3 The Governor-General is expected to make the standards principle-based, specifying the outcome to be achieved, rather than detailing how an entity must meet the standards in its particular situation. (Revised Explanatory Memorandum: 57)

The principle-based approach to the governance standards reiterates the light-touch approach – minimising the extent to which the ACNC can interfere with organisations. This effort to limit interference implicitly constructs organisations as autonomous and independent.

The Revised Explanatory Memorandum also clarifies that the governance standards cannot be utilised or established in a way that would interfere with an organisation's capacity to work to mission but should, instead, free organisations from undue interference:

5.22 Further, the standards will create a framework to protect entities and their mission or purpose from mismanagement, and will ensure that the entity is focussed on its mission, and not the goals or interests of others. (Revised Explanatory Memorandum: 60)

Here, independence is again being defined as organisational autonomy. This definition of independence as organisational autonomy is somewhat constrained. It seeks to protect the independence of the sector by proscribing the conditions around which organisations can be intruded upon or interfered with. Yet the conceptualisation of interference is direct, conscious and deliberate acts of interference.

Despite this constrained definition, it is made clear in the Revised Explanatory Memorandum that the understanding of independence implicit to the legislation connects to the understanding of independence as freedom of voice and capacity for public advocacy:

5.40 The governance standards cannot prevent a registered charity from undertaking an activity where that activity furthers, or is in aid of, its purpose, and that activity is advocating or attempting to change the law or government policy except where that activity is in breach of an Australian law [Subsection 45-10(6)] [reference in original source]. This will protect the independence of registered entities from inappropriate Government interference, and ensure them sufficient autonomy in carrying out their operations by ensuring the governance standards cannot limit a registered entity's ability to make its own decisions on how to best meet its mission without undue influence and control from the Commonwealth Government and its agencies. (Revised Explanatory Memorandum: 62-63)

Here, the capacity of the sector to '*advocat[e] or attempt to change the law or government policy*' is explicitly recognised as legitimate and the writing of the governance standards is designed to ensure that the capacity of the sector to maintain an independent voice is protected.

The conceptualisation of independence as organisational autonomy and freedom from undue interference is also evident in texts published by the ACNC. The following statement appears in the ACNC document 'Approach to Regulation':

The approach of the ACNC is founded on respect for charities and those who work with and for them. We will listen to and work with charities. We recognise the unique nature and diversity of charities, and respect the autonomy of charities. (ACNC nd: 7)

There are other examples where the autonomy and freedom of charities and the NFP sector is stated in official ACNC texts:

Respecting autonomy

The ACNC will respect the freedom of individuals to associate with others, which underpins the role of charities. We understand that charities are an important part of civil society, not a part of government or of the business ('for-profit') sector. It is for charities to determine their own goals and strategies and to decide how they should best fulfil them. (ACNC nd: 8)

In this quotation the independence and autonomy of NFP organisations are not only being recognised but are constructed as fundamental to the nature of charities and NFP organisations as part of civil society. The voluntary nature of charities positions them as separate to government and the for-profit sector and as due protection from interference for this reason.

From the analysis provided above it can be seen that, while there is no explicit definition of independence in the ACNC legislation or the Explanatory Memoranda, independence of charities and the NFP sector is implicitly and sometimes explicitly constructed in terms of organisational autonomy, with a capacity for freedom of voice, to be free to set, and work to, mission and to not be interfered with unnecessarily by government. In turn, the justification for this need to respect the autonomy of organisations is implicitly tied to an understanding of the sector as having a unique role in Australian public life.

3.3 ACNC interviews

Analysis of the interviews with ACNC staff highlights very similar understandings of sector independence in the ACNC legislation. Independence is defined primarily as organisational autonomy and in terms of organisations setting, and working to, their mission. The place of NFPs as actors in civil society is also highlighted as significant in understanding the sector and independence. However, the interviews also raise issues regarding independence that are not referenced explicitly in the ACNC Act. In particular, some research participants in the interviews identify financial independence and a wider range of factors impacting on organisational autonomy, issues that cannot be reduced to direct, conscious and deliberate acts of interference.

3.3.1 Regulating from a platform of respect

We've been very mindful in all of our guidance, particularly around good governance, to be clear about it being up to the charity themselves. Unless there's mandatory obligations on them, that they have their own entitlement to make decisions and constitute themselves the way they wish, and run things the way they wish subject to governance standards, and that they maintain their charitable purpose.

As this excerpt demonstrates, the interviews with the ACNC staff very much reinforce the findings from the discourse analysis of the ACNC Act and associated texts in defining sector independence. The emphasis across all of the interviews is on the role of the ACNC as a light-touch regulator, acting with a high degree of respect for the independence and the capacity of the sector. ACNC staff emphasise that they come from a position of trusting the sector:

We come from the principle that charities are doing the right thing. They're honest. They're trying to do the right thing. If they're not doing the right thing, that is often because they don't know what they should be doing rather than flagrantly not applying the best practice. We always try to collaborate with the organisation first. So, we work with them on a voluntary basis to get the information from them. If we can't get the information on a voluntary basis, then we might use our powers.

Respecting the right to voluntary association and not burdening voluntary organisations with unjustified regulation is a theme in the interviews and it reinforces the findings of the discourse analysis:

Interviewer: How would you define independence for the sector?

Interviewee: Independence to be able to deliver its purposes, its charitable purposes in the way that they individually and organisationally think is the most appropriate in their circumstances with the minimum level of interference. You know, the voluntary sector, volunteering, that all stems from that voluntary association and independence and we have an Act and there are certain ground rules if you like, [but] the framework that underpins what they can and can't do is not at the level of interfering in their independent decision making about: '[Is] the best way to help people who are homeless to give them soup or to provide them with housing or to do education or to do none of the above?' It's independent decision making in that regard.

ACNC staff also emphasise the identity of the sector as independent and separate from government and from the business or for-profit sector as important:

We talk of the third sector when we talk of charities and not-for-profits and by that we generally mean not government, not commercial, but a separate concept of civil society. So in that sense independence is important.

There will be many interactions with government. [...] ⁷ But it's the construct of Australian charities that they are independent of government. If they get too close to government, or become an arm of government, then they're no longer charities. They lose their definition. Interestingly enough, if they get too commercial and too much for private benefit, they're no longer charities. So they have to maintain that distinctive independence.

Each of these examples is consistent with the understanding of independence identified in the ACNC legislation and related texts. Independence is defined in terms of organisational autonomy: of organisations being free to set and work to their own mission without being unduly interfered with. Moreover, NFP organisations are defined in terms of their identity as voluntary organisations and as part of civil society. They are seen as being separate from and independent of government and the for-profit sector and as having a unique role and place in Australian public life.

3.3.2 Additional issues

The interviews with ACNC staff reinforce the understanding of independence evident in the ACNC legislation: as organisational autonomy and freedom from undue interference. They also raise some definitions and issues not addressed in the ACNC Act: in particular, financial independence and a wider range of issues impacting organisational autonomy outside of direct conscious and deliberate acts of interference. Research participants, in this part of the interviews, draw on their wider working experiences with the sector. The discussions during which the excerpts cited in this section occurred were sections of the interviews where ACNC staff were asked to reflect generally on the meaning of independence and whether there are any threats to that independence within the NFP sector. A sample of these reflections are

⁷ The interview excerpts that appear in the report have been reproduced exactly except in instances where amendments were necessary to preserve anonymity or where discussion was not relevant to the point highlighted. Where text has been omitted it is indicated by [...].

reproduced below to illustrate the more expansive issues emerging in the interviews.

3.3.2.1 Financial independence

One definition of independence that arises in the interviews with ACNC staff that is not explicitly stated in the ACNC Act is financial independence. As the quotations below demonstrate financial independence, or rather the lack of it, is linked to the capacity for independence of voice – which *is* part of the definition of independence implicit to the ACNC Act.

Responding to the question: ‘Do you think that independence is important for the sector?’

I think it’s critical and it’s always under threat in that the sector still, I think, is heavily reliant on government funding and also, in that very unequal relationship, the sector becomes the agent to the government’s principal part of the relationship and becomes a deliverer of government’s services – in the eyes of some an arm of government or a de facto of government. And the danger there is that the sector’s capacity for innovation is diminished, but also, its embedded-ness in local community and its trust, the trust it gets from local communities because of its independence and the innovative ways it can go about delivering its services – I think they become very much under threat. So I do see independence as absolutely critical to the nature of the sector.

I think it’s fair to say that in the Aid Watch High Court decision that it’s implicit in the judgement that was made there, that it’s proper for not-for-profit entities to advocate and that’s really, I think, implicit – that they’re independent bodies that ought to be having a voice for issues that concern their mission and their core purpose. [...]

I think in the cool light of day independence also requires some financial capacity and that’s where independence can be compromised, particularly if people adjust their mission to attract dollars for survival—and it happens. So, I think that’s probably another issue in relation to maintaining independence and perhaps, in relation to maintaining independence given the charitable nature of the enterprises we’re talking about. A commitment to vision and mission ought to be something that helps them to maintain that as well.

Interviewee refers to the book Driven by Purpose by Stephen Judd, Anne Robinson and Felicity Errington

[T]hat’s a book that says charities have sometimes lost their very clear purpose that sometimes coincides with government and sometimes doesn’t. And that if they simply follow the money they do become a puppet of government and that’s one of the dangers and they’re rediscovering what does it mean to be driven by a purpose regardless of whether the money is there or not.

So, yes, I think that the symbiotic relationship created by the money flow is an issue of independence. I don’t know the answer to that because you’re dead if you don’t take the money and that’s the problem or you find other streams of income. An interesting example was Tim Flannery. So Tim

Flannery's running a government office and the government said we're cutting you, bad luck, and he goes to the constituency and says, 'Well, do you want this to happen?' And they crowdsourced a million bucks in a few days. So it is possible to simply say we will not accept the money or if the money's not available we'll ask the community to fund this ourselves, and that does create a sense of independence. It also creates a sense of vulnerability.

[In response to the question 'What would strengthen the independence of the sector?']

I suppose it would be something around the funding. Greater transparency about the funding side of it. So there was that ability, confidence to be able to be assertive without the fear of retribution. So that there is that transparency so there isn't the link between: we could have our funding cut and therefore be at risk of having to fold if we speak out about something that we actually think could make a real difference for the people that we serve or the cause that we serve.

[In response to the question 'Do you think that there are any threats to the independence of the sector?']

Actual, real threats to independence of the sector? I think it's resourcing. Yes, I think that's a struggle. It's hard when you're struggling for that dollar to be independent because you're always looking to make sure that next dollar comes in and it's hard.

The role of philanthropic funding is sometimes discussed in relation to financial independence and its intersections with independence of voice. There are mixed views on the capacity of philanthropic funding to have a positive impact on financial vulnerability and its implications for independence:

[T]here's this increased expectation that philanthropy will fill in a lot of gaps in terms of the needs of society and I'm always worried about [...] will it come with strings attached? Whether it's philanthropy through corporate or private – will it come with strings attached? And will the right causes be supported? So as much as I think philanthropy is great, what's the role of government? And I mean, government could do it [fund services] as well but I guess it's a bit more... the giving I guess is a bit more structured and you can lobby government and there's a different relationship between the not-for-profit [sector] and government whereas with philanthropy and not-for-profits it's just a little bit more private, and you see that certain causes are more popular with certain companies.

So I think that's the fear that if we're moving towards more of a philanthropic kind of environment and I think you see it in the US where, you know, a lot of philanthropic money goes back to support big powerful universities or schools that rich people have gone to but what about the poor suburbs where people just survived and then they haven't got money to go and invest in their schools. So I think that's probably one of the, I think a potential for it affecting the independence of the sector.

3.3.2.2 Organisational autonomy

Organisational autonomy is central to the definition of independence identified in the ACNC Act and features as a theme in the interviews with the ACNC staff. However, in the ACNC Act, as shown above, the understanding of what constrains organisational autonomy is somewhat limited to deliberate and direct intervention. Interviews with ACNC staff highlight that issues impacting organisational autonomy are not limited to deliberate and direct intervention but can be indirect. One such example offered is mergers; another is the competitive tender system:

I think mergers can be disastrous or they can be useful. Useful mergers come from the impetus of the organisations themselves. I think disastrous mergers come from: 'You don't get any funding unless you do this together'. So where you've got organisations that have developed very locally with a local base for a very local service delivery perspective and purpose, the notion that they would necessarily merge with another organisation because it happens to be suburbs away is a nonsense. It might make sense on paper because there's a good business case for it but it doesn't mean that the charity itself can better deliver its services to the people. So I think mergers, I'd be very hesitant to suggest mergers as a kind of cure-all. If they want to do it because it's useful, fine, but I think that requirement to merge is a real push away from independence because that's not the decision made by the organisation.

Interviewer: You mentioned competition: in what ways do you think that affects the sector?

Interviewee: I think it dilutes the amount of money that goes around so I think that's where big charities can often just overwhelm and overshadow smaller charities. [...] [I]t's pretty, well, I'm going to say it's pretty easy, if you've got 165 years behind you and, you know, multiple million dollars, say, \$700million as a budget and all this history and ability, then if you're doing research or whatever, you're obviously going to be a preferred research body above a smaller one.

3.4 How does the ACNC support an independent NFP sector?

While ACNC staff hold a range of views on what would support and sustain an independent NFP sector all of the research participants speak to the fact that the ACNC is not an advocate for the sector and identify parameters to their work as regards the issues that promote sector independence. Within their statutory remit ACNC staff see their work as supporting and sustaining the independence of the sector in a range of ways. As described by the ACNC staff the work of the ACNC is potentially more far-reaching than the limited definition of independence in the ACNC legislation. This divergence arises, not because of any inconsistency in the work of the ACNC, but because some of that work *incidentally* contributes to the wider issues impacting sector independence

identified above. It is worth noting that the ACNC Act has 3 objects and they are:

1. to maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector
2. to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector
3. to promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.

ACNC staff identify the following ways in which their work supports and sustains independence in the NFP sector:

- Educating the public in general about the NFP sector and in particular about the legitimate role of advocacy in the NFP sector (given recent Australian case law and legislation).
- Developing and maintaining a public register of charities that, for some research participants, is seen to potentially contribute to increased knowledge of the issues affecting the sector and, for other research participants, is seen as strengthening the independence of the sector because it contributes to public trust and public funding for the sector.
- The sub-type classification system potentially assists charities to work to their purpose and therefore potentially helps to mitigate the risks of 'mission drift' arising from external pressures.
- Supporting smaller organisations in relation to some of the administrative burden that they face through the development of governance standards that are instructive and provide an accessible framework or guide to understanding and implementing good governance practice.
- Minimising the interactions with government through a mainstreaming of reporting requirements (red tape reduction) and consequently freeing up staff in the NFP sector to do their core work.

At first glance, not all of these points have a clear connection to the issue of independence. Nonetheless, for research participants each point has an implicit or explicit connection to independence – depending on how independence is defined. The points are elaborated in turn below with excerpts from the interviews where appropriate.

3.4.1 Public education: advocacy as a legitimate occupation

Public education is one of the areas that ACNC staff identify as part of their remit in supporting and sustaining the independence of the NFP sector: by educating the public about the NFP sector – in particular, its legitimate role in advocacy, independence (defined as freedom of voice) is supported. ACNC staff note that the issue of advocacy is one that has been raised to them by some concerned members of the public who are unaware that, as now established in case law and legislation, it is legitimate for NFP organisations to be involved in public policy debates.

ACNC staff point out that it is not their role to define the purpose of charity, but that it is their role to educate the public and, where appropriate, government departments, now that legislation concerning the sector has been established by the Commonwealth:

[Our role is] educating the public on issues related to charities and non-profits; and supporting the, sort of, what we call, internal and external policy of government; supporting staff within the ACNC to understand the sector so they can develop appropriate policies and procedures; and supporting external policy.

[I]t's for the parliament to determine what the definition of charity is. Sorry, it hasn't necessarily; it's been the case law up until now. The last parliament decided to largely, if you like, summarise that and put it into legislation to aid clarity and to tidy up some of the problems. [...] [I]nterpreting that legislation, that's our role. If the current government wish to repeal that legislation, well then we go back to interpreting the common law. Either way we have a role in interpretation and I think as a fairly small, specialist regulator, we have the ability over time to develop expertise in that. To consult with the sector about what the trends are and something new that has not been thought about from all 600 years of case law couldn't possibly have been envisaged when this legislation was passed, and to deal with that in our interpretation. If it's beyond the bounds of reasonable interpretation but we think it's important, we set policy. The team can reflect back to the parliament or to our Minister, where we think there's a gap or a loophole or a problem as part of administering the law, that's our role.

3.4.2 The role of the public register

Developing and maintaining a public register of charities is a significant part of the work of the ACNC. It is often referred to in the interviews with ACNC staff as an example of the way in which the ACNC supports and sustains the independence of the sector. However, it is not always clear *how* the public register is seen to contribute to sector independence. The public register records and makes publicly accessible certain information about charities. Its primary purpose is accountability and transparency to the public.

However, ACNC staff identify additional, incidental, benefits of the public register for charities and NFPs. These additional benefits hinge on two separate issues: promoting relationships with the public and with philanthropic funders and making application for government funding less time consuming by clarifying the 'risk burden' of organisations. The following excerpt draws some of these issues together:

Well, I think it's probably three things [that the register achieves]. I think it increases public awareness and the public's understanding of what the organisation is doing, which could lead to greater giving, but I also think, within the sector, entities can compare themselves to other entities of similar purpose activities, and how they're going in terms of benchmarking. And then even from a government perspective that reporting and governance should decrease risk profiles within grant-giving agencies in relation to those entities. Because they're [registered entities] subject to that

reporting and governance it potentially could impact on how a grant-making agency identifies or classifies the risk of that entity.

[W]hen they [Government Departments] determine some of the grant guidelines it's all based on risk and proportionality. One of the components relates to the entity's specific risk, and I think [the public register] should decrease that risk profile, which should assist and potentially lower reporting requirements as well.

The first point highlights that improved trust and transparency can lead to greater public donations to charities. Here independence is being defined as financial independence with the inference that increased public giving could prevent the sector from being dependent on government. The latter point concerns independence defined as organisational autonomy. Easing the reporting burden and the administrative burden around qualification processes is seen to create less pressure upon and intervention in the autonomy of NFP organisations who receive government funding.

3.4.3 Red tape reduction: indirect but important

Red tape reduction is not indirect or incidental to the work of the ACNC – it is fundamental to its purpose as specified in Object 3 of the ACNC Act: '*to promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.*' However, the goal of red tape reduction is not explicitly articulated as supporting or sustaining the *independence* of the sector. Nonetheless, as noted above in the discussion of the role of the register, red tape reduction is seen by some ACNC staff to have an indirect impact on independence for the NFP sector:

[...]The work on reporting and red tape reduction as well is an important part of that, it's not directly looking at the independence. Obviously, the less compliance and regulatory reporting requirements, just the fact that someone is sitting down and going, 'Well, why do you have that requirement you actually caused that requirement, does it do anything for you or is it just something on your form that you've always had?' And having those discussions, I think, helps reduce that kind of onerous, over-reporting, but, kind of, not useful reporting as well. In that way, I think, when you tie those to independence... and those are relevant in some ways because things like gag clauses are in government clauses and that's where they come in. So, I think that's an important part of the work as well.

