

“THAT’S NOT YOUR ROLE”

STATE FUNDING AND ADVOCACY IN THE IRISH
COMMUNITY VOLUNTARY AND NON-PROFIT SECTOR

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Acronyms

CSO	civil society organisation
CVO	community and voluntary organisation
CWI	Community Work Ireland
ECHR	European Convention on Human Rights
FRC	Family Resource Centre
FSS	Family Support Service
HSE	Health Service Executive
ICCPR	International Covenant on Civil and Political Rights
IHREC	Irish Human Rights and Equality Commission
NGO	non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
SLA	Service Level Agreement

Executive Summary

This study seeks to examine the funding, advocacy and stakeholder engagement environment which exists for the community and voluntary sector in Ireland. A mixed methodological, large-scale survey was conducted online between April and June 2023. The survey findings offer a “snapshot” of the sector’s perceptions of this environment. Those perceptions were then analysed and recommendations offered. Some segmented analysis of the findings was also conducted to ascertain whether perceptions differ between organisations which are involved in frontline service delivery and those which are not.

The Survey

The survey was divided into five sections which sought to gather information on:

- The organisations and the work they are involved in;
- The funding they receive from the State, if any;
- The organisations’ advocacy work and their perceptions of any limitations on this;
- Their participation in stakeholder engagements and how they perceive the usefulness of this;
- Perceived attitudes to their work on the part of State bodies.

The majority of survey questions could be responded to in a “point and click” manner with additional space for participants to provide qualitative feedback if they so wished. The survey was launched in April 2023 and was open for inputs until June 2023. A total of 248 individuals participated in the survey (not all participants answered every question). Based on the wide array of organisations and the geographical scope of participation, we believe that the findings offer a representative “snapshot” of the advocacy and stakeholder engagement environment in 2023.

Key Findings

The headline findings of the survey paint a worrying picture of the state of freedoms of expression and association, and the right to unfettered public participation for the community and voluntary sector in Ireland. The findings also point to an inherent tension between the roles of the community and voluntary sector as service providers and as advocates for causes and communities.

The responses of “homelessness and addiction” organisations were segmented for additional analysis due to their involvement in frontline service delivery.

Our findings suggest that almost 40% of organisations are of the view that their funding has been put at risk because of advocacy they engaged in. This rises to almost half when we look at addiction and homelessness organisations in isolation. There is also a very strong perception amongst participants that organisations which dissent from government policy are at significant risk of having their funding cut, and that the State would prefer if the sector engaged in no advocacy or campaigning at all, despite their right to do so.

The findings paint a mixed picture with respect to the perception of stakeholder engagement. There is a concerning lack of consistency with respect to practices and outcomes.

The findings of the research are analysed in Chapters One and Four.

Recommendations

Based on the survey findings and our analysis, we make seven recommendations, four with respect to advocacy and three with respect to stakeholder engagement. These are presented in more detail in Chapter Five.

Advocacy Restrictions

1.	That all funding agreements between the State and non-governmental organisations are modified to set out clearly that the acceptance of funding does not preclude criticism of government policy or campaigning and advocacy. A complaints mechanism for breach of these agreements should be considered. This may be a role suited to the office of the Ombudsman.
2.	That the Irish Human Rights and Equality Commission, as part of its responsibilities under Section 42 of the Irish Human Rights and Equality Commission Act (2014) develops a set of guidelines outlining community and voluntary organisations' rights and responsibilities regarding freedom of association and expression. These guidelines should take account of best practice internationally as set out by the Venice Commission and the important role these organisations play in service provision. The guidelines should also explicitly set out the role of the sector to criticise government policy, as seen for example in the Northern Ireland Concordat ¹ .
3.	That the State should commission a full investigation into the prevalence of self-censorship in the community and voluntary sector to understand the scope of the issues identified in this study. This should include an examination of the inconsistencies in the State's approach towards stakeholders identified in this study. The investigation should be complemented by a full OECD Civic Space Scan to ascertain other issues in the sector, including the issues this study has identified related to stakeholder engagements.
4.	That as part of the development of the next strategy on the Community and Voluntary Sector, the role of the sector to challenge and oppose government policy as a key function and right is explicitly acknowledged. The strategy should include a commitment to developing an updated collaboration guidelines document with State funding and advocacy as a theme.

¹ [Concordat between the voluntary & community sector and the NI government \(2011\)](#)

Stakeholder Engagement

5.	That efforts are made to improve the communication of stakeholder engagements. This could include, for example, building enhanced stakeholder networks for the dissemination of consultations and other engagements; a dedicated centralised portal for stakeholder engagements; and more effective communication strategies through Public Participation Networks (PPNs) at local level and peer networks at national level. This is particularly important for the inclusion of low-capacity and grassroots organisations.
6.	That realistic and inclusive timescales and engagement typologies are developed for participants, including online roundtables, in-person meetings, workshops, etc. A statutorily guaranteed minimum of six weeks should be allowed for responses to consultations and different participation options should be offered (e.g. online surveys and written submissions) to allow for organisations' individual capacity levels. The possibility of accredited anonymous contributions should also be examined as a way to overcome self-censorship.
7.	Consideration should be given to examining the obligations set out under the Aarhus Convention that the government must take "due account" of issues raised by concerned parties as part of stakeholder consultations and to developing a similar set of guidelines for non-environmental policy development. There is a responsibility on the part of those seeking inputs to honestly outline the purpose and scope of a stakeholder engagement to manage expectations and allow those consulted to properly allocate resources. A report on the findings of the engagement should be published alongside the rationale for accepting or not accepting the findings. The reasoning behind these decisions should be transparent and made available to the public as a matter of course.