3.4.4 Supporting organisations to work to their mission

Another way that the ACNC staff see their work supporting and sustaining the independence of the sector is through their ability to help organisations to clarify their purpose or mission. When charities register with the ACNC they are classified by type and then by sub-type. To continue to remain registered, and therefore eligible for tax exemptions, organisations need to be able to demonstrate that they are acting in accordance with the type, and sub-type(s) that they are classified under. Failure to act in accordance with the sub-type will not, necessarily, involve being struck from the ACNC register or other punitive

action. It may simply involve a conversation between the ACNC and the organisations to clarify the situation. An organisation may have intentionally shifted its focus and need to be re-categorised as a different sub-type. Or it may be that the organisation is unaware that it has shifted from its original sub-type classification. For the research participants that raised this as a relevant aspect of the ACNC's work in supporting and sustaining independence, it was the act of consulting with the organisations about their mission, their purpose and their sub-type classification that is seen as relevant. Conversations with organisations on mission and classification are seen to help organisations maintain their autonomy by regularly reviewing their mission and protecting them from the risk of an unconscious erosion of, or drift away from, mission, out of response to external pressures.

I suppose we have a role in helping... in terms of charities that they are maintaining their purpose and their mission and their values, and to an extent that there is a mission drift and people have got a long way from why they were set up and why the money has been donated, that we have a potential role there.

We often talk to charities, when they're confused about what they can do, what they can't do, can they donate to another charity and so on, we often refer them back to their own purpose and their own governing rules of constitution; 'Well what is it that you really are meant to be doing? What does your governing document say?' So I think that in terms of our contact with charities it's very much along the lines of being true to their purpose and doing things that fits in with what is important to them.

In these examples independence is being defined as organisational autonomy.

3.4.5 Supporting capacity building – the governance standards

ACNC staff commented that a significant part of their working is to support organisations to develop good governance practices. Having good governance practices in place is seen as a way of assisting organisations to maintain their independence defined as organisational autonomy:

A critical part of our role is to support charities, in terms of meeting their obligations under the ACNC Act, and then providing broader support in terms of tools, and other information they can use in the managing of running a charity.

Conclusion

In summary the definition of independence implicit to, and in some instances explicit in, the ACNC Act and related legislative texts is one of organisational autonomy. The Act establishes clear limits around when the autonomy of NFP organisations can be intruded upon. Unless clear criteria are met the autonomy of NFP organisations is to be preserved. However, this understanding of independence establishes a fairly narrow understanding of freedom from

intervention as the intervention imagined is of direct conscious interference. Despite this constraint, Section 5.40 of the Revised Explanatory Memorandum highlights that while the definition of independence and of intervention is fairly narrow, a wider concern informs it. That is, the capacity of NFP organisations to maintain their freedom of voice. The chapter also highlight the wider interpretation of independence in the interviews with ACNC staff and the way the three distinct objects of the ACNC Act are intersect in the formal practices of the ACNC.

4. ‘Crucial, mandatory, cannot exist without it’: independence in the NFP sector interviews

4.1 Introduction

The sector interviews highlight three main definitions of independence and participants are often explicit in describing the different ways in which they define independence: as freedom to advocate or freedom of voice; as organisational autonomy; and as financial independence achieved through multiple funding streams. Each definition is elaborated in this chapter. In keeping with the qualitative methodology the findings are presented here as a ‘thick description’ allowing the ‘voice’ of research participants to lead, inform and substantiate the analysis. Themes have been identified but not been quantified. The aim is not to identify how many of the research participants held the same view but to give insight into why particular definitions are offered and why they are meaningful to research participants. Qualitative research is not intended to be representative so percentages of participants who share a view is not the point of interest here. Instead, the purpose of this qualitative approach is to provide a thorough-going understanding of the issues raised in the interviews.

In relation to the overarching research question of comparing sector understandings of independence with that implicit in the ACNC legislation and practices, it is clear that the ACNC legislation takes a somewhat narrower view to independence than the sector. Despite this divergence, there are areas in which the ACNC works that are identified in the community sector interviews as having the capacity to support and sustain the independence of the sector. Chapter 6 addresses this aspect of the interviews and draws on them to make recommendations.

The most consistent theme across the interviews in both SA and Canberra is that independence is crucial to the sector and central to how individuals working in the sector understand what they do. Many participants either explicitly identify the sector as part of civil society or the ‘third sector’ or comment that maintaining an identity as separate to and distinct from the for-profit and government sectors is fundamental to the NFP community sector. Of the 46 community sector representatives who took part in the project, only one research participant challenges the idea that independence ought to be fundamental and suggests that a relationship of partnership with government is more appropriate. The research participant was speaking specifically to the issue of service delivery and program and policy design in making the comment.

By contrast, the majority of research participants identify the relationship with government as not an equal partnership but instead a purchaser-provider relationship in which the sector is seen as an unequal partner. Research participants frequently describe independence as being threatened, or at risk of being threatened, by the existing nature of these unequal relationships with government and/or by the current funding paradigm. The failure to develop

equal partnerships with government is sometimes even expressed in an ironic way. The following ironic comment is representative:

Interviewer: Just a follow up question about that 'power balance'. Do you think that there is a power balance?

Interviewee 1: Yes, there is a power balance, we've got less power.
[laughs]

Interviewee 2: Yes, that's right. Huge power imbalance...

Partnership with government in service delivery is very much an ideal or aspiration for many research participants, but it is rarely described as a reality.

Four of the research participants involved in this project spoke about their direct experience of being warned in conversations with government staff and/or public servants that their involvement in public advocacy on particular issues could result in a loss of a program or service contract. A fifth research participant gave the example of a Minister limiting their working relationships with an organisation after public criticism of a government decision had been made by the organisation. Another research participant shared an anecdote of being dressed down by a Minister for taking a public position against a government decision. For the majority of research participants the threats to independence that they experience and/or identify in the research are indirect threats.

While research participants express concerns about the existing relationships with government and their implications for the independence of the sector in some instances, this does not mitigate willingness to work with government. There are positive relationships with contract managers and effective collaborations within the sector noted in the interviews. In the words of one participant: *'I think that governments and [the] not-for-profit sector should be working hand in hand, and I do see that in some areas. So it's not all negative.'* Additionally two of the research participants state that they feel that there are no challenges to the independence of the community NFP sector:

Well I think we, in our ambition and our mission, we've got quite a lot of independence of what we think is appropriate and what our role in the sector is. So we are a secular organisation, we are very proud to be a secular organisation but there has never been any indication from government we can be one thing or the other. There is independence with our philosophy I suppose. I have never felt constrained by any of the different kinds of government that have been [in power] since I've been working here.

However, many research participants identify policy and funding settings and relationships that impact on the confidence of individuals to be outspoken publicly, and also sometimes privately with senior government contract managers, as threatening the independence of the sector or altogether eroding it in some instances. Sometimes the threats to the independence of the sector are seen to be direct and explicit, as in gag clauses or limited funding, and other times threats are indirect such as onerous requirements in service contracts. Threats to the independence – defined in multiple ways – of the NFP sector are explored more fully in section 4.2.

Another theme arising in the interviews is concern about the sustainability and independence of smaller and specialist organisations into the future and the challenges presented by the increased administrative burden created by current contracting practice. Small and specialist organisations are seen to be at risk of being amalgamated into larger organisations or of having their funding redirected to competitor organisations because of a lack of capacity to negotiate the increasingly competitive procurement system adopted by governments. These are seen as threats to independence – defined as organisational autonomy. They are explored more fully in Chapter 5.

The interviews highlight a tension for the NFP community sector that arises from the twin roles that community sector NFPs occupy: of providing large-scale government-funded services and also providing the opportunity for a plethora of community voices to engage in civil society and policy debate. This is not a new tension for the sector, and some of the research participants identify it as having long existed. However, some research participants state that it has been exacerbated in recent decades by the increased outsourcing of public sector services and the introduction of competitive tendering. One research participant described this tension in the following terms: *'I think you need to know as an organisation that in your heart you're a service provider or you're an advocate and when those two things come into conflict you know where you're going to fall.'*

While this issue is a common theme across the interviews and some research participants express concern about the motivations of some of their colleagues, in general, research participants express confidence in the integrity of the sector:

I think most organisations do have integrity. I think most not-for-profits do actually have integrity and do take that responsibility really seriously and... But I guess it's just the tightrope, it's the juggle, it's the nuance, it's the constant, ever-present juggle that you have to do; be able to say what you need to say to do your role properly, to have integrity and to also keep the doors open, perhaps on that service that's slightly not insulated, do you know what I mean? So I do believe that almost all organisations that I'm aware of, I would say they do have the necessary integrity, it's just that their life is not easy in terms of how they operate on a daily basis.

An additional finding from the interviews is that how independence is thought about can depend on the wider trends occurring within different sub-sectors of the community NFP sector. For example, organisations that were in the disability sector often spoke about independence in terms of independence for people who use their services. As the interviews coincided with the launch of the National Disability Insurance Scheme (NDIS) it is not surprising that control and choice for service users was at the forefront of any discussion of independence with organisations working in this sub-sector.

Key themes emerging from the interviews are consistent across the two states. For this reason they are presented together below. The fact that the themes are consistent across the two regions is itself interesting and was not anticipated. Unfortunately, it is beyond the scope of the project to provide any substantive analysis of why the themes are consistent across the two regions and whether there are differences and distinctions that have not been captured by the

interview schedule. The fact that many community sector organisations have relationships with both Commonwealth and state/territory governments could account for the continuity of themes across the two regions. However, as the states and territories also provide funding and have a role in regulating the work of the NFP sector it is a reasonable expectation that there would be differences across the regions as well as continuities.

4.2 ‘We shouldn’t be an agency that just follows the political whim, we’ve lost everything then’: Defining independence and its importance to the sector

The sector interviews highlight three main definitions of independence and participants are often explicit in describing the different ways in which they define independence: as freedom to advocate or freedom of voice; as organisational autonomy; and as financial independence achieved through multiple funding streams. Though these definitions are organised under discrete sub-headings in the discussion below, it is not the case that research participants only name one or the other in the interviews. Sometimes they name all three, as in the citation below:

Interviewer: How would you define independence?

Interviewee: Well, I think that can be defined in many ways. Certainly, I regard independence in regards to being a body, either a company limited by guarantee [...] or association [...] so in a sense that makes you independent on a governance level, and really the rules, the expectations in being an independent entity like that are really quite clear, but they’re really quite stringent. So, you know, first and foremost, you have to meet your governance of your organisation, and you can’t ever sway from that. That in a sense gives you a sense of independence.

Financially, though, if your sole reliance is on government funding and also, secondly, if your sole reliance is on a particular pot of government funding, then you can’t always be true to your own governance mechanism within your organisation, and really you’re at the behest of whatever government wants you to do. And should they sneeze, you will get a cold.

And so therefore, for me, independence is about having a multi-led approach to the finances that we receive, to the services that we provide [...].

And so having that balance, so certainly governance independence, financial independence, which can be achieved by multi layers of funding, fundraising, social ventures, fees for service, even understanding the resource of volunteering and having a better understanding of that because you can really utilise that as an organisation, as well as specific select funding resources from government, but not... you know, not all of your eggs in one basket with government. So that’s important.

The other aspects that are important are that, you know, there are so many different needs out there, that the community’s vast and broad, you know, not one size fits all and not every square peg fits in a round hole, so it’s actually being independent in regards to being able to be flexible to choose

who you want to serve, how you want to serve them and meet the broader need, but, at the same time, I think it's important not to be an island unto yourself. I think it's important to be a team player, and I think it's important to be connected to the broader community for a stronger united voice and front as well.

Acknowledging that the definitions often overlap and/or are interrelated, they are presented here under the three discrete headings, in so far as practicable, for ease of reading.

4.2.1 Freedom of voice

One of the main ways in which independence is defined by sector representatives is as freedom of voice: the capacity to speak freely, and publicly, without fear of repercussion:

Independence is being able to have a voice that puts forward ideas and paradigms that might be different from what's on a government agenda, without any fear of repercussion. And repercussion is things like being cut out of policy discussions, having funding curtailed, having it based on personalities instead of actually the business of social services.

Interviewer: How would you define independence as it relates to the sector?

Interviewee: I think it's the confidence to be able to give honest assessment and information and views to the government, without the fear that there's going to be any form of retribution, that is ... and we have to be careful as well, you don't want to embarrass the government or the funders, but you have to be able to provide fearless information direct to them so that they can actually understand and accept what we say.

Interviewee: When I think about it, I think of independence being a capacity to choose the funding that we seek but also an opportunity to speak about what we learn and see as both feedback and advocates and be able to use that information in a range of ways that we think advances the community's interests more generally.

In discussions of freedom of voice the role of the sector as representing the interests and needs of people who use sector services is frequently highlighted:

We're working with, quite often, a fairly vulnerable client group, and in some ways, we provide a voice for that group of people, and if independence is compromised or conflicted, it means we actually can't do, quite often, the things that we set out to do that are, in fact, the vision of our organisation, or the, you know, the philosophy of the organisation. So I also think that there are things that government can't do, that an independent community sector can do, so the things that we can say that a government agency would be unable to say, and I think it's important that we have that opportunity to be able to say what needs to be said, really.

Certainly, you can see in the last 20 years that there's a lot, I believe there's a lot more government control, in terms of what's allowable to be voiced publicly and what's not. That's probably with the eventuality of Facebook and IT and the media. But it's really important that organisations continue to speak up for the community and for families and for all our special target groups, because often people can't speak up for themselves, and that's part of our job, I think. I think the role, in my opinion, the role of a CEO in the community services area is that not only are you there to run an organisation but you're there to help provide a voice to what the issues are in your area, and that is part of the ethos and part of the values of working in a community service organisation.

In some instances freedom of voice was linked quite directly to ideas of advocacy and the need for a multitude of voices to enable democratic life to flourish. In these instances the sector was seen to be defined by its capacity to bring an independent voice to public debate.

I think it's [independence is] quite critical because as the not-for-profit sector, we are embedded in community, so we should be able to pick up community needs and be responsive to those needs. We should have a clear vision and so, really, independence enables us to then act upon our vision, and hopefully a strong value base, that would also guide our practise in what we will and will not be involved in [...]. So, to me, it's really critical to have independence. It's also, a voice for people who cannot perhaps speak for themselves, advocacy. Government may try to put policy in place but I think if it's a not-for-profit sector it's important that we have that independence so that we can critically analyse government policy and then have input and influence the policy and therefore the programmes on the ground.

Interviewer: You said that independence is crucial. Why is independence crucial?

Interviewee: Because the community sector is crucial to broader society for one, the whole role of civil society, so it's about alternative ideas to the other estates, to government and industry, groups that have got, sort of, vested interests. It is crucial for the capacity to represent the views, the voices of, I call them, ordinary citizens. It is crucial for our ability to provide services in a fair and responsive manner, responding on the basis of need not on the basis of gender, race, sexuality, age or any other factor that could be used in a non-independent setting to preclude people from essential service provision.

It's also crucial that the not-for-profit sector is independent in terms of its ability to generate ideas which are not necessarily in the best interests, or which are not going to come naturally from government or from industry. [...] it's about independence for representing civil society, for ideas, for research, for service provision.

Independence of thought I think is fundamental and critical in being able to contribute to the debate about what type of world we want to live in, as a bunch of humans who all have to cohabit, and how do we go about getting there. [...] I'm a firm believer in the method, wouldn't say determines, but

strongly affects the outcome you get. So that you can intend this outcome and if you come at it from one direction, you will get something different to if you're coming at it from another direction. So the method is critical to the debate. If we don't have independence of thought, then we risk group think, which is we all agree with each other just because we're in the space, and that may have zero connection to the reality out there, this mob thinking, it just happens because you're all together. Or we risk imposition of a particular philosophical or cultural position across the world as a whole, or across the communities we're trying to affect. That's dangerous, it causes harm.

So having more than one voice in any discussion about what's the world we want to live in like, how do we want to be achieving that world, what types of service provision or methods of service provision are necessary, I think having more than one voice in those conversations is absolutely critical, and that the not-for-profit sector's voice is informed by things that are very different to the way that the government's voice is informed, and again, very different to the way that the for-profit sector is informed.

4.2.2 Organisational autonomy

A second key definition of independence in the interviews is organisational autonomy. Organisational autonomy is sometimes of heightened importance in interviews because of tensions identified in the procurement relationship. Organisations compete to provide government funded and government designed programs and services. This means that the contracts that are put to tender may not be entirely consistent with their values and mission. Additionally, programs may not be responsive to the needs or issues that organisations feel are most pressing and urgent in the community. Further, undertaking service contracts, if successful, requires organisations to comply with government regulations as specified in the service level agreement.

As a definition of independence, organisational autonomy typically came up in one of three ways. Organisational autonomy is sometimes spoken of in the interviews at a fundamental level, in terms of the organisation as an independent legal entity:

I would define independence by having, you know, a management committee or a board of governance structure that's made up of community representatives.

The second way in which research participants talk about organisational autonomy is in relation to autonomy in management decisions such as workforce issues. One particular example that arises is organisations being able to employ workers who have lived experienced but lack formal qualifications. In some instances, service contracts are prescriptive around hiring practices and this is seen to undermine organisational capacity:

We need to be building that workforce, and we need our independence that we can carry people without qualifications while they're getting qualified. So that we can, you know, continue to function and look into the long term.

Interviewee: I started off in a not-for-profit organisation where I started as a trainee and worked my way up to actually being the coordinator of that service. That was the independence that I think we had, if you wanted to, was that the organisation allowed people to do that and it was a very supportive environment, especially for myself as being an Aboriginal woman. [...]

Interviewer: Okay, so you managed to do all that professional development from within the one organisation?

Interviewee: Yes.

Interviewer: Okay. And over what kind of period of time were you there?

Interviewee: 13 years, but five years of that I was Coordinator.

Interviewer: And you're no longer with that organisation?

Interviewee: No, it was defunded.

Organisational autonomy around operational and management decisions is not only talked about in terms of workforce issues. Having input into the design of services and programs is also linked to organisational autonomy:

I think it's also a trust thing for me, as well. And about transparency and about just giving the not-for-profit sector the space and capacity to be able to deliver the services effectively. There's a reason why we're outsourced this money to deliver these particular services, and that's because we're the best people to do it. That's why government aren't doing it. So then give us that trust, you know, and give us the autonomy so that we've got the capacity and strength to be able to roll out the services as we feel they need to be done.

Interviewee 2: For me it's always about, that independence is about the client and that if you're constantly caught up in what a higher power wants, you can lose focus on the client. And the independence actually allows you to have that focus and keep that focus, because that's where you are, that's why we do what we do. And if you lose some of your independence, then you start focusing on what they [funders] want, you lose focus on what is happening down there, and that you need to keep that touchstone.

Interviewee 1: In a way, I think the funders want us to be independent; I think it's to their advantage that we are able to be innovative and creative, and challenge them a bit. So, I guess that's why they don't have a government department that does this, because they've given it to people who they think know the client group, who can see the need, and are thinking every day about how they can improve things, and yes, within the limitations of funding, or the guidelines, you know, you can achieve things. But I think they...why independence, is because that's what they also are seeking us to be, or they're seeking to give their money to people who are going to be innovative.

Interviewee 2: And who are going to challenge them and fight them and actually kind of, fight a good fight, and not just lay down and...

Interviewee 1: But they've created this competitive environment which, you know, contributes to that.

Interviewee 2: Maybe that's how we stop fighting the government we start fighting each other.

Interviewee 1: Yes, we start fighting each other.

Interviewee 2: Takes the pressure off them.

Interviewee 1: That's exactly right; that's what happens, but yes, and I agree with what [Interviewee 2] said about...yes, because of the clients, yes...

Interviewee 2: About independence...

Interviewee 1: Yes, otherwise you're not focusing on that, you're focusing on other things.

Interviewee 2: People do fall between the gaps, because you are too focused on who you're supposed to be servicing and what you're supposed to be doing and providing and you do lose sight of those people that actually really need you but don't fit your criteria, and that's a huge thing, and that independence does allow us to have those discussions with government, and although in some ways we're impeded in how we can have those because of our contracting, at the same time we can still have those discussions, and our independence allows us to do that, and the power that...some of that power, although full of holes and has certain restrictions on it, still does put us in a position to do that and be out there and you know, on our soapbox.

The third way in which organisational autonomy is talked about is in terms of an organisation's capacity to set and work to its own mission.

I think that's what independence is about – the capacity to work to your mission and to your values, and not have those values compromised by bureaucracy. Bureaucracy: either within your own organisation or externally. When we have a strategic plan and we determine the values and the mission, we shouldn't have other people telling us, 'No, sorry, you can't do that.'

Independence, to me, is the ability of the charity or the community group to set their vision, develop their strategy without being controlled or relying on anything apart from the [relevant] legislation and laws.

[Another] thing that makes them independent is that they're driven by the needs of their clientele rather than the constraints of their funding.

I guess I'd define independence as being able to operate as an organisation with its very own identity, very clearly with a mark of difference from other organisations, and very clearly operating in response to its own board of governance, its own community, and its own direction, without being a complete puppet to the sector, or the government direction.

Along this theme, in some instances autonomy is talked about in terms of organisations making decisions between maintaining their mission and being involved in the delivery of government programs that they feel to be at odds with their mission or are not being adequately funded to enable their success:

Interviewer: Do you think that independence is important in the not-for-profit sector?

Interviewee: Absolutely. And I think the opportunity to make decisions around what direction an agency may go is absolutely essential, and to share an example of that, you know, [the policy of Compulsory] Income Management [...], to be able to say no because we just don't believe that it sits with our values is important, and I wouldn't want to compromise our values for the so-called short-term funding, for example. So being able to make those decisions of our own where we may choose to be involved in it or not, is really important not just to the organisation but the board but also for the people who are actually working in the organisation to see where we stand.

Interviewer: Why do you think that is so important?

Interviewee: I think it provides us with the chance to determine our direction and where we think we can best demonstrate our work and provide services to the people in a way that we would like to work rather than having something imposed on us that doesn't fit with our value base.

Interviewer: And you said that that was important not just to the board but to the staff that work for you?

Interviewee: Yes, I think so. Look, you know, I have about 15 Aboriginal staff, it would be, I think, really poor form for us if they saw that we were actually taking the dollar rather than, for example, standing up for things we don't believe in.[sic]

One of the things that we do as an organisation is choose, well, the reality for an organisation like ours is we're probably 98% funded by state and federal government contracts. So part of our independence is that we don't choose to apply for every bit of funding that comes down [...] because we actually want to choose to apply for funding that we believe, one, that we can deliver appropriately and can do a good job at, but also it works in a way that we think is acceptable and aligns with our values as an organisation. So that's what I mean when I say about independence in terms of choosing what we do from a funding perspective.

The capacity to maintain purpose and to work to mission is in itself a key theme in interviews and it is sometimes drawn on to highlight key tensions in the sector regarding the realisation of independence:

[A]ll good not-for-profits have a mission and they're mission-driven, and they seek to deliver as much as they possibly can to achieve their mission and the government contract that they have, for instance, might achieve part of their mission, might achieve all of the mission, might contribute in some ways to the mission. But if the government contracts become the sole driver of the work that they do, then they're no longer going to be able to deliver on mission. And given that that impacts on the relationships they

have with other funders, particularly philanthropic funders, given that impacts on staff retention, it impacts on clients' perceptions of them, all kinds of different things, then that's a potential hazard for organisations.

Two research participants took issue with the view of independence as organisational autonomy stating that ongoing trends in the sector made independence and organisational autonomy contentious issues:

I think there are other aspects of independence which are... you know, probably come up in [these] interviews where I'd have less sympathy with them. That's where people really want to maintain their independence as a standalone organisation, and so there are lots of issues about... and lots of fear and loathing, I'm going to say, about things like, you know, mergers and acquisitions and takeovers, and the change in the nature of the sector and whether organisations are going to survive in their current form.

And I think... I think there's a range of issues, I think, but one of the things that concerns me about that argument is it tends to be very much focussed on the organisation's interests rather than the interests of the people they serve, so it... they might... if you really take a proper client-focussed approach, you might actually say it's going to be in the interests of the clients if [...]... these inefficient set of organisations come together and merge and form, you know, a larger, more efficient one, why wouldn't I consider that?

Interviewee: I think independence is important, but I think it also has to be matched with some changed expectations around the relationship with government and I think that many workers and organisations in the community services space in a sense want to be able to have their cake and eat it too on that front. So they want autonomy and independence and the freedom of action, but they also think that government should be resourcing everything they want to do and I think that that's, there's been a long period of time where you've probably been able to walk that line without a lot of conflict, but I think we're entering a period of reform where those two ideas are coming up against each other more strongly than they have in the past.

Interviewer: So can you tell me a little bit about that?

Interviewee: Yes, I can tell you a lot about that. I think most of the funding that comes through not-for-profit providers from governments relates increasingly to the programmatic policy agenda for government and they see that they need a diversity of providers with connections to community who can bring different philosophical or service delivery models to play and I think organisations, organisations [that] receive that kind of funding retain a sense of how their organisations were established and they have a bit of a history around why they exist. And I think that's very important, but I do put a lot of that down to these days being marketing, that's the story you tell about why you're special. I don't think from the outside view it makes a lot of difference when you're one of many homelessness service providers, or one of many domestic violence providers, or one of many disability service providers to think that there's some inherent merit in your specialness because of your story about how your organisation came to be, if you haven't also tried to ensure that your rhetoric of independence and autonomy is actually matched by behaviour that's consistent with that.

Later in the interview this research participant states their view in the following way:

Interviewer: Are there any other ways in which independence has been a factor in terms of either something that's important to this sector or whether it's shifted over time or...?

Interviewee: I think the answer's yes. I don't think it's just simply about the organisational boundaries. I think it's also about the representative voice, although that's really where I think people want their cake and eat it too. For me that's that thing around – if voicing your position on behalf of the community you view yourself as serving or representing would get the resources chopped off, do you do that or do you shut up? And, unfortunately, I think at the end of the day people shut up and take the money because it's known and comfortable and less scary than the alternative.

And I know as an organisational manager you've also got a responsibility to people's jobs, you know, like it's not as straightforward as just going, 'Ah, well, you know, stuff you we'll ditch your contract.' It's like – that's someone's job goes when I make that kind of decision. So it can't be just a, 'Yes, stuff you' kind of thing, but I think it does, I think you need to know as an organisation that in your heart you're a service provider or you're an advocate and when those two things come into conflict you know where you're going to fall. And most of the time we don't have to make the choice, but I think when people haven't thought about that moment they get surprised when they're required to make the choice and I think then we find real disappointment going on.

4.2.3 Financial independence

Financial independence is the third common definition of independence in interviews with community sector representatives. In different interviews financial independence is given a different inflection. At the most fundamental level, having control over finances is seen as fundamental to allowing organisations to pursue the services and programs that they identify as appropriate for the community and as consistent with their mission:

[I]t's crucial that, to be able to do the work of the third sector, civil society, whatever blanket term you want to use, that we have control over our own finances and so we're not a statutory authority or whatever but we can live by our own rules, our own finances, you know, and that can come from government and industry but in order to fulfil the objectives we have it's crucial that, yes, [we are] independent in finances, in thought, in the capacity to respond to people's needs.

[F]inancial independence and [...] being able to do projects that aren't reliant on government funding. So addressing the need in a community, and then trying to work out, well, sometimes that doesn't always fit within your contractual obligations. So having the independence to say, 'Okay, well, there's this need, we've got some money, and let's run a particular project or address a particular need in the community.'

Probably the other aspect of independence, too, is the notion of when you've got some financial independence, you can also be more flexible, innovative, and responsive to the ever-changing community need, rather than being contained in boxes that might not necessarily fit what outcomes we want to achieve.

Frequently financial independence is tied to the conceptualisation of independence as freedom of voice. That is, financial independence is seen as enabling freedom of voice:

Basically, being independent is ensuring that we can speak out on the issues we need to speak out on...

However, as the research participant in the excerpt below makes clear, lack of financial independence is not necessarily seen as creating a situation where advocacy work is not carried out:

It starts with financial independence, because I think as long as you're dependent on government funding you are compromised in terms of some of your independence of opinion and expression of advocacy on behalf of your clients. That said, I think that is part of your responsibility as a community service, so to what extent that impedes your independence or your desire to express an independent opinion, I think is probably quite varied, depending on the circumstances and the implications of what you might have to do. I think, certainly, for instance in direct advocacy is that you just do it. You don't let the financial implications, because as far as you're concerned, that's what you're funded to do. You're funded to speak out on behalf of your clients. I think when it comes to running programmes and the sustainability of an organisation it becomes more complex because of the nuances of your relationships with government and the expectation that it, you know, that you cannot necessarily be a viable organisation without that government funding support.

For other participants financial independence is not connected to the capacity to engage in advocacy so much as it is an issue about the future sustainability of organisations:

My view [of independence] is that there has to be, one way or another, something that allows the sector to survive through changing times, and if that requires some financial independence or some management independence or whatever, one way or another, survival is important.

In other interviews these two aspects of financial independence are raised as being equally relevant and important:

I actually think [financial] independence is crucial for sustainable not-for-profits, and I think that for a couple of reasons. One, there's no doubt that government funding is becoming less and less, both at a state level and a federal level, and the government funding that is available is often short term, and then on top of that, the government funding that is made available, the expectations of that pot of money for the reality of what it costs are actually very misaligned.

So that's one factor: financial sustainability is crucial. I also think that, you know, no matter what level of relationship you have with government, and

certainly having good, cooperative working relationships with government is paramount and certainly we strive for that; however, there is a hand-that-feeds-you mentality at the end of the day when they are the holders of the purse strings and you are the ones who have to kowtow to their every wish and command.

So I think... and their paradigms are really quite different than our paradigms, so I think having some independence as a not-for-profit allows us to develop a much more mutual relationship with government which is more on trying to serve better community outcomes, rather than a power relationship of the hand that's being fed.

For another research participant the issue of financial independence is not so much a question of whether government provides funding, but the expectations that attach to funding:

To have economic – and it depends [on] how it's defined, because if the government is going to give us funding and then we determine how to use it, that's independence. The other way of looking at independence is actually raising your own income somehow and using that to provide services to the community.

For some research participants being independent of government funding is an unrealistic ideal and financial independence is less about not being reliant on government funding but about mitigating the vulnerability that such dependence creates by having diverse funding sources, from government, philanthropy, and other revenue raising activities. Sometimes having diverse funding streams is conceptualised as attracting funding from a variety of government programs, departments or jurisdictions, so as not to be overly dependent on any *single* funding source.

Financial independence, to be honest I think is a bit of a daydream, but sufficient financial independence to be able to act consistently with values and with domain of thought, I think is critical, because it allows us to have a range of methodologies that are out in the world, and I think that's important because it gives people choice.

Financial independence and having, well, at least a diverse range of funding so that we're not wholly reliant on government.

Another research participant, who defined independence as financial independence, framed their understanding in the context of the existing competitive tender system:

The great thing about independence – my understanding of independence – which is less dependency on government funding. The model under which we operate as a sector at the moment is that you take a group of organisations all delivering complimentary services, you hold in front of them a carrot which is for the funding, and say 'May the best service win'. And so then that gets really messy on the ground, you have services pitting against other services for this carrot. Eventually through a process, the quote, unquote, 'best service' gets the funding and then the funder's turn around and say 'And now you need to all play nice'.

You know, it's a shocking, shocking way to go about funding services is my personal belief.⁸

While, for the reasons given in the above excerpt, this particular research participant welcomes the move to financial independence, they also express strong reservations about the ethical implications of this trend:

I have ethical problems with the concept of [financial] independence and this push, from my understanding, of what it means for the community sector to become [financially] independent. My ethical dilemma is that I have cause for concern that as a community, as a culture, and as a nation, that we will continue to move further and further from having national responsibility for people's wellbeing and social and health, and, welfare basically.

On the one hand, we really can't stop what's coming, so we need to be prepared to become [financially] independent and that's exciting because it gives us more freedom to deliver different types of services in different ways and we're not necessarily tied to one particular form of practice according to our funder's beliefs of how that practice should be delivered. Yet, having said that, it lessens public responsibility for people's welfare.

Other research participants note that the move towards financial independence from government is often framed in terms of a turn to philanthropic funding. For some research participants the move from government to philanthropic funding will not necessarily resolve existing tensions regarding sector independence but instead simply involves a different set of tensions:

The sense that we've been getting for some years now is that there's an expectation that philanthropic organisations will pick up more of the funding responsibility for the not-for-profit sector. Whether they genuinely are doing that in Australia, I couldn't tell, I haven't looked at the data about that. But I think philanthropic organisations have a different agenda from government sometimes, the things that they want to achieve with their donations might not align entirely with government and they need to be able to be confident that the organisations that they might invest in are going to deliver on what they want. So that provides another opportunity for the sector but also another tension point where the sector needs to manage its relationship with the expectations of big corporations, big business too.

Interviewee: Similarly, if you're fund-raising, that has its own complexities and accountabilities. If you're pursuing money from philanthropic trusts, that has its own nuances, so you know, you think about all of the places you might get funding, each one of those sources have an expectation from you in the provision of that fund, so... yes...

Interviewer: So it's largely an administrative burden?

Interviewee: No, I don't it's only administration. I think it's predominantly administrative, but I think it's about what they think they're buying from you because, you know the concept – there's no such thing as a free lunch. People give you money for some reason and they have an expectation that

8 The issue of competitive tendering is addressed more fully later in the report.

you'll fulfil that reason and that includes engaging parties that want you to respond to their agenda. So you've got to weave that in to how you represent yourself and the community. So if you're sponsored by a major corporate or looking for sponsorship from a major corporate [...] we've also got to say, well do they do anything that's actually against our purpose and our constitution? I wouldn't think it was a good look for us, and they're looking for the same way, you know, you doing something that would be in conflict with their purpose, so it becomes quite complicated.

A related issue in two of the interviews that connects to financial independence is the capacity of NFP organisations to generate alternative income through the creation of income-generating businesses and still retain their status as charitable and tax-exempt. While the fact that NFP organisations engage in a series of different strategies to ensure their financial independence is relevant to this project, specific details of the financial strategies engaged in are outside of the scope of the project and are not discussed in further detail in this report.

4.3 What threatens independence?

Research participants were asked if they thought that there were any threats to the independence of the sector. This line of questions was pursued in order to further clarify the meaning and understanding of independence. Having research participants reflect on what, if anything, challenges or constrains independence, is an additional way of understanding how independence is understood and defined. Responses to this question are, on the whole, consistent with the responses given when defining independence directly.

Some research participants state that limited funding and increased competition are threats to the independence of the sector, drawing out the ways that they impact on the capacity of organisations to work to mission and to be sustainable. In these examples independence is being defined as financial independence. In other instances financial vulnerability is seen to limit the capacity of organisations to advocate and to exercise voice. In these instances independence is defined as freedom of voice.

Another threat, or series of issues, that is identified in responses to this series of question is the use of gag clauses and overt or self-imposed censorship of NFP community organisations. In these instances independence is also being defined as freedom of voice or freedom to advocate. Further, financial independence and freedom of voice can intersect in important and significant ways. The citation below provides one such example.

[T]here's obviously economic threats from just inability to raise money for the purposes and the causes that we think are important so that's always been a struggle.

There's certainly, linked to that, is the threat of independence from government funding in particular where we've had, what I summarise as gag clauses, put by government funding on a number of programmes where, as a recipient of this funding you will not speak publicly. You will not speak to the media. Anything you say publicly will be first vetted by the Minister; that sort of clause. Outrageous.

This research participant highlights financial vulnerability as a threat to the sector. It is represented as a direct threat – a lack of available funding impacting on financial independence – and also an indirect threat as reliance on government can lead to additional threats such as the gag clauses that the research participant also identifies as impinging on the independence of the sector. On this later point independence is being defined as freedom of voice or freedom to advocate. These are not entirely separate issues, therefore, but rather they intersect as financial dependence can constrain freedom of voice and organisational autonomy. These intersections, therefore, are highlighted where they arise in the discussion below.

In discussing threats to the independence of the NFP sector, sector representatives also often talk about contracting, procurement and competitive tendering. While these issues may not at first seem to have an obvious connection to the issue of independence, considered against the definitions of independence that are given in the interviews, the connection becomes clear. One of the ways in which independence is defined, as discussed above, is organisational autonomy. Contracting, procurement and the tender process are seen to threaten independence where they are seen to threaten, undermine, or erode, organisational autonomy.

For ease of reading the themes arising in response to this series of questions are again organised under three different subheadings. However, as described above research participants do not necessarily only name one or the other issue but sometimes identified several or all of them as undermining the independence of the sector.

4.3.1 Limited funding: threats to the financial independence of the sector

Limited funding is identified by many participants as impacting on the independence of the sector in a range of ways and across all of the definitions of independence. Research participants frequently identify limited, and competitive, funding as having an impact on the independence of the sector. Funding is seen to impact independence in terms of the sustainability of organisations with even small, primarily volunteer-managed organisations identifying a need for funding of some kind in order to undertake their work. However, accepting funding is seen by some to risk being beholden to funders. The research participants in the excerpts below highlight the appeal of funding and the potential limitations or risks that can obtain in funding relationships:

Interviewer: Do you think that there are threats to the independence of the sector?

Interviewee: I think it's mainly around funding. If you only have a very small core income and then you get, you start getting a staff to do some of the work around contracts, it becomes harder and harder to risk that. And I suspect, you know, it's not much different for the larger ones [organisations], but for a small one – I think it's really hard to say, 'Well, we'll give up this funding which allows us to have a staff member, to give us more independence.'