CHAPTER ONE

Introduction and Key Findings

1.1 Introduction

Civil society (the collective name for charities, non-governmental organisations (NGOs), community and voluntary organisations (CVOs) and other non-profit organisations) forms a critical part of the democratic and service delivery landscape in Ireland. Many organisations that serve as policy experts and campaigners in their fields are also often contracted by government to provide services for the State.

This practice of “delegating” service provision to charities, CVOs, etc. is most common in the areas of social care; health and ancillary health services; and education. In the dual role of civil society as both campaigner and State-funded service provider there exists a tension due to the power dynamics created by the provision of funding to organisations to provide often critical services.

The acceptance of State funding for service provision often comes with stipulations. The Health Service Executive (HSE) funds many organisations through “Section 39” contracts, which set out restrictions on State funding being used for campaigning or advocacy purposes. The receipt of any HSE funding also opens the door to extensive auditing of finances and governance², which can create a serious resource burden for smaller organisations.

There has long been anecdotal evidence and research of State funders using implicit or explicit threats of funding withdrawal as leverage to silence dissent and curtail critical advocacy by organisations, regardless of whether the funding for this advocacy came from private sources. This type of excessive restriction on advocacy cannot be justified as it runs contrary to the rights of public participation, freedom of association and freedom of expression. The State is obliged to respect these rights under the Constitution, the European Convention on Human Rights and the International Covenant on Civil and Political Rights (ICCPR). All public bodies have a duty to protect the human rights of the persons to whom they provide services to under the Irish Human Rights and Equality Commission Act 2014.³ Disproportionate restrictions, whether official or unofficial, on legitimate campaigning and advocacy efforts of civil society are also counter to the best practices as set out by the UN Special Rapporteur on Freedom of Association, the Organisation for Economic Co-operation and Development (OECD) and the Council of Europe’s Venice Commission.

This issue has previously been examined in Ireland in 2013/14 by The Advocacy Initiative⁴ and in the Civil Voices study of the Australian not-for-profit sector in 2017⁵. While the former study provided invaluable insights, the research is now a decade old and we consider that an updated study provides a useful insight into the current situation in Ireland. A full overview of the theoretical underpinnings of the study and an examination of previous studies is set out in Chapter Two.

As a guiding thesis, this study can be summarised as follows:

The rights of civil society organisations to engage in campaigning or advocacy as part of their legitimate work cannot be disproportionately limited purely because they accept funding from the State. This study seeks to investigate the existence of explicit or implicit restrictions on civil society advocacy imposed by the State on the basis of the receipt of State funding.

To this end, a mixed methodology survey was designed to gather data. This survey was based in part on the Civil Voices study carried out in Australia in 2017⁶ and on the previous domestic work of the Advocacy

² [HSE Internal Controls and Framework Principles](#)

³ [Irish Human Rights and Equality Commission Act \(2014\)](#)

⁴ [The Advocacy Initiative](#)

⁵ [The Civil Voices Project](#)

⁶ [The Civil Voices Project- Final Report](#)

Initiative. The study also took the opportunity to investigate how civil society engaged in advocacy and civic dialogue work and whether they found this worthwhile. We are grateful for the inputs provided by our colleagues in Community Work Ireland and The Wheel on the structure of the survey and for disseminating it to their networks. In all, almost 250 responses to the survey were received between April and June 2023. These ranged from large national organisations with many employees to small local grassroots organisations run by volunteers. A full methodological overview is provided in Chapter Three, while Chapter Four offers detailed analysis with breakdowns of the data to demonstrate response variance. Finally, in Chapter Five we offer conclusions and make recommendations.

1.2 Key Findings

The survey was divided into five sections

- Sections one and five asked some basic questions regarding the nature of the organisations (size, geographic location, type of work they engage in, policy focus, etc.);
- Section two explored government funding and the limits (if any) the acceptance of this funding places on organisations' ability to advocate or campaign on policy;
- Section three dealt with the issue of stakeholder engagements and how effective, impactful and worthwhile organisations felt these were;
- Finally, section four looked at how the sector perceives the government's attitude to their role in the policy formation process and how the sector itself sees its role in this.

A Note on Graphs, Data, Quotes and Terminology

(n=xxx): This refers to the number of respondents who answered the question, i.e., if (n=50) then 50 people responded.

Average Score: The average score is calculated by dividing the total score for the entire graph, by the number of people who responded. This gives us the average response and is represented on the graphs by a vertical red line.

Fig(*): This report is based on the findings of a survey. Not all graphs representing these survey findings are present in this report. Those which are not in this report (but can be found in the full annex, linked on page 10) are indicated with an asterisk.

Mode: The mode is the most frequently chosen response. This is indicated on the graphs by a red circle.

Percentage (%): This indicates the proportion of respondents who selected an answer and is most frequently represented by a solid line on the graph.

For the sake of clarity, percentage figures are rounded to the nearest whole number, this may sometimes mean that graphs do not add up to exactly 100%.

Quotes: The selected quotes presented throughout the report are responses from individuals which were collected as part of the survey. The responses have been amended to ensure that organisations cannot be identified. The full set of responses to these questions can be found in the annex.

Times Chosen: This indicates the total number of times a response was selected by respondents.

Trend Line: The trend line is a blue dashed line that runs across the graphs, and it represents the "spread" of answers. If the line is very steep, it means that most respondents chose answers at the end of the scale where the line is higher.

Vertical and Horizontal Axes: For most of the graphs, the vertical (Y) axis shows the "count" of how many respondents selected an answer. This can either be as a number or as a percentage. The horizontal (X) axis either shows a category or a scale of response. The scaled responses can either have the "0" response at the far left, or sometimes in the centre, where zero is a neutral response.