[...] I think funding is the biggest barrier on the whole to actually being truly independent in what we do. It tends to steer you down a path, but it's also great opportunities. So, there's this sort of tension all the time about what it allows an organisation to do, but then what it might constrain an organisation from doing. I think quite a lot of funding hasn't been set up in a way that actually enables continuous improvement and innovation in what you're doing, constantly looking outwards.

Another interview provides a direct example of how this tension has played out for one organisation:

Interviewer: Have there been instances where you've felt that your ability to maintain your independence has been... there have been threats to it, or there have been challenges?

Interviewee 2: Well, I think a nice one is when the government took away our funding.

Interviewee 1: Made it very difficult.

Interviewee 2: We were not happy!

Interviewee 1: No.

Interviewee 5: But at the same time that... in some ways has freed us up.

Interviewee 4: Yes.

Interviewee 5: When we did have government funding there was always that suspicion of, to what extent did we... were compromised by them.

Interviewee 1: And we had to be careful in our submissions and what you said so it didn't appear as if you were kowtowing to them because they're providing you with funding. You had to try and remain independent of that and couch what you're saying accordingly.

Interviewee 4: I mean, there's no worries that you... if you have grants and things from the government then they're entitled to know what it is you're spending that money on. No complaints about that whatsoever, but you don't want to feel as though that you *have to* give a biased view that would help you stay in that position rather than give an independent view that you know a [client] would have, which are quite often different.

Interviewee 2: The downside is that we've lost our research person, or the person who was doing the day to day communications with telephone calls and that type of thing, and then following up on any work we'd done [...] so it throws that all back on us as volunteers.

Funding is a constraint on independence because it can steer organisations towards a particular path or program that government wants to fund that may not be in line with their values or the needs that the organisation believes are most urgent in their community. Conversely, *lack* of government funding can also constrain organisations by pushing work back on to a volunteer workforce with a limited capacity.

Another way in which limited funding is seen to constrain independence is in relation to the increased competition for funding ushered in by the tender process. Research participants often talk about increased competition for

funding, commenting that this puts them in a difficult position to negotiate freely with funders;

Interviewee: It's a challenge. I can't say that our relationships [with funding bodies] are strained because in this day and age I think it's a really brave organisation that says no to anything that the person responsible for funding you wants. You know, I certainly try to be as compliant as possible!

Interviewer: So when you say 'in this day and age' that there's that feeling that you just don't say no, what contributed to that?

Interviewee: Well, it's the whole global financial crisis, and how we're getting increased competitors, our funding is probably going out to tender again [soon] and, you know, we want to keep a good relationship with the people that are responsible for the decision-making, certainly. So the whole funding landscape is changing right across the world, and yes, we want to be seen as a really functional and happy and compliant and cost-effective organisation.

Limited funding and the increased competition for it, is identified as impacting on the capacity or willingness of organisations to speak freely. It is also sometimes identified as having an impact on service delivery and, more broadly, on organisational autonomy:

Interviewer: Are there any implications from that shifting [funding] landscape to service delivery?

Interviewee: Oh, absolutely. [...] there were massive cuts last year and there're going to be cuts three years in a row, and we had a meeting with the funding body and they told us pretty well how many staff... We had to make roughly half of our staff redundant and maintain the same funding outputs with the remaining staff, and so it was a real challenge. But, they told us how many staff now we could employ and what we could pay, what pay range we could pay them, and you know, how many cars we could have and, you know, really, like I said, micro, micro stuff; yes.

In another interview a research participant suggests that the reliance on government funding that has occurred over the last twenty years, in a context where it is now being withdrawn, is driving the sector to undermine its own independence:

I feel that because we're fighting for limited dollars, we're starting to look at, well, we'll have to take it from wherever we can get [it], and in doing so, we're threatening our own independence. So I think, recently, some of those pressures are coming both externally, but [also] from the community sector itself.

The sector interviews, much like the ACNC interviews, are ambivalent on the role of philanthropy as solving the problem of government funding shortfalls. As noted above, some research participants see potential for the enhanced independence of the sector from increased funding from non-government sources. Others see the situation as potentially more fraught:

Because if you receive money from a philanthropic trust or a sponsorship or whatever, you're independent of government, but then it might come with strings attached to those corporations.

Several research participants state that philanthropic funding, like government funding, attracts significant competition. One research participant notes that access to philanthropic funding can depend on the location of the organisation, with the eastern states being the basis of major philanthropic trusts in Australia. This dearth of philanthropic funding opportunities is seen by some research participants as replicating the problem of limited government funding for the independence of the NFP sector rather than resolving it:

Certainly, with the pressure on charity dollar, because we've all seen that since the global financial crisis, the amount of money that people are willing to donate to charitable organisations seems to have diminished.

What we do note, of course, is that some of the larger charities are spending a lot of money helping to raise awareness of their existence and soaking up the available dollar. Without mentioning which one, I'm aware of a \$28million a year charity that's spending big money trying to soak up, blotting paper style, the charity dollar. It doesn't make it any easier for the small ones, like us.

In relation to non-government funding, one research participant identifies industry partnerships in particular as bringing their own risks for the independence of the sector;

We've also had, I think, in some agencies, some third-sector bodies have been part of partnerships or deals with industry which has, for me, tarnished the independence of research and thinking coming out of some research. Gambling comes to mind where the gambling industry has been very successful at influencing the research debates with academics or seemingly academic institutions and seeks to appear to be independent and coming from the third sector but, in fact, is totally a vested interest in the interests of the gambling industry and exploiting more people to make more money for the gambling industry.

Another participant speaks more positively about the potential of philanthropic funding but notes that there are different models of philanthropic funding:

Interviewee: I think there is some threat [to larger organisations] because of the diminishing government funding of the community sector generally and if people get really excited about social benefit bonds, for instance, which I think is a fabulous idea, but I would hate it to be an excuse for governments to renege on their responsibilities to fund this sector, I don't think that those bonds will... and incidentally, that move towards social benefit bonds and impact investment bonds or whatever they're called, that move also favours the larger NGOs because they are the only ones that are going to be able to assert and quantify the social benefit. But those bonds are not really going to be the answer to government funding. They are a great idea but they are not going to save every NGO that has diminishing funding.

Interviewer: That is an argument that is sometimes put, that there is a need to invest or to find ways for the private sector to fund, or to attract the interest in funding [from] the private sector, and you've identified that that's a positive thing in some ways but that's not a solution to the diminishing funding of government. Do you see any other positives or negatives in that shift?

Interviewee: Oh I think I would much rather pursue either a social enterprise model or a straight philanthropy and there are emerging organisations – venture philanthropists, social philanthropists like the 10/20 Foundation. There are some wonderful organisations that are just providing grants rather than this complex bond arrangement that, I suppose, I don't really understand.

Additionally, in relation to limited funding, the issue of competition with for-profits who are increasingly competing for government tenders is also raised as a threat to the independence, and indeed the sustainability, of the sector:

I think there are lots of threats to the NGO sector, I think the attitude that we could see from federal government, possibly state and territory governments, where they look at bringing in, I guess, some of the stuff that's happened in England around the funding models; the fear of for-profits coming into our sector. My biggest risk as an agency is that [trend for] very, very large [interstate]-based organisations who've adopted an Australia-wide philosophy, and yet when they've actually come and done the work [in regional areas] they've actually downsized and downsized. So I think there is major risk from a government level to provide work to the very large [organisations] and make it simple for them [government] in terms of their administration and transactional processes that places the smaller or medium sized agency like ours more at risk, so that's the real threat, absolute threat.

4.3.2 Feeling and being vulnerable: threats to freedom of voice

Direct and indirect threats to public advocacy are said to impact the independence of the sector. Four of the research participants involved in this project spoke about their direct experience of being warned in conversations with government staff and/or public servants that their involvement in public advocacy could result in a loss of a program or service contract. A fifth research participant gave the example of a Minister changing their working relationships with an organisation after public criticism of a government decision had been made by the organisation. Another research participant shared an anecdote of being dressed down by a Minister for taking a public position against a government decision.

These examples all highlight threats to independence where it is being defined as freedom of voice or freedom to advocate publicly. These potential threats to independence are of direct and conscious interference and, in this regard, they are the kinds of imposition that the ACNC Act seeks to prevent. As discussed in Chapter 3, the Revised Explanatory Memorandum clarifies that the governance standards established by the Act cannot be utilised in a way that would interfere with an organisation's capacity to work to mission but should, instead, free organisations from undue interference:

5.22 Further, the standards will create a framework to protect entities and their mission or purpose from mismanagement, and will ensure that the entity is focussed on its mission, and not the goals or interests of others. (Revised Explanatory Memorandum: 60)

On the theme of threats to independence of voice more widely, a range of issues are discussed in the interviews as impacting advocacy and some of these have already been touched on above in the section on limited funding. Some research participants talk about gag clauses, others talk about unequal power relationships with government Ministers and bureaucrats. Limited funding and competition for funding are also identified by research participants as threatening advocacy as they create a situation in which organisations feel that they need to self-censor their public and their private commentary. These diverse issues, and their interconnections, are elaborated below.

In relation to threats to advocacy and freedom of voice, some of the research participant's mention gag clauses in government contracts:

Interviewer: Would you say that there have been any threats to the independence of the sector?

Interviewee 1: Well there used to be gagging clauses in the contracts.

Interviewee 3: Yes.

Interviewee 1: So, as an organisation we could not speak out against their [government's] policy. To me that sort of affects independence.

I was aware that when there was a change of government in Queensland, that there were gag clauses put into contracts; well, I think that definitely threatens independence. If you can't say what you believe, what you value, what you think is important to your client group, then it threatens the very foundation on which you're working; it threatens the quality of the work.

However, it is not only clauses in contracts that are identified as impacting on the capacity of the sector to advocate freely. Some research participants discuss feeling vulnerable in relationships with government:

I have seen in the last couple of decades more government control and less tolerance to another view, to the point that people have been bullied, have been excluded, have been targeted, I think. And sometimes organisations have been defunded. And it's hard to pinpoint and prove that it's because of the high profile dissent, but it seems to be too coincidental not to have some link. I mean, there'll always be, 'Oh, there was some mismanagement or there was some lack of accountability', or... But they're fixable. Bureaucrats and organisations can work those through.

We've seen situations before where peak bodies, who have spoken out against a particular national agenda or even a state agenda, have been frozen out, to a certain extent, of some discussions, such as being involved in committees. A peak body that I was involved in both provided support for a particular direction the government had taken but also provided some criticism and raised some concerns, and the Minister at that time quite openly said to us that they were not happy that we had spoken out against a direction they had gone in, and I had noted that, following that time, the Minister really didn't, they avoided meeting with the organisation, even though it was written [the public criticism of government] in a very constructive way.

I've certainly seen people at contract management level, within government, avoid meeting with and liaising with organisations or making judgements on progress or funding, based on some situations where people may have spoken out or may have interpreted things differently. There have been a number of organisations that have been affected, and that wouldn't be unique. That's certainly happened in many parts of Australia. So I think we're actually even moving more towards, unfortunately, more towards a situation where organisations are fearful of speaking. A good example of that was recently a national peak was defunded. We actually don't know why, and organisations, other national peaks were very fearful of writing letters of support for that organisation, in case it affected their own funding.

More often than not, I found that that independence... we used to call it rattling the funding chain. They would rattle the funding chain. And it was the bureaucrats who put obstacles in your way. Once you got a public profile and started pushing policy initiatives that the sector had come up with, if that contradicted or cut across what the bureaucrats wanted in terms of control of their Minister, they would try and head you off at the pass and they weren't above rattling the funding chain...

Interviewer: Do you think that there are or have been any threats to the independence of the sector?

Interviewee: Absolutely I do. I often feel that we are bullied by [...] government. I often feel... I personally feel as an organisation we pride ourselves on being quality driven, proactive, innovative, and I feel that often when we're dealing with government we get dragged down to their level of operating credence, rather than the level we actually would prefer to be operating at.

Interviewee: I know when there's joint working parties, well, there's plenty of examples in this [region] where there's meant to be an equal partnership, but the CEOs of the government departments or directors make unilateral decisions about what will and what will not go on the agenda and it's as if the CEO is the CEO of all the non-government organisations, which they are not, but the non-government organisations are very careful not to buck too much because they know that it could have an adverse impact on the relationship and maybe on some funding decisions down the track.

Interviewer: And do you think that feeling vulnerable in relation to future or existing relationships and future funding and the actual detail of contracting, do you think that they're threats to the independence of the sector?

Interviewee: Yes. I think it... Well, they're not threats. They're actual restrictions. Yes. It's gone past threats. Well. Sorry. And the threats are anxiety amongst the whole of the non-government sector. If they advocate too strongly, there will be further adverse effects further down the track for their specific agency.

Interviewer: So, you're aware of that level of anxiety?

Interviewee: Yes.

Interviewer: ...Does that anxiety lead to, does it influence action or is it just an anxiety?

Interviewee: It will influence action not to take action, I would say, in terms of advocacy. I'm not sure in terms of directions in service delivery. It probably restricts the flexibility and service delivery which is being contracted when, you know, negotiations like a contract might say, there's a service, a more flexible service delivery model and then the government might say, no, we want you to narrow this or target it more. So, really there's not much choice in that case. So, it restricts the degree of independence the agency has to do innovative things.

Interviewee: I mean, we're in a precarious funding environment right now, and I think, you know, certainly in our sector, we're feeling like it's really difficult to know what to say and how much to push, because there's a sense that maybe if you go too far, it affects your funding. So because we're in a really tight funding framework, that threatens independence, because you're competing for this limited amount of money, and so you're kind of feeling like you've got to be a bit careful about what you say. And that's certainly the message that I've heard, and I've been told when I'm in meetings with government and Ministers' advisors and things.

Interviewer: So that's been a clear message?

Interviewee: Well, you know, I guess just that the advisors are checking your policy, where you stand, and they're asking questions about where we stand, and it made me think, 'Mmm, does that mean if we don't...if we're not... our alignment or not with government impacts on whether or not we get funded?' And I found that concerning, because it shouldn't actually. All of the community sector will work with whoever is the government of the day, but we should be able to also express a view, if we don't agree with policies that the government make, on either side of the spectrum.

I think also it [funding from government] affects, you know, advocacy often, in, you know, there are particular issues that come up, where we're often really hamstrung about what we can and can't say. You know we are often contacted by media or MPs, or whatever, to give comment and, really have to say 'No comment' because we have a related contract or, you know, something like that. Where we would like to speak out and have a lot more to say about it, we have to be very careful because we know that there can be ramifications of speaking and particularly to the media, about particular issues that, might give them a, some sort of a profile, you know, broader profile in the community so we'd like to speak out about it.

[I]'s just my impressions I suppose from firstly, having worked in government where you're a public servant and, of course, you've got a complete gag and the frustrations of that, but now having moved into this sector and thinking, 'Oh, whoopee I should be free to do anything' and you either have your own organisationally self-imposed sort of strictures or it's

the informal, I guess, you know, 'Don't bite the hand that feeds you' kind of nuance that's out there all the time. Now, as we've just said, the fact that [we don't] have a gag clause written into our contracts I think is a really good thing and something we should fight to keep.

In several instances participants identify feeling vulnerable, and that they needed to self-censor, that making public statements – or even direct private statements – critical of government tender outcome decisions would put them in a compromised position:

I suppose a threat to the independence is... I think there is some kind of constraint about what we can say. I would feel like, if we were to come out and make statements that were anti-government, kind of, or anti the processes that government has taken [in decisions arising from the tender process] and do things like that, I feel like we would be under threat.

I think that's one of the real catch-22's at the moment about maintaining positive relationships, you don't know whether if you complain about processes or you complain about outcomes or you raise what you believe to be a legitimate question and I think it's beyond just 'Oh we didn't win it hence we're just bad losers' [...] It's quite a difficult decision to make about how far you would take a complaint or a conversation around that knowing that you're dealing with the people who are making future funding decisions about you. So I think that's one of the areas of concern.

[...] I feel like our relationships with the department are both really positive and provide us with opportunities but that, but the dilemma is that goodwill allows you both to have fairly honest conversations but the reality is you feel like you need goodwill with people in the department and those people are the same people that are making decisions about, or are certainly significantly involved in the funding decisions and those sorts of things, and you think that that's actually, so there is a bit of 'Don't bite the hand that feeds you' aspect and I'm not sure that that's the department people saying it out loud to people. I don't think they come to you and they say that but there is, it's a bit of a way you feel about the nature of the relationship overall.

In relation to managing the tension with funding bodies, peak organisations and other organisations with explicit advocacy roles are sometimes identified as facing unique challenges given that their role is to scrutinise and hold government to account;

[Independence is] critically important but incredibly vexed and [...] on procurement [...] teasing out some of these tensions and, of course, the moment your funding is provided by government there's a whole range of tensions around that in terms of your independence. How can you be truly independent from your funding body and particularly for peaks [that] in some government circles would be seen to be funded to cause trouble, but funding to be... to hold you to account in government.

So it's this weird twisted thing whereas on one hand you're accountable to government for your money, but on the other hand they're accountable in some ways to you as a public watchdog or as a sector watchdog. So I think that it's a pretty vexed basis for the relationship in the first place. I think

we've seen in Australia where certain governments have really decided that they don't like the relationship and they've solved that by terminating the funding, and have found that... I think have probably considered it's just too difficult a balance to achieve, and I know certainly that's happened with youth peaks in Queensland and I know in other states. [...]

I think one of the cornerstones for a good independent relationship, or to manage the tensions I was just talking about, is good faith where criticism isn't seen as a personal affront. It's actually seen as an attempt to improve services and I think it's a fairly human thing for people to either to be threatened or to not like criticism but personalising it is always a problem, and particularly if it's not given or delivered in a personal way, but delivered in an objective way, supported by evidence, then you really would hope that it was seen as being an attempt to improve service systems or whatever. But it's often in the eyes of the beholder. It's hard, that communication.

Interviewee: Look, I just... I think this whole caper is about relationships, and if you don't have relationships, good relationships with your stakeholders, including your funders, and the broader government including, like, reps from departments as well as Ministers, I think it's all about relationships, and I think it's hard when there are barriers to you actively seeking to develop those relationships, so that has an impact.

Interviewer: What sorts of barriers?

Interviewee: Not wanting... when Ministers don't want to have a relationship with us, and we've got one at the moment who doesn't really want to have a relationship with us, so when traditionally this organisation has always met, you know, regularly with the Minister, with our Minister, doesn't matter. [...] Yes, so there was a new Minister [who] made it quite clear that [they weren't] going to meet with us regularly, so that's been a challenge. It's hard to... it's harder for us to do our work if the [Minister] doesn't understand what our work is, and it's harder for us to help [them] understand what our work is if they don't want to actively engage with us.

Under the last federal government, it felt a lot easier to be fearless. It was a lot easier to go in hard on advocacy, because that was seen as part of our role, and an acceptable part of our role. With the change in government, we are very much, having government contracts, and we are feeling our way through and, you know, you do have up in your mind at the moment, how am I going to juggle those issues? It feels like that there very much is a line that we're constantly having to walk. We have to be true to what we do, we have to be fearless, and we have to advocate for structural change, but in the back of your mind is always that we'll probably lose that contract over it. It may be a separate contract, and it has very much come to the fore at the moment, I find. So I'm heartened that in the Charities Act that at the moment we pretty much have our advocacy role enunciated and protected...

4.3.3 Contracting, procurement and the tender process: threats to organisational autonomy

Contracting, the procurement process and competitive tendering are all raised as representing threats to the independence of the NFP sector in many of the interviews. The connection between these themes and the issue of independence may not be immediately apparent. For many research participants organisational autonomy, the capacity to work to mission, to make choices in design and service delivery, is a key way in which independence is defined and this point has been established above. Where contracting, procurement, and the tender process are seen to challenge or to undermine organisational autonomy, they are seen, therefore, to threaten sector independence.

One of the ways contracting is identified as impacting on organisational autonomy and, by extension, sector independence, is in relation to short-term contracting and the timelines in which government funding bodies notify organisations as to whether existing service contracts will be extended or terminated:

Interviewer: Are there any other threats to, or restrictions on, the independence of the sector?

Interviewee: [S]hort-term contracting. I was thinking about this. This actually has a very powerful impact on the independence of the sector. It keeps the sector on tenterhooks. Now, I'm thinking of one classic example, homelessness services. In 2009 the federal government did the review, 'The Road Home'. It set a 2020 vision. The services in this region got completely restructured, people that had service [contracts] had to re-tender for them, and they gave the agencies a three-year contract from 2010-11 to 2012-13. Then, for whatever political and other reasons, those contracts were only extended for a year to 2013-14. If you ask anyone in Australia or the world, 'Will homelessness end June 2014?' I don't think anyone is going to raise their hand. So it's absolutely ridiculous and now they're threatening the viability of these services, the quality of them and it just keeps on happening.

So, the default position is, 'We're a bit worried about this', and they've gone through the whole review and restructure process and then they default to a year and that really just restricts the freedom of the agencies. It just, all it has is flow-on negative effects to, you know for the independence, the autonomy, service quality, outcomes for clients, and everything else you can think of, retention of quality staff and also having the short notification as part of the contracting process, you know three months' warning. [The sector has] been advocating [...] for at least six months and probably 12 month's advice. That is absolutely essential and that won't cost the government any money. You've got long-term social problems and you need long-term contracts to deal with it.

Interviewer: Just before you move on, with the short-term notifications, if I could just get you to elaborate a little on what they are and how they restrict organisations?

Interviewee: [...] So it does a lot of damage in terms of people [employees of the NFP organisations] starting to jump ship and go to another job and,

you know, the service starts to wind down and so in terms of dealing with long-term issues with clients in a long-term service, you have to say, well, sorry, we can't take you on. So, the service starts to wind down and then you finally get notification well how long is it [the contract] going to be? Is it 12 months or three years? People just get fatigued with that. So, once again it has deleterious effects.

Other interviews provide further insights into the issues raised by this research participant regarding the contract process and its implications for programs and service delivery:

Interviewee 2: Well, I think that there is a lot of uncertainty; [program contract end date] is only six months away, so they're [staff] all starting to get jumpy now; I think there's a lot of sort of, lot of uncertainty for them, and I think particularly because federal government hasn't really mentioned the homelessness stuff, and those reforms, and what will happen with them, and there's no word from the department or anybody else what will happen with the tendering for those programmes, and what will go with that, so they're all [staff], you know, I think they're positive in their work, which is fantastic that they have that faith in themselves and [organisation], in the programme that they provide, but I think there's others that get quite flighty and ask if there are concerns about, 'I think I need to start looking for work', kind of stuff, and it's, you know, it does make it hard because I myself don't know the information to be able to...

Interviewee 1: We're all on one year contracts, basically. I mean, none of us have permanent work, not even the CEO. So I guess that's the reality of the sector. [...]

Interviewee 2: We've had it before where, you know, rocked up to work one day and the government's changed, or rocked up to work one day and the government has changed, policy has changed, and now the programmes that you once worked in for years have now dissolved and gone away. And you know, I think if you kind of go through that process enough you just have faith that you'll move on to the next thing, but it's still disappointing because you love the work that you do and it's sad to pack your bags and, you know, put them over your shoulder again and move on to what the next thing is.

Research participants from both SA and Canberra raise the issue of short-term contracting having particularly 'deleterious' effects in relation to homelessness services. While it appears to be the case that homelessness services as a sub-category have very pronounced concerns about short-term contracting and late notifications regarding tender outcomes and contract renewal, these issues are not only raised by those working in the homelessness sub-sector.

Furthermore, some research participants state that contracts are overly prescriptive. Prescriptive contracts are seen to erode the autonomy of the sector through the imposition of requirements that are seen as not having any direct bearing on the service delivery that governments are contracting organisations to carry out. In some instances this fact is seen as making the NFP sector 'more like' government departments – a trend that is resisted and resented.

I notice that we're being micromanaged more and more by the funding body... Quite often what I see here is sometimes the funding body knows [organisation's] business sooner than I do [...] And sometimes maintaining that independence and the ability to decide how we're going to do our service delivery is a challenge. Like in the old days, as long as you honoured your funding contracts and met your outputs, how you delivered the service and how you structured your organisation and all of that was just up to you, and I see that being eroded. [...]

For instance, in our, health funding contract, now we all have to go smoke-free, we've got to work towards pretty well having a staff management plan to reduce their tobacco use and things like that, which, you know, it's written into our funding contract, so things like that.

[I]t's certainly unjustified that some of them [contracts] can be quite prescriptive around, you know, we've got contracts now that tell us how often we have to provide supervision to our staff, for example. So, what, did I need to really do that? If we have a quality management process and we abide by work safety legislation, surely within that context we should be able to operate as we think is a really effective way of keeping ourselves safe and well.

[An]other thing too is that within our organisation government treats us as a department of government. So our contract reflects that. We have a resource approvals procedure that's a government document and it was an internal government document but it's given to us to roll out, and it's like, well, you know, we actually aren't your department. And they see us as a mouthpiece of government. And it's like, but you've given us a contract, so it's a bit like, my plumber is not my mouthpiece, you know. They're the person I say, 'I can't do this job, I want you to do it for me, and here you go and give me your expertise.'

[O]ne of the things that government does is contract the non-government sector to provide services. Unfortunately a lot of these contracts have got more and more clauses every year as to requiring agencies to comply to more and more things which actually goes beyond what their contract is [about]. Like, if they're going to deliver a community service of some kind, then there are clauses about environmental requirements, which is a nice thing to have, but it's not really relevant to that contract. What's happening is that governments are developing more and more policies for themselves around all sorts of things which are flowing on to the non-government agencies and requiring them to do that, which then doesn't respect their autonomy. I don't believe it respects their autonomy or independence because they're saying, 'Well, because we're giving you money, we've got the right to require other things of you.'

I tend to associate red tape to independence. And it's about that micro management of the dollars that we're – I respect that it's a procurement contract, I suppose, that we're entering into with government – there just

needs to be an opportunity to be able to deliver our business the best way that we know how to.

In relation to government contracts, the issue of administrative burden is also raised as impacting on organisational autonomy and sector independence:

Indirectly for me, you know the reporting burden's quite high at the moment. And I guess for my particular team we could certainly be better spending our time trying to specialise our, or concentrate our efforts on... I say indirectly but, for instance, rather than going through all of this ridiculous reporting for the [name of grant] that we have to do, which is really, really time consuming, I could have been using that time investigating our procurement contracts, or negotiating our procurement contracts. You know, we're aiming for a 30% saving on stationery this year, which I should be working on, but can't be because I've got this. So the 30%, saving that we make could equate to something like \$5,000 which then can go straight back into our service delivering and improving, or value adding to the services that we've currently got.

The issue of contracting is often linked to the procurement system more broadly. One research participant suggests that the procurement system risks imposing a value system on the delivery of programs and, ultimately, on the NFP sector organisations that provide them. This imposition is seen to undermine the organisational autonomy of the sector and also to have implications for those accessing services:

The purchase provider model I think has inherent risks in it, and the baseline of those is that the government thinks it knows the answer. Frequently the government thinks it knows the answer without defining the issue particularly well, that's level one. Level two is there is a tendency for governments to fluctuate between the government as parent and the government as facilitator. Where the government has a tendency to go to government as parent, the tendency is to tell the child what to do, and the framework within which to do it, and that implicitly includes values. [...]

The high risk is you assume the values without making them explicit, and then the government decides that it knows the answer to an issue, then the answer is likely to be value laden, and the values are likely to be implicit in the contractual arrangements that are made...

Another research participant provides an example of how values implicit to the contract process can lead to NFP organisations losing contracts and can also impact on service users:

Interviewee: It's not only ramifications for the actual organisation itself. It's also ramifications, potentially, for the clients, which is probably even more critical. So, where clients may not be aware that an organisation has spoken up, that's the advocacy component. I think the other part is it's not necessarily just [policy] advocacy. It's where organisations interpret contracts from government and implement services in ways that are innovative or, perhaps, definitely meet client or community need, but may not be strictly to the letter of the contract, detail for detail, but have been innovative and tried to adapt and, certainly, sometimes there are consequences for that.

Interviewer: Could I ask you just to elaborate a little on that?

Interviewee: So there was an organisation that provided services to families, and they interpreted a contract that they had with government in a particular way and coordinated their contract in a particular way. They budgeted in a particular way, and the government had accepted that budget, however, when it came to the implementation, they felt it wasn't in line with what they [government] particularly had in mind, even though that wasn't clearly articulated – it was a fairly broad contract – and, in fact, after a series of meetings, defunded the organisation because they couldn't come to a common understanding and agreement about how that organisation should proceed with delivering services.

Comments from some research participants on the issue of competitive tendering make clear that they feel that this system sometimes undermines relationships within the sector. Some of these views are elaborated in the discussion on small and large organisations in Chapter 5 of this report, as they are particularly pertinent to internal sector relationships. However, some research participants also identify ways in which the tender process impacts organisational autonomy, stating that it redirects the focus of staff and programs away from client need and on to contract outputs;

I think tendering, in a lot of ways, means that you are more focused on better output, KPIs, strictly straight down the line stuff, and that you really have to be mindful as programmes and as leaders as everything else around making sure that we're not getting too caught up in that and that quality of the work is still there and that we're not just quantitative in making sure that those numbers are coming out there and that that's a real battle and as tenders get closer I think you really do have to fight off some of that stuff [...] [and] that is something that is a challenge.

Research participants were asked whether they felt that the threats to the independence of the sector that they identify had changed over time or whether they had been consistent issues for the sector. This line of questions also helped to identify how independence is defined and understood and invited participants to broaden their reflections in response to the questions, to not only draw on the issues that may have been most pressing and at the forefront of their minds at the time of the interview. These questions had mixed responses. However, a view commonly expressed is that competitive tendering has either resulted in new, or exacerbated existing, threats to the independence of the sector:

I think the pressures have always been there. I think they have become more pronounced with, I think, the advent of tendering as a basis for allocation of funding, coupled with short-term contracts, has been a significant factor. So you've got organisations that are constantly competing with each other for maintenance of basic funding, well, funding for basic services so that's led to a more competitive, in a negative way, sector.

You know, I would argue that applying business commercial principles to community service delivery is a flawed model because one of the strengths of this sector when it's working well was collaboration and cooperation. You actually can't have effective civil society and civil society organisations without them actually collaborating so I think that [the competitive] funding model for service provision has been an unhelpful development.

And so organisations have got bigger and I think that's a really significant trend too. So the big organisations have got bigger, have got more dependent on government funding and have to rely on tendering and contracting in a, sort of, quasi-competitive basis to achieve that and I think that's been unhelpful.

I also think it's been a way that government has actually sought to reduce or silence some advocacy and some public voice on issues that it doesn't want to be taken to the public too much.

It's changed over time. The '90s was the big influx of contracting procurement tendering, the start of treating the community sector as business. And I think there's parts of the community sector where we need to understand business and need to be able to do that better, and that was probably a good thing in some areas. But prior to that, you could have state government bureaucrats, community sector leaders, sitting down working out best options for development in the future. And, you know, the tendering gone mad actually disconnects and dislocates that. So, instead of seeing community services as a public good, it becomes a public commodity. And the last two decades have demonstrated that, I think, being a public commodity has been detrimental to the sector, because it's driven up competitiveness, it's driven down price, it's probably meant erosion of quality, and all for the sake of what? Some sort of arbitrary, 'Well, we can't talk to you about that', you know, 'We can't give you direction about that.'

4.4 What would and/or has strengthened independence?

In order to further explore the understanding of independence and develop recommendations as to how independence could be supported and sustained, research participants were asked questions around what has or could strengthen independence. Responses to these questions contain implicit definitions of independence.⁹ The definitions and understandings of independence that come up in response to this series of questions are consistent with the definitions of independence and the range of issues that have already been summarised above. Collective representation through peak bodies is identified as a way of strengthening independence. Where it is, it is apparent that independence is being defined as freedom of voice or freedom to advocate. Increased funding and, related to this point, greater security of tenure of service contracts is also identified as a way to shore up independence. In these instances independence is being conceptualised as financial independence. Recommendations are also made about increasing government's understanding of the sector or of particular programs, of stronger partnership relationships with government and of organisations having more of a role in the design and delivery of programs and services. All of these suggestions and recommendations speak to the issue of organisational

9 Carol Bacchi explores these ideas in her policy analysis methodology 'What's the Problem Represented to be?' Bacchi (2009) argues that 'solutions' to policy problems contain within them implicit representations of policy problems and are worth interrogating for this reason.

autonomy and of organisations being more active in the design of programs that they deliver and more confident in their relationships with government funding bodies. In these instances, in other words, independence is being defined as organisational autonomy.

As the issues raised in response to this series of questions are all already well-established in the discussion above they are revisited only briefly in this section.

4.4.1 Collective representation and collaboration

As made clear in the discussion above, many organisations feel vulnerable speaking out on issues to do with service delivery and to do with government policy. In this context the role of peak bodies becomes identified as being an important way of allowing public advocacy while shielding organisations from fear of reprisal.

I guess that the safest way for people to put their opinions out there is clearly through the peak bodies, so everybody, you know, hides under [organisation], hides under the [organisation] and, of course, government knows exactly who belongs to all of them, but because they can't single you... And [organisation] is quite open about playing that role, particularly for the little tiny organisations, which is a good thing, but where there are opportunities to actually have lists of providers' names, we have done that on a number of occasions. It just depends on what the topic is and how it's worded.

You know, the thing about the voice, what we have here is the [name of organisation] is the peak body and I am a passionate believer in the role of peak bodies and [organisation] is rapidly increasing its influence with elected and bureaucrats and state government people and that is fantastic. Now that is an independent voice for the entire sector and it's quite powerful and getting more powerful.

I think that one of the things that the sector doesn't do right is that we don't actually fund our, fund our peak bodies well enough. I think we, as the sector, would be better represented, have a louder voice, if we all made sure [peaks] were funded to a much bigger degree, have much more capacity to have a conversation that takes up points for people. I think that we are sometimes tested because we also may not speak as one voice as a sector, we might have all different views whereas, say [peak organisation] tend to have the collective views. I think having strong peak bodies that are well resourced, are very important parts of having, having an independent voice, I suppose, or at least having good feedback so I would, I'd like to see us rework some of how we fund those peak bodies and maybe we don't need as many peak bodies but maybe we need to have peak bodies with a greater capacity.

Other research participants identify a role for government and funding bodies in valuing more highly this advocacy work:

I think there is real merit in trying to develop a culture of government and corporate funding that actually sees the development of civil-society-based advocacy and research as important. I think there's been a drop-off of that sort of attitude...

Related to the issue of collective representation is the issue of collaboration. Many research participants suggest that the procurement process has fractured relationships within the sector and that – making amendments to the procurement process and repairing relationships will ultimately improve the independence of the sector and, by extension, service delivery:

I think also, you know, some of that stuff around the collaboration, I think, would really strengthen us, is that you know, the contracting process has had some negative impact, and that you know, some supports around actually helping us to move into a better space with that stuff would be a huge...would give us more power again, because having that position of power against government, but you know, in giving us that power to sort of, negotiate what is needed in the sector, if we could sort of, get past that, because I think we collaborate on issues without collaborating together, and that there's a big barrier to that, and I think if we were collaborating together, I think that would be a huge thing that would strengthen us...

One thing that could enhance the independence of the sector? Well, I would certainly think that the government procurement system as it currently is, which on one hand tells us all to be nice to each other and then on the other hand makes us all compete ferociously with each other, and the silo nature of the procurement themselves, that says we just want you doing this thing in this box, is... if that could be absolutely overhauled, absolutely revamped, absolutely scrapped, then there might be a better chance of the sector having more true independence, yes.

A related theme raised by another research participant is that having some distance from program managers could enable more outspoken feedback, improve communication with government and strengthen the independence of the sector:

I wonder whether service development and contract management and stuff should all be in the same, you know, we feel like we're dealing with the same people. We might not at one level be, but we tend to be dealing with the people that actually support our, the people that are doing our monitoring and so on, tend to be the people that develop the services and ultimately put them out [to tender] and I wonder whether if some separation of some of those sorts of things that would be, would allow people to feel more comfortable about speaking out, because they're not criticising... Because there's an aspect about this, at times, which is criticising an individual's piece of work and that's become very difficult for some of the conversations.

One research participant recommended that having capacity for CEOs to receive mentoring from established CEOs of NFP organisations would also work to sustain the independence of organisations and the wider sector by providing guidance around 'what has worked for them'. Arguably this kind of initiative would foster stronger relationships across the sector.

4.4.2 Security of tenure and improved contracting practice

The issue of insecure and diminishing funding is raised in many of the interviews as impinging on the independence of the sector. Consistent with these comments, secure funding and longer-term contracts were identified as issues that would enhance the independence of the sector. The following excerpts are representative:

I just want to say funding, you know. That's the dream, isn't it? If only we had more secure funding, I think that would make a big difference and I think the contract length is an issue as well. So, where our funding agreements at the moment are three years, but we have had 12 months before, and there's nothing stopping the government from giving us 12 months again. So you know, it's like Maslow's hierarchy of needs, if you're all about surviving as an organisation, it's not as easy to be innovative or independent or vibrant, is it? No, because you're all about making sure you've got food and shelter.

[I]t should be ten-year contracts. We should be not having roll-over year to year or three-year contracts. But to say, look, we're here. We've... a lot of this work we've been doing for 30 years. Some of those things are never going to change, so recognising what services are never going to change. Also know that policies can change, but just that the security of a ten-year contract, you can actually develop a bit more business plans and work out how you're going to do it. And retaining your surpluses, you know, within reason, actually being able to retain your... retain your surpluses and decide where you want to put that to.

4.4.3 Improving the procurement process: better understanding of the sector would strengthen organisational autonomy

As established above, organisational autonomy is a key way independence is defined in the interviews. Many of the research participants identify existing relationships with government as well as the procurement system as undermining the independence – understood as organisational autonomy – of the sector. Along these same lines, when asked what would strengthen independence, many research participants identify things that would improve the relationship with government and provide organisations with greater capacity to have a role in the design of the programs that they deliver: to more easily realise their organisational mission, and to maintain their authority in decision making about the management and administration of their organisation – areas of decision making which many research participants identify, as set out above, as being imposed upon by government through overly prescriptive contracts. The excerpts below are illustrative of the ways in which research participants think independence, defined as organisational autonomy, could be supported and sustained.