FULL SURVEY TEXT AND GRAPHS

The full text of the survey, the findings and all the graphs can be seen by scanning the QR code, or by visiting www.iccl.ie/news/thats-not-your-role/.⁷ For the sake of clarity and space, not all graphs referred to are included in this report. They are, however, all accessible at this link.

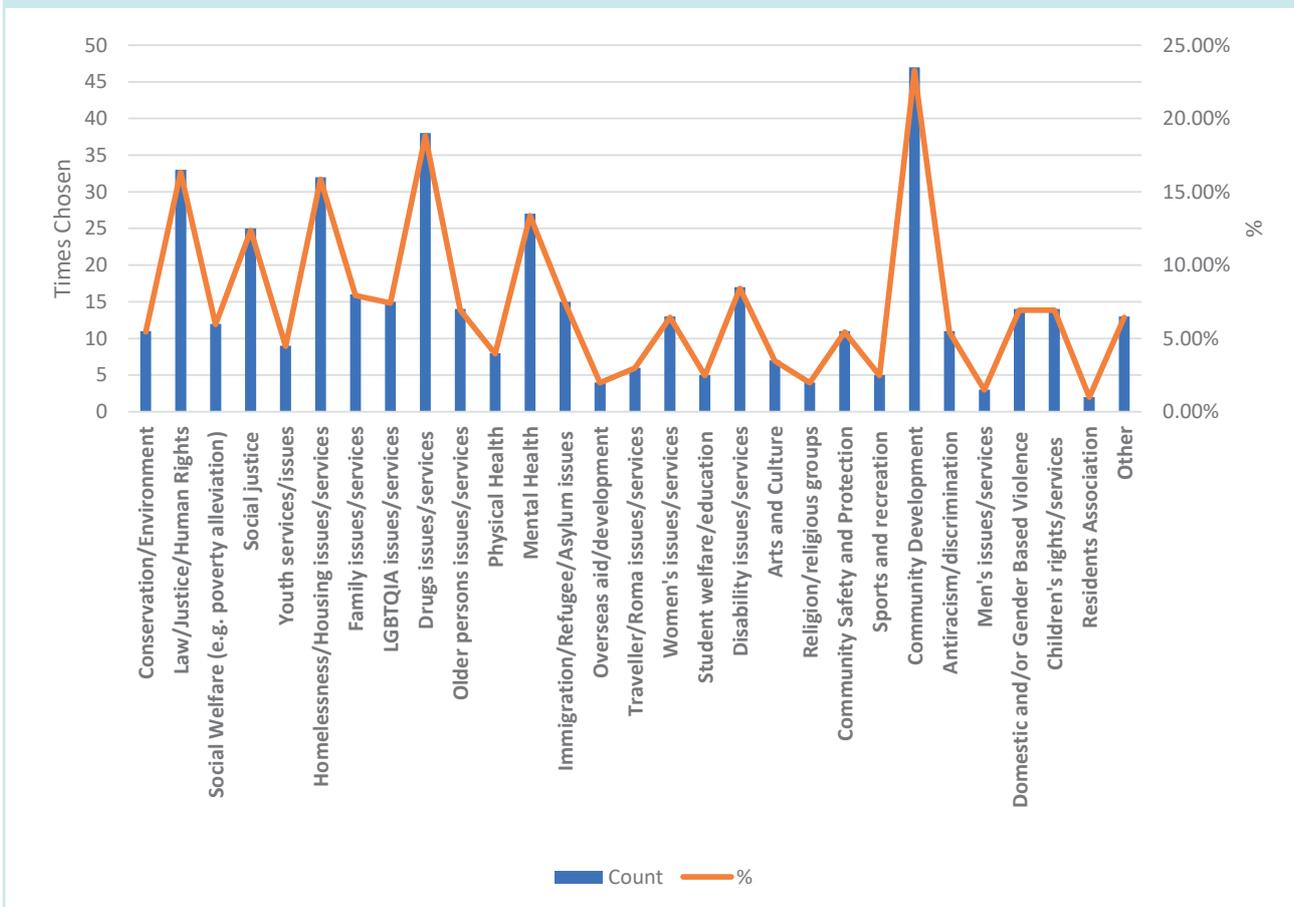
Do any of the contracts your organisation is party to restrict your ability to make public comment on government policy?
What are these restrictions?

“We and others in our sector [...], have been selectively bullied and “punished” for criticising [State Agency].”

1.2.1 Who Took Part and What Do They Do?

248 individuals from organisations across the country took part in the survey. In terms of organisational focus, 23% of respondents selected community development, 19% selected addiction/drugs services and 16% selected homelessness/housing. The full array is set out in Fig 1.1 below.

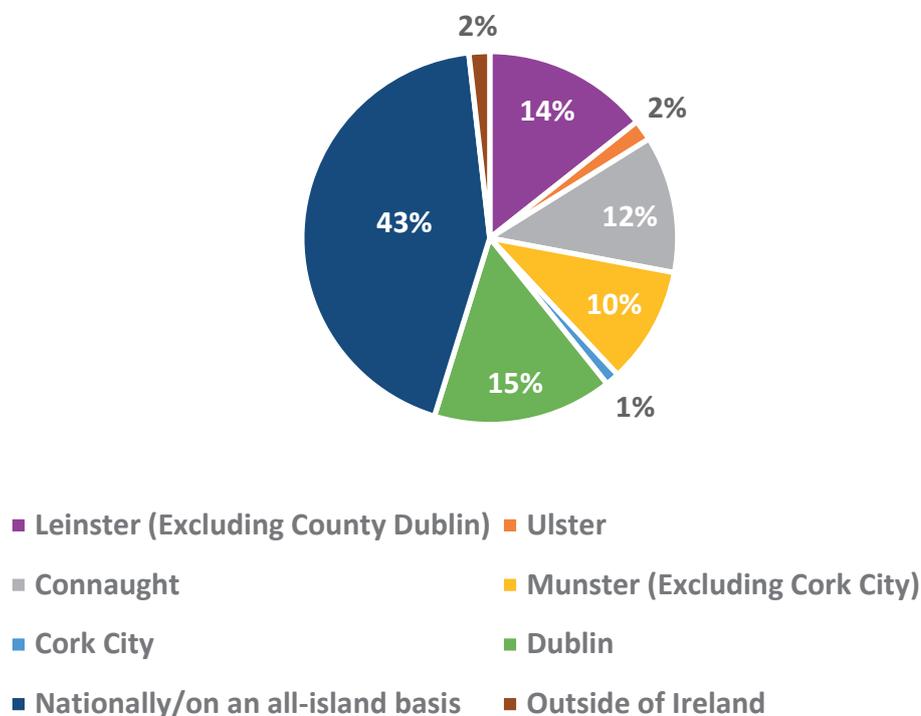
FIGURE 1.1: Organisational Focus (n=202)



⁷ [ICCL webpage for the “That’s Not Your Role” project.](http://www.iccl.ie/news/thats-not-your-role/)

41% of organisations reported their work as being primarily national; 39% as local; and 18% reported having a 50/50 split. 35% of responding organisations have five or fewer employees; 13% have five to 10 employees; 20% have 10 to 20; and 32% have more than 20. The geographic spread of organisations is set out in Fig 1.11 below.

FIGURE 1.11: Where does your organisation primarily operate/what area does it serve? (n = 168)



Participants were then asked about the activities they engage in. The two most popular options were advocacy on behalf of individuals or service users (65%) and service provision (63%). Lobbying or campaigning to change policy or legislation was chosen by 54% of respondents.

When asked about the importance of different activities, the two areas of work most frequently cited as “most important” are service provision and advocacy. Lobbying/campaigning is in fifth place (Fig 1.6*).

These figures demonstrate that responding organisations carry out a significant amount of service provision, while also valuing the work of lobbying and campaigning. This is the critical source of tension in this study. In essence, the challenge for many organisations is how to square the circle of being both a contracted service provider for the State and a campaigning organisation. This tension is further explored in Chapter Two.

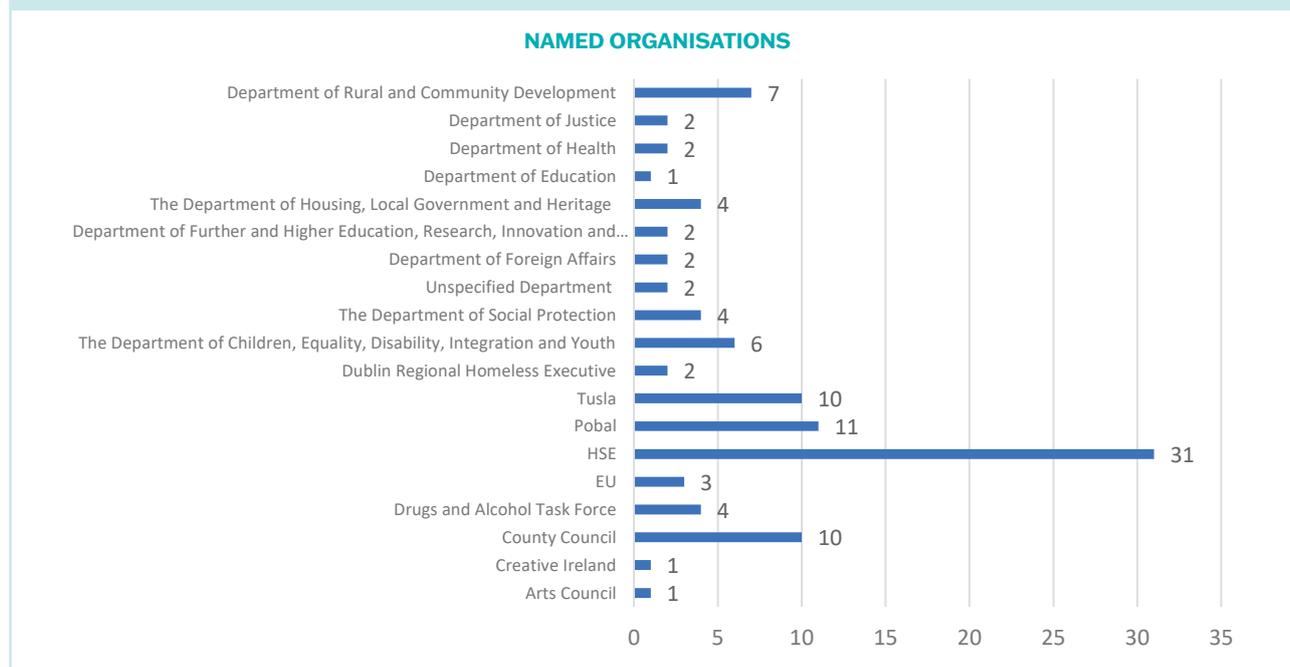
Do any of the contracts your organisation is party to restrict your ability to make public comment on government policy?
 What are these restrictions?

“It has been made clear to us verbally if we kept our current position on a piece of legislation our funding would be at risk. We have also been requested to confirm that none of a particular type of activity includes advocacy.”

1.2.2 State Funding and its Impact

81% of respondents reported that they are in receipt of some kind of State funding. 26% of the organisations in receipt of State funding reported being party to a Service Level Agreement and 14% indicated they were parties to a “Section 39” contract. 56% reported that they had different funding contracts or didn’t specify. Service Level Agreements (SLAs) and “Section 39” contracts are the primary means by which the HSE allocates funding and their prevalence in this study reflects the clear primacy of the HSE as a funder (followed by Tusla, Pobal and county councils) and the delegated “service delivery” model for health and social care. A full breakdown of funding bodies is provided in Fig 2.1(B) below.