Some research participants talked about shifting evaluation frameworks to focus on social outcomes rather than on service outputs. This shift was expressed as a way of increasing the autonomy of organisations to determine processes of work and service as well as a way of better respecting clients:

Don't concentrate on the money doing the talking. Allow us to prove social impact. If the department can come up with some really clever mechanism to concentrate on social impact, doesn't matter how we get there, just let us do our business. Because, really, at the end of the day that's what this is about. This is about just trying to achieve certain outcomes for the department, to make sure that they're making a social impact with the money that they've been given from taxpayers. So let us do our job.

[...] that quality focus, I think that's hugely important, because [...] [it's] always numbers and you know, how many numbers on the board, how many runs can you get. This isn't a game. It's peoples' lives and in that context numbers are never important.

Another research participant expresses a desire to see existing reporting practices better inform the contracting process so that the knowledge organisations have about service gaps and community needs is fed back into the contracting process:

Interviewee: We spend a lot of time reporting to government. We don't get any feedback back. And there's one department that does it incredibly well. They actually read your report. They actually write you a letter. You know that they've read it because they've picked up some of the issues and gaps in service delivery and want to come out and have a coffee and talk about it. It's not rocket science. And then you get others that don't see you for a year and then just turn up for a contract negotiation meeting, but don't actually recognise the value of the work that you've done for that year.

Interviewer: And so that more consultative approach?

...

Interviewee: Yes, yes, yes, but it's also informing government and the workers about the things that we do, you know?

Interviewer: And ideally would that also help perhaps influence what kind of funding they offer?

Interviewee: Yes, yes, and where it goes to. You know, if they actually read your reports and understand the need or demands [in the community]

Another research participant suggests that increased understanding of the sector would improve relationships with government. Increased understanding is seen as a way of improving the contract and procurement process and, by extension, organisational autonomy:

[A] good thing would be... if the government departments were truly able to have a respectful relationship and understand what respect means with the non-government sector... now, the Productivity Commission Report outlined very clearly the mega contribution from the non-government sector. So, really I think that what would help is if there was an education campaign in government departments who have relationships with non-government to say, here is what the non-government sector is about. Here's the size of it. Here's what they do. Here are the 11 service types.

5. Small and large organisations – are there different issues?

One of the questions informing this project is whether organisation size has a bearing on independence. In the interviews different sets of issues are commonly identified as impacting on the independence of small and large organisations. However, ultimately, the responses to this series of questions highlight that there is no consistent view among research participants as to whether small or large organisations are more equipped to maintain their independence in the current setting. This may be, in part, because research participants define independence in different ways and consequently see small and large organisations as having greater or less capacity depending on the (implicit or explicit) definition of independence.

For small organisations, the administrative burden arising from government funding regulations, reporting, and related requirements is identified as challenging the independence, and in some instances, the very existence, of small organisations. In these instances independence is (implicitly) defined as organisational autonomy. In other interviews, small organisations are frequently identified as having greater ties to the community and, consequently, greater capacity for independence. In these instances independence is being defined as freedom of voice and small organisations are seen as having greater willingness and capacity to exercise that voice.

Large organisations, by contrast, are seen to have greater financial independence through their capacity to pursue diverse funding streams and generate income independently of government. Related to this point, the actual size of large organisations is also sometimes seen as a protective factor where it is seen to lend organisations political weight in the context of public advocacy. However, in other instances, the size of large organisations is seen as limiting their independence. Where size is seen as a limiting factor, it is interpreted as meaning that organisations do not have strong ties to the local ‘grass-roots’ community and are more likely to find themselves beholden to government in a manner which limits their capacity for freedom of voice and thus, their independence.

The interviews also highlight that there is no consensus around how small and large organisations are *defined* and this is potentially a confounding issue for the research. The ACNC defines organisations in terms of their annual revenue: with small organisations defined as having an annual revenue of less than \$250,000; medium organisations as those that have an annual revenue of more than \$250,000 but less than \$1million; and large organisations as having an annual revenue in excess of \$1million.¹⁰ Yet, the majority of the research participants seemed to categorise any organisation with annual revenue of less than \$1million as small. One research participant, on hearing the definition used by the ACNC of small organisations, stated: *‘I’d say that’s microscopic’*. The majority of research participants in this project are in the medium to large

10 ACNC Factsheet ‘Charity Size and Revenue’:
<http://www.acnc.gov.au/ACNC/Pblctns/Factsheets/ACNC/FTS/Fact_CharSize.aspx>.

category by the ACNC definition, but this did not necessarily represent the way they characterise their own organisation.

While it is not possible to offer an agreed definition of what counts as a small or a large organisation as an outcome of this project, based on the comments from research participants it is fair to assume that, in general, sector representatives participating in this project define small organisations as those with annual revenue of \$1million or less. Further, they consider organisations that rely primarily (or exclusively) on volunteer contribution as a particular sub-category of very small organisations. This distinction is important to note because a related theme that intersects with the issue of small and large organisations is the trend to mergers and acquisitions. On this topic, which is discussed more fully below, many research participants comment that ‘small’ organisations are at risk of being absorbed through the current trend for organisations to merge – participants are not only referring to those organisations receiving less than \$250,00 in annual revenue.

It is worth clarifying that concern about the potential loss of smaller organisations is not uniform across all of the interviews. However, where it is expressed, this concern is not only expressed by leaders of smaller and organisations. Some leaders of medium and large organisations (as defined by the ACNC in terms of revenue *and* as defined by organisations themselves) also express concerns about the loss of small or specialist organisations. Specialist organisations are not always small organisations, though often they are. While the questions put to research participants in the project was specifically around size of organisations sometimes participants interpreted this as an issue of loss of specialist organisations. The concerns expressed in response to this series of questions thus cluster around three separate issues; the loss of specialist organisations in particular is seen by some research participants to equate to the loss of specialist skills and expertise. The trend of having fewer organisations operating in the sector is seen by other research participants as potentially leading to a loss of diversity and ultimately less citizen choice in service provision. In other interviews, the situation of only a few ‘mega’ community sector NFPs is seen by research participants as reproducing the limitations identified in public service delivery models: of a lack of grass roots involvement and an increasing bureaucratisation.

5.1 Small organisations – strengths and challenges for independence

There is no consistent definition of what constitutes a small NFP organisation. In relation to the ACNC’s definition, which focuses on financial revenue, many participants suggest that all organisations with an annual revenue of less than \$1million count as small organisations in the sector. This view can perhaps be attributed to the fact that organisations involved in human and social services tend to include ‘economically significant’ organisations that have considerable annual revenue. UnitingCare Queensland, for example, one of the largest NFPs operating in the human and social services field in Australia in June 2014 had an annual revenue of \$1,406,775 (UnitingCare Queensland 2014: 69).

Considered against the larger of the large NFPs in this field, annual revenue of \$1million may indeed seem small.

5.1.2 Administrative burden: threats to organisational autonomy

Across several interviews small organisations are identified as having some specific challenges in the current operating environment. In particular, disproportionate administrative burdens around compliance with government regulation and funding reporting requirements are identified. These challenges are understood as challenges to the organisational autonomy of organisations and where they are suggested as impacting on the independence of organisations, independence is implicitly being defined as organisational autonomy:

I was thinking more around the amount of auditing that's done and the amount of quality systems you have to put in place, policies, procedures, industrial relations, insurance; those sorts of issues I think are really difficult for small organisations. As a matter of fact, we've had organisations come to us and ask if they can amalgamate, [whispering] it's a takeover really, and they ask if they can amalgamate and it's for some of those reasons.

Because small organisations necessarily have a small workforce the administrative requirements involved in managing the compliance requirements attached to government funding and the operation of human and social services is seen to cause a significant strain on organisational resources. As in the example above, this may lead organisations to seek to amalgamate with larger organisations that have an administrative structure that enables them to more easily accommodate government requirements and regulations. This can raise the issue of independence at the most fundamental level if the organisation cannot sustain itself.

For some research participants the administrative requirements that are now imposed by government do not only put at risk the independence of small organisations but ultimately spell their demise:

Interviewee 2: ...They have no future at all. I think the quality systems, the reporting systems, the financial systems, the budgeting systems, sort of board governance you need, they will not be able to sustain their lives in the government tendering process. If they've got very strong community network, volunteers, donations, contributions in kind; that sort of stuff, they will survive, but they'll be really, really local and that will still be good, there's no question about that, but in terms of that broader government funded sector, they have no future. The only ones that will survive will be the ones in rural areas because the large players won't go there, or those that are providing really specialist services to particular client groups. The LGBTI [lesbian, gay, bisexual, transgender and/or intersex] group, or that sort of thing, they will survive because they'll be specialists and the broader network won't actually do anything for them. But I think, if I was the CEO of a very much smaller organisation, I'd be thinking – 'Holy shit', be getting out of here – because I don't think over the next few years, I don't think they've got any future at all. [...]

Interviewer: What about you *Interviewee 3*, do you have any views on this issue?

Interviewee 3: Yes, probably not quite as strong as *Interviewee 2*! [...] I think it's going to be very, very difficult for small organisations.

In this section of the interview schedule the issue of future sustainability emerged as a theme in its own right. It is considered in more detail in section 5.3 of this chapter.

Another issue that is highlighted in the interviews is the limited resources that are available to assist small organisations to achieve the regulatory standards and reporting requirements set by government funders:

Interviewer: Just on compliance, then, and the issue of red tape... with the smaller organisations – because you mentioned that for some of the smaller ones there was a burden around accreditation and standards – are you aware of there being any resources that small organisations or small centres can actually draw on to... especially the ones that rely on a volunteer staff, to assist them or support them with that work?

Interviewee: We use our sector development support to go and support that and so we've worked with a lot of our members now [...]

Interviewer: So, there are adequate resources to enable you to do that work?

Interviewee: I'd say probably never. Yes.

Related to the issue of administrative burden, the time pressures on leaders of small organisations are seen to limit their capacity to be involved in high level strategic conversations with government regarding program and service design. As established in Chapter 4, input into such processes is seen as part of maintaining independence defined as organisational autonomy because it provides organisations an opportunity to feed into and influence the design of programs and services instead of merely competing to deliver services designed by government:

I think the difficulty for very small organisations – and I'm talking about \$1million type organisations per year – is that sometimes the executive directors and the CEOs don't have the time, because they're so under resourced, to actually participate in forums and in committees. That's very difficult for them. So I think there's a time factor.

We don't have an HR department, we don't have a publications department, we've got half a person. So it's all of that stuff, that our capacity is so reduced, our resource level is so low that we're always, every one of us multitasks. So, I answer phones and I work in the [service area] and, you know, I'm also supposed to be on national committees and, it's just like, you know, how? And I look at Executive Officers who churn out discussion papers and go, that'd be great, you know, how fantastic. I wish I had the time to sit and just contemplate my navel for a few hours and...

So it's really hard to keep up with the stuff that's on the political landscape when your head's down most of the time. And some of it's being

disorganised on my part but it's also time. And Sam¹¹ sits out the front and she's not the receptionist, but she's actually the Admin Officer but she sits on reception and does all of that because we don't have a person anymore because we lost money.

So, you know, we've lost money over the years and some of that is reflected in... some of that is a reflection of our under-resourcing and not being able to be as slick, system-wise, therefore our reporting hasn't been as slick as what they've wanted but the frustration is they'll look at the reporting and go, it's not very good, but don't actually look at the services and go, services are fantastic, it's just you haven't done your reporting very well. But they've judged it all on that really superficial stuff. So, we've been struggling with that in terms of getting our reporting right, to reflect what we've been doing.

5.1.3 Community connection and freedom of voice

Research participants who state that small organisations are more easily able to maintain their independence tend to point to the close relationships between small organisations and their community as facilitating independence. In these instances independence is conceptualised as freedom of voice:

I think it's probably easier for small organisations to be more independent because they're... maybe it's because on the whole their contract is so small, yeah, just small contracts and they are so connected with their community that you've got your community voices all happening within this little organisation and so... And, you know, I think this must be sometimes what drives funders mad; is that something gets up someone's nose just ever so slightly and they write a letter to the department or to the Minister and there's no filter on that and – because that's what community does, and quite rightly, too. And so you can see how government certainly finds it easier to deal with a large organisation than the little ones which can all happily and very happily do their own thing a bit.

But then small organisations, probably much like the one that I currently work for, is completely... has its own identity in its own community, because it responds completely to its own community; it's very based around the needs and the issues within its local community.

I think for smaller organisations, I think that some of the community houses, neighbourhood houses, and I think they maintain their independence really well because they are so embedded in community, and they're community driven, they respond to community need, otherwise they wouldn't survive. So as far as just independence is concerned, they also run on an oily rag, they don't have all the infrastructure costs that the larger organisations do.

For some research participants the issue of connection to community speaks to a fundamental conceptualisation of the NFP community sector. For these

11 Name changed.

participants the dividing line is not large and small NFP organisations but community-of-interest organisations and mainstream service providers:

With lots of caveats and also limited understanding of bigger NGOs, but certainly the perception is that the larger organisations are very bureaucratised and are government agencies working on the cheap. And, so, that's, kind of, where my divide is. I see places like, [major non-government organisations] as being corporatised small government organisations. And their role is to roll out government agendas, not necessarily because it's on the cheap, but, I mean, let's face it, government's chasing the dollar.

But I sat on an accreditation panel for [major non-government organisation], so I got to review them and it was fascinating to look into their organisation because they were completely different to what I thought they were and doing great work. So, it's not a judgement on *quality* of work, it's the whole issue about independence and, I think, the *purpose* for having a non-government sector, or a not-for-profit sector. If it isn't to be independent and to offer something different and to allow work to be done differently to the way government does it, then what's the point of having it if it's just cheap services?

My perception, as I said, is the bigger orgs are doing government work. And to some degree doing their own but I don't see that they have a *community*. And I suppose my next divide is the notion of community versus non-government and I think that's worth keeping or identifying. [...]

I think, within the NGO, within the third sector, there's businesses or places that are run like businesses but not-for-profit. There are semi-government agencies in the NGO sector and then there are *community service* organisations, I think, ranging from what I, not disparagingly but probably disparagingly call, trading table type environments where, you know, it's you make cakes and sell it and that's that kind of attitude. It's very, you know, it's not that sophisticated stuff, they don't take on the world, back to, at the other end, very sophisticated community org[anisation]s that are doing really incredibly valuable work for advocacy for small, marginalised, disenfranchised groups. And, I think, that's all the community stuff and I think they're very different to the rest of the NGOs. So when I think 'NGO' that's who I think of the most, because that's where my allegiance and passion is, and when I think of independence I look at that group losing their independence and not liking that.

5.2 Large organisations – strengths and challenges for independence

Specific strengths and challenges are also seen to exist for large organisations in their capacity to maintain their independence. Strengths which are identified as enabling independence include having diverse funding streams, having existing political relationships, and having a clear organisational mission. These three examples correspond with the three different definitions of independence. Diverse funding streams facilitate financial independence, existing political relationships enable freedom of voice, and a clear organisational mission bolsters organisational autonomy. For example:

I think probably some of the larger... oh, well, I can think of quite a few organisations actually, that maintain that independence and identity, but I think some of the larger, religion-based organisations, and that's a whole combination of reasons – one, because they're larger, two, because they have such large charity arms, so they have a lot of income independent of their government-based funding, and they also have a very, very strong mission underpinning what they do, that they articulate very well.

Large organisations are also seen to face some unique challenges; some of which are seen to arise from their large size and considerable funding. Some research participants consider it harder for larger organisations to maintain their independence as their significant reliance on government funding leaves them dependent or beholden to their funders and were doubtful of the capacity of large organisations to use their voice in this way.

The two most commonly cited issues impacting the capacity of large organisations to maintain their independence – financial independence and, conversely, dependence on government – are elaborated more fully below.

5.2.1 Diverse funding streams: financial independence

In instances where research participants state that large organisations are better able to maintain their independence, diverse funding streams are frequently identified as enabling that independence. In these responses having diverse funding streams is not just seen to create financial independence. The funding security created by financial independence is also seen as lending capacity to freedom of voice. As is made clear in the excerpts below, this view is not only held by research participants who identify as being a leader of a large organisation:

I think a larger organisation would receive funding from a variety of different sources instead of relying on funding from a source, or a couple of sources, so I think that makes a difference. A larger organisation might be the state-based version of a national organisation, and I think just by virtue of its size and number of staff, and profile, it perhaps has greater legitimacy and suffers a little less from being able to be independent.

Interviewee: I suppose if we're talking independence, you know, in an ideal world, if we could actually find, successfully find different streams of funding it would actually help maintain our independence. And I suppose if you look at places, you know, like the not-for-profits like the Salvation Army who have this wonderful pool of volunteers, and they can run programmes without any, you know, any funding or income stream, and you know, they can do some pretty good things just on volunteers. We don't have volunteers like that here, and I don't think we would successfully, you know, in our organisation manage to pull that off.

It's interesting. I think depending on the size of the organisation, I think that's where it starts to come down to, I guess if your funding base is well distributed across a wide range, so if you did run afoul of one group

because of something you've said, that you've probably got enough to offset that in some way or you wouldn't go under. But I think the smaller the organisation, and particularly the ones who only have a single source of funding, the practical reality is that they're very gagged unless they're very well connected in some other way, sort of protected.

So I think the church groups do okay because, [from the perspective of a secular organisation] looking at the big church agencies because they've got their bishops and archbishops and they seem obviously quite strongly connected politically as well or are seen as the go-to people for what have you. You know, some of them are extremely large providers. So if you've got an income of \$100million and you've got an Archbishop who's barracking for you with various Ministers and whatever else, like you can get out there and pretty much say what you like, I would think, and they do at times, and sometimes they probably suffer for that in some respects as well. And they've also got their own income because people donate to churches and so forth.

I think the larger you are maybe the more resilient you are and, you know, you can't erase a larger organisation nearly as easily as you can a small one and so, you know, the big [...] players will see independence probably a bit differently. I mean, [CEO of a larger organisation] is one of the characters I've always seen as being very out there with their comments, not scared, and that's great to have people like that making comments about... and certainly when they missed out on funding, that maybe an impartial observer new to the system but having seen the old set up, would have thought, 'Oh, well yes they'll get funding' and they didn't get funding. I think that actually was quite empowering for [them] because they were able to say, well, you know... and they had funding for other things, so it didn't threaten their existence and they continued to be a vibrant organisation doing good stuff.

So, yes, I mean I think depending on which director you talk to, you'll get a slightly different take on it but, yes, I do think it's very different. I think it's probably easier for a larger organisation with multiple funding streams.

5.2.2 Dependence on government: freedom of voice

While many organisations identify the size and the degree of funding enjoyed by large NFPs as enabling their independence, other research participants point to this same issue as limiting the capacity for independence. In these instances independence is being defined as freedom of voice and the reliance on significant government funding is seen to raise tensions, and in some instances, limitations:

I imagine it must be a real tussle for large organisations too when such a lot of funding that goes in is to feel like they're being an independent voice in it [...]. It's a real tension, isn't it, that's managed.