FIGURE 2.1(B): If applicable can you specify the type of contract(s) your organisation is currently party to? (n=105)



The study then examined what limitations on activities, both formal and otherwise, the acceptance of State funding entails. While only 29% of respondents reported being told that they should not oppose or make public commentary on government policy, a far higher proportion of organisations are restricting their advocacy for fear of losing their funding. When asked if they’ve ever curtailed advocacy, campaigning or communications for fear of putting their funding at risk (Fig 2.4), or if they believed that their funding was put at risk because of commentary or advocacy they engaged in (2.5), 37% of responses answered yes. As will be demonstrated in Chapter Four, this rises significantly when we disaggregate the responses and look only at respondent organisations working in homelessness and addiction.

These responses point to a perception amongst a significant minority of organisations that accepting State funding necessitates restricting their advocacy, campaigning or communications. This presents a very serious problem with respect to the State’s ability to guarantee an open civic space and associated rights as required by the Constitution, the European Convention on Human Rights (ECHR) and international law.

If significant funding was awarded, did it come with conditions attached to your advocacy? If yes, what were these restrictions?

“Some of the restrictions are not written but implied. For example, for one funding stream it was made clear that we were not to be critical of [State Agency] policy.”

FIGURE 2.4: Have you ever curtailed advocacy, campaigning or communications for fear of risk to your organisation's funding? (n = 105)

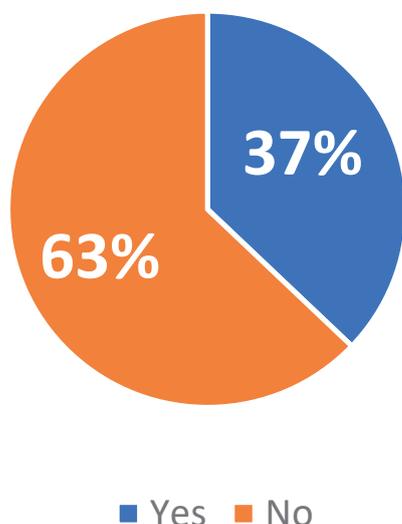
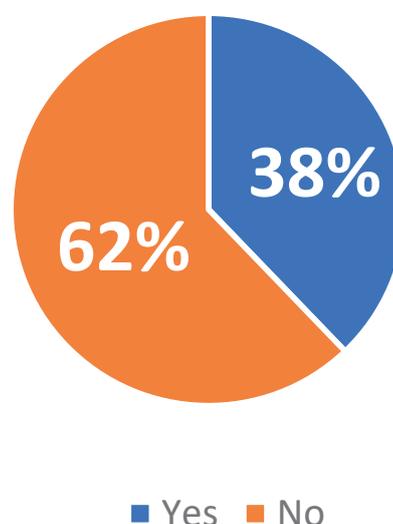


FIGURE 2.4: Have you ever felt that your organisation's funding was put at risk because of commentary, campaigning or advocacy that you engaged in? (n = 103)



1.2.3 Stakeholder Engagement

Stakeholder engagement in policy formation is a key juncture in the relationship between government and the community and voluntary sector, and crucial for the formation of informed policy. This study set out to assess whether the sector believes that government holds consultations in good faith, whether feedback provided during consultations is responded to, and whether the sector perceives stakeholder engagements as useful.

The overwhelming majority (78%) of respondents have been involved in a stakeholder consultation of some sort, however, the research identifies some issues of concern.

Firstly, organisations find it difficult to keep track of policy developments. Almost three-quarters of respondents (74%) reported missing a consultation or other stakeholder engagement of relevance to their work because they found out about it too late.

Secondly, the high level of reported resource allocation given over to stakeholder engagements is not seen to be worth the effort. This frustration is borne out by participants reporting ambivalence about future stakeholder engagements.

While the overall aggregated findings are quite negative, this is not a universal experience. Some participants reported that some government departments and agencies engage with stakeholders in a constructive and positive manner. However, even within the same agencies and departments, there is not a uniform approach to stakeholders and to stakeholder engagement. This points to a lack of clear guidelines or procedures with respect to consultations across and within state agencies.

1.2.4 The Sector's Perceptions of State Attitudes to It

The final section of the survey sought to explore perceptions within the sector of how the State views its work and its role in the policy formation process. The responses are stark.

When participants were asked what they believe the State's view of stakeholder engagement in their policy area is, the average answer was placed at 4.1 on a scale of 0 (actively silencing) to 10 (contributions taken satisfactorily on board). This points to a perception that the State has an ambivalent, tilting towards actively hostile, attitude towards taking stakeholder contributions on board.

These findings are borne out in further questions. When asked if they believed that organisations that dissent from government policy are valued in the policy formation process, 64% of respondents either somewhat disagreed or strongly disagreed. When asked if they believed that their work was valued as part of the policy formation process, 52% of respondents either somewhat disagreed or strongly disagreed.

The survey also revealed that there is a strong belief amongst participants that the State does in fact use funding as a lever to silence dissenting voices; 56% of respondents agreed strongly or somewhat with the statement “Organisations which dissent from government policy risk having their funding cut”. Meanwhile 82% of respondents strongly or somewhat agreed that “The government would prefer if we engaged in no advocacy and only in service delivery”.

1.3 Initial Conclusions

The headline figures outlined in this chapter paint a worrying picture of the relationship between the State and the community and voluntary sector. The findings point towards a high level of self-censorship as a result of accepting State funds which goes beyond the formal restrictions which may be present in SLAs and Section 39 contracts. It suggests a wider culture of either explicit or implicit threats to funding in response to opposition.

While there is significant self-censorship reported across respondents, given the level of State funding provided to organisations delivering services, we would expect to see even higher levels of self-censorship on the part of organisations working in areas such as addiction services and homelessness. We will return to this theme when we look at disaggregated data in Chapter Four.

The findings also suggest that respondents feel a level of ambivalence towards or alienation from stakeholder engagement. The results indicate that because engagement is resource intensive, it is perceived as simply not worth the effort. There is also a sense that the State, or some State actors, are ambivalent if not actively hostile to stakeholders, in particular those who dissent from or otherwise oppose existing state policy.

From a human rights perspective, these findings present challenges. While this research has identified no *formal* barriers on the rights of freedom of association and expression, the findings suggest a culture which is at odds with the State’s domestic and international obligations. The State is obligated to create and facilitate open civic space and this is particularly true for dissenting voices which may oppose state policy. The results point to worrying attempts to use the implication of funding withdrawal to sideline or silence dissenting voices, not only within the policy formation process, but in discourse more widely. While these practices may not reflect official policy, this research indicates that they are present. This would directly contravene the rights protected by the Constitution, the ECHR and the ICCPR, as well as the public sector duty contained within the Irish Human Rights and Equality Commission Act (2014). In the next chapter we will outline the obligations placed on the State with respect to free and open civic space.

Have you ever felt that your organisation’s funding was put at risk because of commentary, campaigning or advocacy that you engaged in? How did this risk present itself?

“[Government Department] official has clearly stated to both the Board and CEO that an organisation in receipt of funding from the [Government Department] is not free to disagree with government policy and implicit in that member organisations of our networks, without having been directly threatened, are reluctant to be seen to take positions that would be at odds with [Government Department].”

CHAPTER TWO

Setting the Scene – Rights and the Irish Context

2.1 Rights in Context: State Funding and Freedom of Association, Expression and the Right to Participate in Public Affairs

Bunreacht na hÉireann Section 40.6 i and Section 40.6 iii set out freedoms in respect of expression and association⁸:

"The State guarantees liberty for the exercise of the following rights, subject to public order and morality: –

i The right of the citizens to express freely their convictions and opinions

*The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavour to ensure that organs of public opinion, such as the radio, the press, the cinema, **while preserving their rightful liberty of expression, including criticism of Government policy**, shall not be used to undermine public order or morality or the authority of the State. [...]*

iii The right of the citizens to form associations and unions. Laws, however, may be enacted for the regulation and control in the public interest of the exercise of the foregoing right. [Emphasis added]

Of note is the explicit provision that freedom of expression specifically guarantees the right to express criticism of government policy. We will return to this later in the chapter.

The European Convention on Human Rights (ECHR) has been incorporated into Irish law by way of the European Convention on Human Rights Act (2003)⁹. In addition, Section 42 of the Irish Human Rights and Equality Commission Act (2014) placed a duty on¹⁰:

"[P]ublic bodies, in the performance of their functions, to have regard to the need to eliminate discrimination, promote equality and protect human rights of staff and people availing of their services."

While Section 42 of the Act makes no distinction as to which human rights are to be protected under this provision, the provision has been narrowly interpreted by most relevant bodies. Reasonable accommodation for people with disabilities, eliminating discrimination against minoritised groups and other forms of social inclusion seem to have been emphasised. This can be seen for example in the topics covered in the six Section 42 implementation pilot studies carried out by the Irish Human Rights and Equality Commission (IHREC)¹¹. Less explored is the idea that the State has obligations with respect to public participation, freedom of expression and freedom of association.

The rights to freedom of expression and freedom of association are protected under Article 10 and Article 11 of the ECHR. The interactions between Articles 10 (Freedom of Expression) and 11 (Freedom of Assembly and Association) of the ECHR are well established¹². One of the seminal judgments with respect

⁸ [Bunreacht na hÉireann Article 40.6 i & iii](#)

⁹ [European Convention on Human Rights Act 2003](#)

¹⁰ [Irish Human Rights and Equality Commission Act \(2014\) Section 42](#)

¹¹ [IHREC: Implementing the Public Sector Duty: Pilot Case Studies](#)

¹² [Council of Europe: Guide to Article 11: Section Part II \(B\)](#)

to these freedoms and the right to public participation was set out in a 2003 judgment of the European Court of Human Rights (Refah Partisi (the Welfare Party) and others v Turkey). In its judgment, the Court noted in paragraph 88 that¹³:

“[...] the Court has previously noted that protection of opinions and the freedom to express them within the meaning of Article 10 of the Convention is one of the objectives of the freedoms of assembly and association enshrined in Article 11.”

It can be reasonably concluded in light of this judgment, that if civil society is not able to freely express its views on the functioning of the State or the development and/or implementation of policy (as guaranteed by Article 10), one of the core protections of Article 11 is diminished. This is because one of the key functions of civil society is to give voice to community, societal and other voices outside of the mainstay of the political process.

The Council of Europe has explicitly set out the State’s obligations to facilitate engagement. Recommendation CM/Rec (2007)¹⁴ of the Committee of Ministers to Member States on the legal status of non-governmental organisations in Europe sets out under Head 76¹⁴:

*“Governmental and quasi-governmental mechanisms at all levels should ensure the effective participation of NGOs without discrimination in dialogue and consultation on public policy objectives and decisions. **Such participation should ensure the free expression of the diversity of people’s opinions as to the functioning of society.** This participation and co-operation should be facilitated by ensuring appropriate disclosure or access to official information.”* [Emphasis added]

While Ireland is party to the ICCPR this treaty is not directly applicable in Irish law¹⁵. It is however instructive to examine the relevant sections of the Covenant. Article 25 of the ICCPR sets out that¹⁶:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;*
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;*
- (c) To have access, on general terms of equality, to public service in his country.”*

This article was further elaborated in General Comment 25 (1996), Paragraph 8 of which sets out that¹⁷:

“Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association.”