As organisations get larger and more complex the capacity to have their independence compromised becomes greater just because of the broader

range of issues and particularly in community sector organisations or community services organisations, I should say, where government funding is invariably more than 50% of revenue.

Then, the bigger you get, the more complex the funding arrangements become in order to maintain infrastructure and governance arrangements and stuff, the more critical that maintaining certain funding programmes can become and therefore the greater preparedness to accept conditions that might jeopardise independence. So I think they're the issues.

5.3 Competitive tendering – compromising diversity as well as independence

As described above, there is, in general, no consensus as to whether large organisations or small organisations are better placed to maintain their independence. However, two (connected) issues that are consistently identified as impacting on smaller organisations (defined broadly to include organisations with annual revenue of several million dollars and less) are the competitive tendering system and the trend to mergers. The competitive tendering system is seen to create the conditions that lead to organisations feeling under pressure to merge. In this context the competitive tender system, mergers and acquisitions are seen to threaten the ongoing existence of small organisations. These two inter-related issues are so consistently raised in interviews that they are discussed in brief below. Though in some ways these issues do not seem to directly relate to the issue of the *independence* of small organisations, many research participants do see a connection. One of the ways in which independence is defined in the interviews is as organisational autonomy. Because of this, the loss of organisational autonomy through mergers is seen to be connected to the issue of independence.

There is a diminishing bucket of money at whatever level government we are talking. There is a diminishing amount of funds being made available to the community sector and there is an increasing tendency for the need to tender for that money which implies that we provide services on behalf of the government rather than actually create and deliver the services that we think are responsive to the community. So from that point of view not only is the diminishing bucket of money – overall funds available – a threat to the sector, but the manner in which we have to tender for that, and I'll include in there client directed services which the funding is moving towards, mean that what funds there are available are increasingly going to be taken up by larger NGOs and, to some extent, local government.

This excerpt highlights the way that the tender process is seen by some as impacting on the independence/organisational autonomy of the sector. The tender process is seen to drive organisations to provide the services that the government funders design rather than to develop services that sector organisations identify as being needed and relevant to their local communities. In the quote above it is also seen to erode organisational autonomy. It is also seen to privilege large organisations over small ones.

Interviewee 2: I think for a smaller not-for-profit organisation, one of the threats for us is bigger not-for-profit organisations that are becoming more

corporate and looking more at, you know, that profit-loss stuff, I think *Interviewee 1* touched on it before when you talk about people moving funding away from homelessness. They're actually moving it into those more kind of, fruitful investment type areas, and then they're a big threat for a small organisation like us, because they do have the resources, the capacity and the power behind them to actually enter the sector any time they want, and would have a really great shot at taking our funding away, and they're quite a threat for us at all times. I think it's something we're aware of...

Interviewee 1: And this will be just a department within that organisation; for us, it's...

Interviewee 2: ...it's our life; we live and breathe it, yes.

Interviewee 1: Yes, but government will be attracted by that, because they've got all the infrastructure...

Interviewee 2: ...exactly, that we don't have, and I think that's a huge threat for smaller not-for-profits out there...

The challenge for most organisations going forward is going to be size. There are a lot of small organisations who have received adequate funding in the past through block funding and money in advance which allows them to put on the service, to deliver the service as it falls due. But to some degree, I suppose, the way that the funding's being received has made them... it's almost made them dependent on the system as well, because they receive just enough money to be able to provide the basic service which is a care type service [in the disability sector]. Going forward [to the National Disability Insurance Scheme], the funding model that exists now isn't going to work. It can work, it's not that it can't work, it can work, but I think the expectations of the type of service need to be increased, but in doing that too, the organisations need to have a little bit more funding as well. Now I'm not sure how the government or the department will be able to manage that. The way that we are going to manage it is we are trying to achieve some economies of scale by trying to have a larger service.

[T]he whole funding policy structure and arrangements are acting against the smaller agencies which are disappearing at an incredible rate and the tendering processes are so difficult and horrendous. I understand with the [Funding Programme] that quite a number of smaller agencies just didn't tender because it's all too hard. So, we might see some really good [...] services go out the window. So, it's... I think it's still linked with independence and the viability or sustainability of the sector.

Interviewer: That was something that I had wanted to ask you about; about whether there were different challenges for smaller and larger organisations. You've identified a few there. How do you think that would impact on the sector if – as you say – small organisations disappear and we're only left with the larger ones?

Interviewee: I think that probably the smaller organisations generally have found a niche of some kind to, they're probably sort of one-service agencies which are able to deliver an effective service in a local region for a

particular client group. Therefore you lose that highly committed expertise and then it ends up being taken over by a larger, these ever-increasing larger agencies and I think sometimes when that happens, if they don't have a management model which respects that service and the way it's delivered, it ends up losing some of that particular skill and I think that probably with the bigger and bigger NGOs if they start to look like government departments run in more autocratic ways well they start to lose that flexible delivery on the ground. So, we do need, I believe we do need to keep these non-government organisations. Now, I know that some of them end up, because of the reporting, accountability, and compliance requirements, you end up becoming part of, still are incorporated in their own right, but they get attached to a large non-government organisation which acts as an administration bureau for them and leaves them still relatively independent in their service delivery and I think that's a very good model.

[There] was a funding stream that was made available to the community sector for many years and was virtually unchanged so it just rolled over year after year for a long time. So it was certainly in need of review. The government department did review the funding and I think one of the purposes of that review was to reduce the overall funding, but also to realign the way that it was structured. ... So it was very clear that there was only so much money available for each region and the way that the tendering process was structured meant that local governments, for instance, there was \$870,000 made available to one region, the one local government in the region applied for \$460,000 of that and there are several local governments in the region. Now they had five or six people to work on their tendering process and they have established services and they will be in a much better position to put in a good tender and a solid tender and a tender that is very hard for the government not to fund, compared with small, independent, organisations with part time employees that don't understand the tendering process and may not necessarily have put in a good application, a good tender but also might not be able to sustain their services if it is not funded as they need them funded.

One participant described the way an erosion of funds that had occurred over time could be seen to lead to a merger or amalgamation with a larger organisation as a natural solution. For this participant there was nothing natural or desirable about such an outcome:

[Y]ou know, we've had direct threats of, you know, you're not doing very good work and you'll lose money and we have lost and we see... we had our funding from last year stayed the same as it was the year before, but of course that means we have less because we had all these other increases, so we lost another staff person this financial year just gone. So, we're just like, well, we're going to get the funding again for next year and it will probably be the same which means we're going to lose someone again, and you get to a point where it's not viable you know, to have two people, doing what? You know, what do you actually do with such a small number of people and so, there's a really good case then of well, if it's infrastructure, why don't we plonk you inside of a big organisation who's got all that infrastructure, and that would be awful.

While there is no consensus view in the interviews about the implications of mergers and amalgamations, and some research participants are positive about potential efficiencies gained for service users, the idea of amalgamations and mergers is often linked to a loss of independence:

Interviewee: I strongly feel that their independence or their integrity is compromised, because the people who ultimately manage and make recruitment decisions don't have a really strong understanding of that programme and this programme, and this programme here. They've got a very good, you know, kind of, stand-back, big picture look, but it compromises the...you know, from where I stand, it compromises the amount of professional development that people might be able to access, the amount of supervision they might be able to access, which impacts on the quality of the work they can do.

And that's because the large service is running all of these programmes, and the focus then becomes a bit more on the big picture structure, rather than on the assuring that the individual service provides what it really needs to provide. And I think the same could happen [here] you know, I feel there's a bit more of a push towards looking at larger services operating other services, and again, I think, well, does that mean that we won't be able...? Would that mean we wouldn't be able to say some of those things that we currently say, because that would no longer be a priority of the organisation, because the organisation runs ten other programmes, and you know, the priorities shift in doing so?

[...]

You know, and I guess that's part of that independence, that sort of thing about, why are we here? Why are we doing what we're doing? We're doing it to support this group of people; that's what our focus should be, but if the decision-making is happening way up here, at this level here, by the time it filters down, there might not be many resources to do that well. So I definitely think it's a live issue. I mean, I could be wrong, but it appears to be coming through a lot of the agenda of meetings I've been going to.

As well as commenting on the risks for smaller organisations created by the tender process, some participants identify risks for the sector if small and in particular, specialist, organisations are lost as a consequence. A loss of independence for the sector is frequently highlighted as a concern:

Interviewee: I can't see how smaller organisations actually get... like if you look at a small service [...] of five or six people in a small team having to address all the compliance, I just don't know how they could do it. And I think it's an issue, and I think those services are quite specialised, and I think we've seen that shift from a lot of small niche organisations going or merging. And I don't necessarily think that's a good idea. I don't think bigger's better.

Interviewer: Why is that?

Interviewee: Well, because I think [...] a lot of people have this focus on growth, and I don't. I just think do what you do well. And I think there's some, as I said, they're small organisations that perform a very niche function, and they do it really well. And just to get swallowed up by a..[large organisation] I think you lose it. [...]

Interviewer: And so the implications of that are a loss of specialist...?

Interviewee: Yes, yes, and just forming into a big organisation. I mean, if, you know, we could possibly merge and take on some of those specialist services, but I think they lose their value base and how they started. And particularly feminist-based organisations started from this particular base, and just to merge into a bigger organisation, sometimes it's not always the right fit. But I think there should be more of, I mean, for us [large organisations], I think we have a responsibility to small organisations to share what we have, and we [participant's organisation] always do that.

There's a lot of discussion about the future of the community sector and around large business, small services and mergers, etc. So there's a sense... but I guess I ultimately would link that to funding, because there's limited money, so the government is needing to be more transparent and careful about how it does it [funds services]. But then the sector are then looking at, well, how can we have more efficiencies? But I worry that in terms of trying to be efficient we lose some of our independence. So there are, within the sector, there are some people who are saying, 'Well, hey, we can have this mega service that does all of these things'. What I'd certainly see as a specialist service, we'd lose our independence if we became part of a one big mega-community sector.

Interviewee: I think that small, independent [organisations] provide the best value for money. They are the most efficient delivery of community, particularly community development services, but also other community services that support vulnerable people in the community. So that would be a sad day. Also because they are small, they are local, they're really responsive to the immediate neighbourhood. A larger NGO, and the large NGO's do great work, but they are institutions and they are not necessarily immediately responsible on a neighbourhood level.

The only real thing that concerns me about the way in which the sector is changing and the expectation that services are going to have to be less dependent on block funding, or on government funding, are more independent is what you get is you get small organisations like the one that I work in, we've never really had a business emphasis here, it's always had that, sort of, touchy feely, kind of, community service, college, kind of feel which won't take us too much further. So my biggest concern is smaller organisations that do have some great services to give, I do worry that they won't be able to become independent quick enough in order to survive the really, really large organisations that we've seen come through. [...] The biggest risk of those organisations not existing in the future is we will end up with a very large and cumbersome wheel of service that rolls through the nation and has non-localised service.

Some research participants identify the trend to mergers as impacting specifically on the diversity of the sector and this loss of diversity was linked to a weakening of the sector. The quote below is illustrative:

Something I didn't mention before probably was around the recognition of the diversity of organisations and that there's strength in, the actual strength is in the diversity and so, I think there is sometimes this perception that a larger organisation really can provide it all and fill any gaps there might be, but not that I'm hopelessly biased or anything, but it's a really important place for the small grass-roots organisations in community strengthening.

I think the independence of your own organisation within a sector certainly strengthens the capacity for our community to have choice and control about who they receive their service from, and how they receive their service, etc.

Interviewer: Just a follow up question, what do you think the consequences would be for the sector if the small organisations -- you mentioned some are actually just closing down -- do you think that there would be consequences for the sector if it continues to lose small organisations?

Interviewee: Is diversity something that our sector thrives on?

Interviewer: That's a question for you.

Interviewee: Well, I think it is.

Interviewer: Yes?

Interviewee: I mean, I'm posing the question because it takes us sort of beyond the independence, but it almost brings us back to the independence. Because if diversity is a good thing, then it's something that should be fought for, and that the, I won't use the word competition, but the capacity for variety actually is a good thing. So we should be investing in that. Small micro business, in an economic development sense, is critical to our whole economy. So why shouldn't the same analogue apply to the community sector, that, as well as your large corporations, the small, conglomerated together and working effectively, is just as much a part? And, very often, what we don't understand is that the small, in that way -- you know, 20 employees and less -- contributes a whole whack of community sector involvement. And probably you've got more of the volunteering through those areas even than the large. Because in the large you end up with employee contracts. In the smalls, you extend capacity by going to the voluntary sector.

A related issue that arises is the potential loss of very small organisations and the implications of this for their contribution to civil society:

And the other thing I think too is that the big community service providers and charities that view themselves as community businesses and you know, have a kind of growth and acquisitions and mergers agenda, what civil society needs is say homes and hubs that can actually provide some institutional infrastructure and support so that your little local group that's interested in art and craft over here or sport or whatever can have some places where some of the supporting structures can sit, but not have this fear of... by sidling up you're going to get swallowed in and taken over. And I think we're yet to see many, many models of that, and that's why I think

we'll continue to have this sense of the proliferation of little organisations that want to maintain their autonomy competing in an environment around these great big whales that are kind of soaking up absolutely everything that they can and there's hostility and fear in that environment.

[...]

So, yes, I think when people think about that stuff around how to survive the future they're presented with this very business orientation and I don't see civil society flourishing in all of that. I think your local tennis club that has all this kind of positive social outcomes, but just thinks it get together to play tennis and needs a little bit of help with managing the finances and the books and you know, runs a tournament once a year. So they've got a bit of cash flow. They need somewhere to hold that. Their committee's you know, maybe not very interested in all that stuff. I think that's the bits of civil society around, we're allowed to do that without being required to be dependent on government's authorisation or risking being swallowed up by big providers that are acting like fairly rapacious corporations really. I mean that's the model. But I don't think people necessarily see a kind of decades-long impact around, if we start to lose some of those things because all of your social capital and social impact research says those kinds of groups are really significant and they're not significant for why they think they've set up. They're significant because of things like connection and yes, and because of the network social capital that they provide for people.

[...]

So I think our social fabric relies on these kinds of groups flourishing, but we're in a time where they're kind of viewed as unviable, you know. They'll haul, the rhetoric is too small, you know, we need bigger, larger and it's all about particular kinds of relationships, service providers to government funders, corporations to big charities, you know, like those are the big relationships where that conversation's happening. All of that other proliferation I think they get wiped out in the mix.

The pressures and tensions that are created by the competitive tender system are seen to raise some specific concerns for what might be termed specialised or community-of-interest organisations. A particular issue that is raised is the implications for Aboriginal community-controlled organisations.

Interviewer: [W]hen you say that the larger not-for-profits, that are not Aboriginal community controlled organisations, are more effective, effective in what way, do you mean?

Interviewee: I think they're effective in the way that they get the money: very effective. I think they write better business plans, better programmes with a little bit of cultural awareness in it, identify three or four relevant Aboriginal staff, whether they're relevant or just Aboriginal people, and say, this is where we become an organisation that is very culturally appropriate for the Aboriginal community, so, we can provide that service.

It's been a debatable thing for a long time and I think it will be one for many, many years to come.

Interviewer: So when that happens, when you have those other organisations moving into that space and competing for tenders and

winning money, how does that impact, what then happens on the ground to impact the Aboriginal community-controlled organisations?

Interviewee: I think one thing, I suppose it demoralises Aboriginal organisations that have been doing it [providing services] for years and they know that other organisations, non-Aboriginal organisations, come in and are then thought about in a better light, with a better direction, from state departments. And their CEOs, some of their CEOs are very high profile people that have just fallen out of government and fallen into Chief Executive Officers jobs, so, you know, the barriers are already broken down to achieve what they've been established to do, so...

It's not just demoralising for the Aboriginal organisation, but for the people that they serve, because there's not many... not many Aboriginal people who want to get picked up by other organisations that are aligned to church or drug and alcohol programmes, that are non-Aboriginal. So it... and I think, again, it has to do a lot, for us, in the sense that we need to be a lot more professional in the way that we deliver our services, and a lot more professional in the way that we promote our services.

In some interviews the trend to fund larger organisations was attributed to government practices and preferences:

[T]here's a part of the whole existentialist philosophy which I'm really fond of where Jean-Paul Sartre said that two... that a couple getting together are drawn to each other by their distinct individual qualities but then they set about trying to make each other more the same, the same as each other, and I think there's an element of that sometimes with government, that they want the community sector to be more like government, you know, conform to the systems. And I think some of them have pushed more recently to fund less agencies and the preference may be to fund larger agencies has to do with feeling more comfortable with something that looks more like a government bureaucracy.

The idea of becoming 'like' the government or public sector was connected to independence as the sector was frequently defined as needing to be separate from and independent of government in interviews.

I imagine and believe that's the whole point of having a third sector, is its level of independence and I wouldn't say, impartiality, because it's not, but certainly it's difference from government, supposedly, it's difference from government.

When community [organisations] become quasi-government, which I've seen in other countries, people... the public lose interest immediately. People... the public have been giving funds and contributions and donations to charities and community groups because they know that they have been complementing and supplementing what the government cannot do. The Government cannot have someone knock on the door and enter in on every elderly [person] in Australia; it does not have the resources. And even if they have the resources [...] they're not going to do it in an efficient and effective manner, and if they do, it will be very costly, very, very costly.

And therefore, if charities become quasi-government their terms and the red tape will apply to charities. And therefore, any public citizen will say,

why should I give my money to a charity that's a division of the government? I'm paying the government already my tax – why should, on top of that, I pay a charity to do the job of the government? That's my limited and humble view. [...]

To me, the fibre – Australia is well developed because, to me, there is a fibre between the government, the community organisations and groups and the private sector. If one of these three pillars become closer to the other pillar the balance will be lost and the fibre will be lost.

6. Comparing understandings of independence and recommendations for future action

The aim of this project is to explore the ways independence is understood in ACNC legislation and organisational practices and to consider whether this maps on to, or is consistent with, sector understandings of independence. The ultimate goal in doing so is to make recommendations for action that the ACNC could take to better realise Object 2 of the ACNC Act: *'to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector.'* Towards this end Chapter 3 provided an analysis of the ways in which independence is conceptualised and defined in the ACNC legislation. It demonstrated that the implicit definition of independence in ACNC legislation and formal practices is of organisational autonomy and freedom from constraint and from undue interference, primarily interference from government. The analysis highlighted that the understanding of independence as organisational autonomy is informed by a concern with the capacity to maintain independence of voice in public advocacy.

Chapter 4 analysed understandings of independence from interviews with sector representatives undertaken in Canberra and in SA. The sector interviews establish three main definitions of independence with participants explicit in describing the ways in which they define independence. The three definitions of independence are: freedom to advocate or freedom of voice; independence as organisational autonomy; and financial independence through multiple funding streams.

It is apparent from the analysis that the understandings of independence held by the sector largely map on to the definitions held by the ACNC. In both instances independence is defined to include organisational autonomy and freedom of voice. Furthermore, in both the views of sector representatives and in the ACNC legislation these definitions, while distinct, intersect in important ways. Most significantly, having a reasonable degree of organisational autonomy is seen as necessary to the exercise of free public voice.