Have you ever felt that your organisation’s funding was put at risk because of commentary, campaigning or advocacy that you engaged in? How did this risk present itself?

“Told explicitly that [work] in the area of [topic related to work of organisation] was not to be engaged in.”

¹³ [European Court of Human Rights Judgment \(Refah Partisi \(the Welfare Party\) and others v Turkey \(2003\)\)](#)

¹⁴ [Council of Europe Recommendation CM/Rec \(2007\)¹⁴](#)

¹⁵ [International Covenant on Civil and Political Rights: Replies of Ireland to the list of issues in relation to its fifth periodic report March 2022](#)

¹⁶ [International Covenant on Civil and Political Rights \(ICCPR\) Article 25](#)

¹⁷ [Office of the High Commissioner for Human Rights General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service \(Art. 25\) : . 12/07/96. CCPR/C/21/Rev.1/Add.7.](#)

Furthermore, paragraph 5 of the same General Comment states:

“The conduct of public affairs, referred to in paragraph (a), is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by article 25 should be established by the constitution and other laws.”

In this sense, we can see that the exercise of the right to public participation is one which applies to NGOs and other civil society organisations (CSOs) such as trade unions. In addition, “public participation”, as an activity, is understood in very broad terms to include all aspects of public administration and policy development. Also of particular relevance to this study are the 2018 guidelines of the UN High Commissioner for Human Rights for States on the effective implementation of the right to participate in public affairs. Paragraph 19(c) sets out that¹⁸:

“The legitimate and vital role of civil society actors regarding participation in public affairs should be recognized. The independence and pluralism of such actors should be respected, protected and supported, and States should not impose undue restrictions on their ability to access funding from domestic, foreign or international sources.”

These rights are further outlined in paragraph 31 of the Venice Commission’s 2014 *Joint Guidelines on Freedom of Association*¹⁹:

*“Associations shall have the right to freedom of expression and opinion through their objectives and activities. This is in addition to the individual right of the members of associations to freedom of expression and opinion. Associations shall have the right to participate in matters of political and public debate, **regardless of whether the position taken is in accord with government policy or advocates a change in the law.**”* [Emphasis added]

In essence then, international and regional law and standards clearly outline the right of CSOs and others to express dissent from government policy and otherwise to seek legislative and policy change.

The ability of non-government actors such as CSOs to access financial resources is a key enabler and component of freedom of association. This has been confirmed by the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association²⁰, the OECD²¹ and the Council of Europe²². Furthermore, the Council of Europe Venice Commission Guidelines on Freedom of Association summarises the State’s obligations to organisations in receipt of State funding. Article 215 sets out unequivocally that²³:

¹⁸ [Office of the High Commissioner for Human Rights Guidelines on the effective implementation on the right to participate in public affairs \(2018\)](#)

¹⁹ [European Commission for Democracy Through Law \(Venice Commission\) OSCE Office for Democratic Institutions and Human Rights \(OSCE/ODIHR\) Joint Guidelines on Freedom of Association Adopted by The Venice Commission at its 101st Plenary Session \(Venice, 12-13 December 2014\) pp18](#)

²⁰ [United Nations General Assembly: Human Rights Council Twenty third session Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development; Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai \(2013\)](#)

²¹ [OECD The Protection and Promotion of Civic Space; Strengthening Alignment with International Standards and Guidance \(2022\)](#)

²² [Council of Europe: Legal standards for Non-Governmental Organisations Recommendation CM/Rec\(2007\)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe.](#)

²³ [European Commission for Democracy Through Law \(Venice Commission\) OSCE Office for Democratic Institutions and Human Rights \(OSCE/ODIHR\) Joint Guidelines on Freedom of Association Adopted by The Venice Commission at its 101st Plenary Session \(Venice, 12-13 December 2014\) pp20](#)

"[...] state bodies providing funding to an association should not deprive it of its independence. **The state should ensure that associations receiving state funding remain free from the interference of the state or other actors with its activities.** In any system that establishes state support for associations, 'state capture' must be avoided and the independence of associations must be maintained. An association is not independent if decisions over its activities and operations are taken by anyone other than the members of the association or an internal governing body, as designated by the members. **The fact of having a single or a primary funder does not automatically result in a loss of independence by an association.** However, an association is not considered independent in cases where the government has a wide discretion to, directly or indirectly, influence the decision-making processes of its managers and members, thereby rendering decisions on the establishment of the association, its activities and operations, the appointment of its management or on changes to its by-laws. [Emphasis added]

2.2 The Irish Context: The State and NGOs

2.2.1 The Irish State and Service Provision: The Role of Civil Society

In order to fully understand the role of the community and voluntary sector in service provision in Ireland, it is critical to understand the nature of the Irish welfare state. McCashin and O'Shea give the following description in 'The Handbook of European Welfare Systems'²⁴:

*"[Ireland] is a liberal developmental state focused on integrating Ireland into the world economy. Its social policies, which show marked continuity, modify tendencies to extreme inequalities rather than attempting substantial redistribution or universal social provision. Also, Ireland places comprehensive provision of social services in second place to the transfer payment system, implicitly favouring a growth in private rather than public consumption. **Finally, the welfare state co-exists alongside private provisions which also receive state support.**"* [Emphasis added]

A broad range of State bodies and actors provide funding to the sector. Pobal and local authorities are frequently mentioned in this research, but by far the most cited are the HSE and Tusla. In this section we will examine some of the predominant ways funding is allocated in practice.