While the understanding of independence held by representatives of the sector, largely map on to the definition(s) of independence in the ACNC legislation, there are also some important differences. Most notably, the ACNC legislation is somewhat less expansive in defining independence. The definition identified in the ACNC legislation does not include an account of financial independence. Additionally, limitations to organisational autonomy tend to be constructed narrowly as the consequence of direct, deliberate action. By contrast, financial independence is a key way that independence is defined by the sector representatives. Furthermore, organisational autonomy is seen to be impacted by a wide and diverse range of issues that are not all reducible to the conscious and deliberate actions of particular actors.

Building on the analysis already provided in the report, this chapter has a three-fold purpose. The chapter provides an analysis of sector representatives' views on the capacity of the ACNC to support and sustain an independent NFP sector. It also explores the differences between the ACNC legislation and sector representatives' understandings of independence. These two themes inter-

relate and it is argued that the differences between sector views and the ACNC legislation in understanding independence helps to explain why some sector representatives do not see the ACNC as having capacity to support and sustain an independent NFP sector. Despite the ambivalence of some sector representatives on this point, the overall findings of this project are that there are activities and actions within the remit of the ACNC that will strengthen and support the independence of the sector. The third aim of the chapter is, therefore, to set out recommendations for future action and these recommendations are elaborated upon throughout the discussion.

Recommendations

- Clear advice about the existence and the future of the ACNC should be widely distributed to the sector with a particular emphasis on reaching small and/or largely voluntary organisations.
- The ACNC undertake research to quantify the current administrative burden arising from the different and overlapping jurisdictions that govern the NFP sector and the impact of this on organisational autonomy. This quantitative analysis should serve as a benchmark for future changes in regulatory arrangements and improvements in administration.
- The ACNC undertake additional communication with the sector regarding the work it is doing to communicate and to clarify the governance standards.
- The ACNC explore the feasibility of developing a database of registered¹² governance and professional development support providers that could be drawn on to develop state and territory specific fact sheets which list governance support providers. Fact sheets with lists of professional development services should then be made available to newly registering charities/NFPs as part of an information package upon registration.
- The ACNC engage/support further research that investigates the independence and sustainability of small NFPs in the current and emerging operating environment.
- Object 2 of the ACNC Act needs to be more clearly communicated as an integral part of the ACNC legislation and the role of the ACNC to the sector, to government, and to the public.
- The ACNC should engage in a public education campaign about the legitimate role of advocacy undertaken by the NFP sector. The campaign should facilitate greater awareness of recent legal and parliamentary decisions undertaken recognising the role of advocacy in NFP work.

¹² That is, registered by a sector body like the Governance Institute, for example.

6.1 How does the sector see the ACNC as supporting and sustaining independence

As part of the interview schedule sector representatives were asked direct questions about the ACNC, what they understand its purpose to be, and in what ways they think that it does and/or could support the independence of the sector. Responses to this series of questions vary, with some research participants indicating that they are very aware of the ACNC and very engaged with its work, and other research participants unclear about the role of the ACNC. Overall, however, responses to this question are constrained by a lack of deep knowledge of the ACNC. As elaborated more fully below, some sector representatives are also ambivalent about whether the ACNC has the capacity to address the issues impacting on the independence of the sector as they themselves perceive them. In part, the ambivalence about the capacity of the ACNC to support and sustaining an independent NFP sector arises because of a lack of knowledge of the ACNC. On analysis, this ambivalence is also shown to be predicated on differences in understanding and defining independence.

6.1.1 Sector knowledge of the ACNC

The knowledge of the ACNC that representatives of the sector demonstrate varies considerably. Some research participants have very little knowledge of the ACNC and several no knowledge of the ACNC at all:

I have very limited information apart from registering my charity and [...] completing the annual financial statement¹³ online. I'm not really fully aware of what they do and the role... the contribution they can make.

Additionally, some sector representatives are unclear about the future of the ACNC and this uncertainty seems to impact on perceptions of the efficacy of the ACNC to meet its remit:

Yes, look, I haven't seen the benefit. I haven't seen, you know, any red tape reductions. And I thought this was about cutting a lot of red tape. And I know it sort of started, but I hear that they're going or possibly going, so I don't... I don't have a fixed view...

Interviewer: Have you had the experience or could you see the capacity for a body like the ACNC to support and sustain the independence of the sector in any ways?

Interviewee: There may be but I don't know quite how, because I don't really understand where their role's heading. So it's very hard at this stage.

Other research participants are very aware of the ACNC and very supportive of its work:

13 The interviewee likely is referring here to the Annual Information Statement.

[I]n the short life it's had, I think the ACNC has actually shown a lot of promise, and I personally am and will be supporting it to maintain and thrive.

In terms of participants involved in this research project, smaller organisations are less familiar with the ACNC than larger organisations.

A key recommendation arising from the project is that clear advice about the existence and the future of the ACNC should be widely distributed to the sector with a particular emphasis on reaching small organisations.

6.1.2 Red tape undermines organisational autonomy

When asked how the work of the ACNC could support and sustain an independent sector some research participants mention the issue of red tape reduction which is, in fact, Object 3 of the ACNC Act: *'to promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.'* Red tape reduction may not seem to have a connection to independence, but for many research participants there was a very clear connection. This is because, as discussed in Chapter 4, one of the ways in which independence is defined by sector representatives is as organisational autonomy. 'Red tape' – defined broadly as onerous or duplicate regulation and reporting requirements – is seen to erode organisational autonomy and, hence, erode independence. Efforts to reduce unnecessary red tape are therefore seen as having a positive impact on the independence of the sector.

[Responding to the question do you think that the ACNC has the capacity to support the independence of the sector]

I would say, absolutely. Around the red tape reduction, I think hugely, you know... if they were able to navigate paths through that, then that would be a huge help. Just, you know, when you hear that some of the Commonwealth departments and... I think in Victoria they're working towards two. It's just a two-page funding agreement and we think that is just so sensible and everything else that goes around red tape and advocating for allowing... for effective evaluation in the not-for-profit sector and innovation, which goes hand in hand, it seems.

While red tape reduction is identified as a useful goal that would support independence, some research participants suggest that the ACNC has limited capacity to effectively reduce red tape. An issue frequently identified as impeding the ACNC on this point is the fraught relationship between the states and the Commonwealth:

Interviewee: Well, it's supposed to be the one-stop shop. It's supposed to be the conduit that captures all data, statistics, relevance of charities and not-for-profits, and therefore serves that area by having absolute relative data, relative comparisons, relative benchmarking, is the checking mechanism that everybody's doing the right thing, and indeed is supposed to cut red tape with everything we have to do. So it's supposed to be a useful commodity and it's less than useful.

Interviewer: And why is that?

Interviewee: Why is that? Because I think with the two layers of government that we have to face at all times, it was actually set up to fail in the context that the Feds [Federal Government] said let's go ahead and try it and see even though the states weren't on board, so there was going to be disparity in regards to what was happening.

[I]t's always tricky when you're looking at something that involves the federation, and I guess part of the problems with the ACNC up till now has been that there's a whole body of state regulation [...] they're up against it, and some governments [...] have been very proactive and said, 'Yes, we want to harmonise things so we end up with a, you know, single way of doing business as far as possible.' But that hasn't been the case across the board, especially with the conservative state governments...

It seems clear that, from the perspective of research participants, the potential to link up government jurisdictions in order to streamline reporting and qualification processes needs to be further explored. While the work of linking up regulatory systems falls outside of the remit of the ACNC, there is scope for the ACNC to support research that documents the existing implications of the dual regulatory system and quantifies the administrative workload it generates in order to benchmark regulatory burden as a way of monitoring the experience of the sector. Red tape and the administrative burden that it creates impacts on the organisational autonomy of the NFP sector, and supporting and sustaining the organisational autonomy of the sector sits squarely within the remit of the ACNC as established in Chapter 3.

This work would not encroach on the autonomy of the states and territories and their capacity to regulate the NFP sector, as it would not make recommendations for state and territory governments to follow but simply serve as a benchmarking document. It should also be designed as a resource that provides national comparisons of best practice in regards to regulation. Many of the states and territories have existing 'compacts' with the NFP sector and have made their own commitments to reducing red tape. A project of this type would complement the work already undertaken in the states and territories.

A second recommendation is that the ACNC undertake research to quantify the current administrative burden arising from the different and overlapping jurisdictions that govern the NFP sector and the impact of this on organisational autonomy in order to serve as a benchmark for future improvements.

6.1.3 Governance and smaller organisations

Another area where the ACNC is identified as having a further contribution to make in supporting and sustaining an independent sector is in supporting, in particular, smaller organisations to maintain their organisational autonomy through the governance standards and by providing information regarding available sector development support:

I think there's very much a role for the ACNC to build capacity, to build the capacity of the sector. You need to get your governance stuff in place.

So at the end of the day you want, we want to create mechanisms that enable small charities, new charities to learn and do the business in an effective and efficient manner. Independence is good in itself; however, supporting community groups, along with independence brings a value. And small charities and new groups may say, well, we'll have independence, but we'll have some guidance; we'll have not holding hands, but at least we'll have some guidance on what to do, where to go, how to do, to be a): enforcing the laws and the legislations, and, b): accountable to the public, and, c): really flourish and make a serious and significant contribution and impact on the people we serve. [...]

[I]ndependence could be strengthened by providing some resources, from both ways – from the Government and also from big organisations to support new charities, and help them – not controlling their decisions, but be there to provide advice when they need to. At least they know where to go, who to contact for what.

It is in fact beyond the remit of the ACNC to provide any direct sector support, but in establishing governance standards which all registered charities must comply with, the ACNC does have the capacity to provide comprehensive information about the governance standards and to document and distribute information on third party organisations that can support organisations to meet the governance standards.

The ACNC already provides information on the governance standards but this project has highlighted an existing area of unmet need in terms of organisations being aware of the standards. Failure to meet the governance standards undermines not only the capacity of an organisation to maintain its independence but ultimately undermines its future viability.

The third recommendation of this project is that the ACNC undertake additional communication with the sector regarding the work it is doing to promote and clarify the governance standards.

Additionally, it appears to be the case that current charities newly registered with the ACNC do not receive as part of the registration process any advice on where they can go to access governance and professional development support services should they require them. This becomes a concern in a context where small organisations are not connected into industry groups or peak bodies and may have no awareness of how they can meet the governance requirements and maintain their organisational autonomy effectively. Ensuring that organisations are aware of the governance standards and, moreover, are aware of organisations that they can contact that are able to provide them with operational and strategic advice and professional development is therefore of fundamental importance.

It would be imperative that any information provided by the ACNC clearly state that there is no obligation for NFPs to contract private providers as part of their obligations under the governance standards. However, providing this level of information to organisations who may need it, would support organisations to 'get their governance right' before running into difficulty or trouble. It could also

potentially serve as an audit of the number and extent of professional development services available to NFPs in the different states and territories.

The fourth recommendation of the report is that the ACNC look into the feasibility of developing a database of registered governance support providers that could be reproduced in state and territory specific fact sheets which list governance and professional development support services. The fact sheets with the list of professional development services would be made available to newly registering charities/NFPs as part of an information package upon registration.

A specific focus of this project is to investigate whether and how organisational size intersects with independence. While there is no consensus view on whether small or large organisations are better able to sustain their independence there is a common view that the viability of smaller organisations is in doubt in the current funding setting. Many of the participants state that the future of small organisations is threatened by the competitive tender process and the increasing requirements for quality systems standards. In the context of these escalating pressures smaller organisations are seen as being at risk of losing their independence due to the expectation that they merge with larger organisations. Importantly, concern for the future of smaller organisations is not only expressed by research participants from small organisations, but also research participants from large organisations. For many interviewees maintaining small NFP organisations with direct ties to communities is seen as fundamental to the nature of sector. Some participants identify this issue as falling within the scope of the work of the ACNC:

Something I didn't mention before probably was around the recognition of the diversity of organisations and how there's no... that there's strengths in... the actual strength is in the diversity. I think there is sometimes this perception that a larger organisation really can provide it all and fill any gaps there might be, but... not that I'm hopelessly biased or anything, but it's a really important place for the small grass-roots organisations in community strengthening and so I think if the ACNC could get that message across, it would be a really useful message to have.

The ACNC is not an advocate for the sector. But given that organisational autonomy is one way in which independence is defined, it is within the remit of the ACNC's work to initiate research which explores these concerns about a loss of organisational autonomy and the resultant potential loss of diversity arising from the loss of small community NFP organisations.

A fifth recommendation is that the ACNC engage in further research specifically investigating the independence and sustainability of small NFPs in the current operating context.

Additional recommendations arising from the interviews on this issue include: designated government funding for specialist and community-of-interest organisations; and developing tender systems which include consultation mechanisms facilitating equal partnerships between small and large organisations. These recommendations are important, however, they fall outside of the remit of the ACNC.

6.2 The importance of definitions: understanding the role of the ACNC

As discussed at length in Chapter 4, organisational autonomy is one of the key ways in which independence is defined by sector representatives. Organisational autonomy is also the key way that independence is defined in the ACNC Act. While there are continuities here in the definition of independence as organisational autonomy there are differences in understanding what *challenges* organisational autonomy.

In the ACNC legislation, as made clear in Chapter 3, the focus is on protecting organisations from direct interference. The Revised Explanatory Memorandum makes this explicit:

5.40 The governance standards cannot prevent a registered charity from undertaking an activity where that activity furthers, or is in aid of, its purpose, and that activity is advocating or attempting to change the law or government policy except where that activity is in breach of an Australian law [Subsection 45-10(6)] [from original source]. This will protect the independence of registered entities from inappropriate Government interference, and ensure them sufficient autonomy in carrying out their operations by ensuring the governance standards cannot limit a registered entity's ability to make its own decisions on how to best meet its mission without undue influence and control from the Commonwealth Government and its agencies. (Revised Explanatory Memorandum: 62-63)

The protection imagined here is a protection from direct actions which would lead organisations away from their mission. On this account, organisational autonomy and freedom from interference has a fairly narrow meaning – it is freedom from direct, conscious and deliberate action which would interfere with an organisation's capacity to realise its mission.

By contrast, in the interviews with sector representatives, a far wider range of issues are identified as undermining or eroding organisational autonomy, including the competitive tender process and the reaction within the sector to increased competition and fewer funding opportunities. These are not issues that arise necessarily as a result of conscious, direct or intentional interference in the mission of organisations. Instead, they refer more broadly to general trends in the policy settings in which NFP organisations operate. This discrepancy in defining independence and what threatens it may help to explain why, when asked if they felt that the ACNC is an institution that can support and sustain the independence of the NFP sector, some sector representatives state that they do not think that it can.

As indicated above, research participants do identify areas of work in which they understood the ACNC to have a role in supporting and sustaining an independent NFP sector. However, in some instances, the definition of independence and the range of complex issues that had been identified as impacting independence leads research participants to consider the remit of the ACNC as too narrow to have an impact:

Interviewee: Well, I think there are things that could be done, but I mean it seems like that's a really big scope, but in some ways, what they're doing is

limited. I'm not really seeing it... I'm not seeing how us reporting to the ACNC can possibly achieve such a broad scope, you know, as support innovative, independent, robust... I think it's good to have something that is a champion of the sector; I'm not quite sure how the ACNC could or would be able to do that. But that might just be lack of knowledge about it.

It's, you know, the whole purpose of the ACNC is almost an antithesis or incongruent to there being an ACNC. I know there's some dots I'm not quite joining in my head. I don't see... I feel like it's been pitched as something that's going to be good for the sector and good for us, and good for the community and I just can't see it right now. It's a data base, it's more reporting. I feel like I'm missing a point somewhere, but I might not be.

Comments such as these reflect an important finding from the project. They highlight the need for additional communication between the ACNC and the sector in order for the sector to understand the remit and scope of the work of the ACNC regarding independence. Object 2 of the ACNC Act clearly establishes the remit of the ACNC to include *'support[ing] and sustain[ing] a robust, vibrant, independent and innovative not-for-profit sector.'* Any difficulties that may arise in 'operationalising' this Object should not lead to it being neglected.

Recommendation six is that Object 2 of the ACNC Act needs to be more fully communicated as an integral part of the ACNC legislation to the sector, to government, and to the public.

6.3 Additional recommendations

Drawing on the entirety of the research undertaken and reported on in this document, several additional recommendations are offered as to how the ACNC can continue to effectively discharge its responsibilities as set out in Object 2 of the ACNC Act. The ACNC has a role in promoting public understanding of charities. This work could be strengthened specifically around two areas: undertaking a public education campaign around not-for-profits and advocacy; and educating the public about the dual role that many NFP services provide as public advocates and participants in civil society and as providers of government services. Trends and developments on this second point have a significant impact on the sector and the general public should be presumed to have an interest in understanding them.

Recommendation seven is that the ACNC engage in a public education campaign about the legitimate role of advocacy undertaken by the NFP sector. The campaign should facilitate greater awareness of recent legal and parliamentary decisions codifying the legitimate role of advocacy in NFP work.

As the purpose of this project is to look at ways in which the ACNC could better meet Object 2 of the Act, the recommendations that have been offered so far are recommendations that fall within the remit of the ACNC. However, given that a finding of this project is that there is some discrepancy between the

understanding of independence implicit to the ACNC legislation and the understanding of independence held by the sector, some additional points of concern that fall outside of the remit of the ACNC are highlighted below.

The research project has found that independence is of ongoing importance to the NFP sector with a strong perception that independence is fundamental for the delivery of robust, vibrant, innovative, diverse and relevant services for people who access social and/or human services. The overwhelming message from the original research undertaken in this project is that independence is threatened in the current operating context. While threats to independence are not new, given the goal of this project this can only be considered a troubling finding and a state of affairs that requires additional research, and more importantly, action.

- The sector, generally, and peak bodies in particular, require more secure and more transparent funding mechanism in order to properly perform their role as public advocates.
- The procurement process as it currently exists undermines collaborative work. Those working in the NFP sector suggest that service users are negatively affected by the existing policy settings which limit dialogue across the sector and between the sector and government. The sector, state and commonwealth governments need to find ways to foster and promote collaboration in the delivery of social and human services that do not restrict the capacity for collaboration or for frank and fearless exchange – both in the private arena and in dialogue with the general public.
- Tender processes need to recognise and fairly reward the unique contribution that specialist, community-of-interest and Aboriginal community-controlled organisations bring and award them accordingly in evaluating application processes. The Northern Territory Partnership Principles between mainstream and Aboriginal community-controlled organisations could serve as a starting point for a sector-wide and nation-wide discussion about the trends in awarding government funding designated to programs for Aboriginal people.
- A similar dialogue needs to occur around the role of specialist and community-of-interest organisations with additional research and robust data to track trends over time for these organisations and the outcomes for service users.
- On a final point, service users remain absent from discussions about the NFP sector. Service users have no or very limited involvement in evaluating services and in advising government on how to evaluate tender applications. This restricts the extent to which NFP organisations are truly engaged and connected into civil society.

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