The delegation of State service provision to voluntary and community bodies has a long history in Ireland. The 1953 Health Act²⁵ is often cited in literature as the starting point of the sustained formalised delivery of social services through the commissioning of voluntary bodies. The provisions of this Act have evolved over the past 70 years into today's Section 39 contracts, which the HSE describes as follows²⁶:

"Non-Acute/Community Agencies [are] provided with funding under Section 39 of the Health Act, 2004. [...] The Framework allows for a tiered approach to the level of governance and separate documentation is used for agencies in receipt of funding above/below €250,000."

The various Health Acts require the commissioning body, formerly the Health Boards, laterally the HSE and possibly soon "Health Regions"^{27, 28}:

"to manage and deliver, or arrange to be delivered on its behalf, health and personal social services"

²⁴ ["The Irish Welfare System" McCashin, Anthony and O'Shea, Judy \(2009\) as included in the Routledge Handbook of European Welfare Systems: edited by Sonja Blum, Johanna Kuhlmann, Klaus Schubert \(1st Edition\) \(2009\)](#)

²⁵ [The Health Act \(1953\)](#)

²⁶ [HSE Section 39 Documentation](#) (Accessed October 13th 2023)

²⁷ [HSE Health Regions](#) (Accessed October 13th 2023)

²⁸ [HSE Generic Section 39 Service Arrangement](#) (Accessed October 13th 2023)

The HSE lists specific “care group schedules” where Section 39 contracts are grouped by speciality for commissioning purposes. Much of this funding is year-on-year; this embeds a precarity into the funding relationships, makes long-term planning extremely difficult and means job security is not guaranteed.

In their 2023 study²⁹, The Wheel and TASC note that from the 1960s onwards the growth in this commissioning led to a corresponding growth in State funding for voluntary organisations, with the roles of both becoming intertwined in the provision of health and social services.

The 2004 Health Act³⁰ put in place, for the first time, a legal framework for the funding and delivery of “Section 39” services³¹. As of 2023, 25% of the entire health budget is allocated to Section 38³² and 39 organisations³³. In 2017, the voluntary sector was paid €3.3 billion to deliver services, almost a quarter of the HSE’s budget.³⁴ As an example of the dominance of this model of provision, a 2019 report showed that 70%³⁵ of disability services were provided by Section 38 and 39 organisations, with a corresponding level of disability funding (70%)³⁶ going to these organisations. Similar figures can be observed with respect to organisations providing addiction supports.

According to TASC and The Wheel, the voluntary sector is critical for the delivery of services both on their own behalf and on behalf of the State³⁷. The exact level of involvement however is unclear. A 2022 Health Research Board report notes that³⁸:

“The HSE supports the non-statutory sector to provide a range of health and personal social services, including the drug projects supported by the local and regional Drug and Alcohol Task Forces, which receive annual funding of more than €20 million”

The proportion of treatment in outpatient drug treatment facilities provided by the community and voluntary sector is unknown, however, the aforementioned Health Research Board report notes that inpatient treatment is provided mainly through non-statutory agencies.

The State has become increasingly reliant on the voluntary sector for the provision of homelessness services. The legal basis for this partnership is set out in Section 10 of the Housing Act (1988) which states³⁹:

“A housing authority may, subject to such regulations as may be made by the Minister under this section— (a) make arrangements, including financial arrangements, with a body approved of by the Minister for the purposes of section 5 for the provision by that body of accommodation for a homeless person”.

And:

“The Minister may, with the consent of the Minister for Finance and subject to such regulations as may be made by the Minister under this section, recoup, out of moneys provided by the Oireachtas, all or part of any payment made by a housing authority by virtue of subsection (1)22.”

²⁹ [The Future of Public Service Delivery by the Community and Voluntary Sector- Working on the Cheap - Assessing the Need for Pay Restoration to Ensure Sustainable Services](#) The Wheel & Tasc (2023)

³⁰ [Health Act \(2004\)](#)

³¹ [Section 39 Documentation](#)

³² It should be noted that the Act refers to both Section 38 and Section 39 organisations. Section 38 organisations are engaged to directly provide services on behalf of the HSE, while section 39 organisations are independent groups who are contracted to provide services. Despite this, at a practical level, the differences are minimal.

³³ [HSE Dialogue Forum Report March 2023](#) (Accessed October 13th 2023)

³⁴ [Building a New Relationship between Voluntary Organisations and the State in the Health and Social Care Sectors; Paper from the Dialogue Forum with Voluntary Organisations \(2021\)](#)

³⁵ [Disability Capacity Review to 2033: A Review of Disability Social Care Demand and Capacity Requirements up to 2032](#)

³⁶ Collins, Deirdre., Featherstone, Tara., & Moran, Patrick. [Spending Review 2021 Social Care for People with Disabilities: Trends in Expenditure and Delivery of Services](#). November 2021,

³⁷ [National Voluntary Drug and Alcohol Sector \(NVDAS\) Website Launch Statement](#)

³⁸ [Health Research Board: Focal Point Ireland: national report for 2022 – Treatment](#)

³⁹ Housing Act (1988) section 10

The Act sets out that the Department of Housing, Local Government and Heritage may reimburse up to 90% of local authority spending on homelessness services. The growth in homelessness over the last number of years has resulted in increased State funding under Section 10 of the Housing Act. The community and voluntary sector plays a key role in this provision, providing 53% of accommodation for those experiencing homelessness in 2020, in addition to allied support services such as street outreach and social integration supports⁴⁰. The total amount allocated to community and voluntary organisations providing homelessness services in 2022 was approximately €250 million⁴¹.

A third area where the State has engaged in significant commissioning of the voluntary sector is family support services (FSS) under Section 56 of the of the Child and Family Agency Act (2013)⁴²:

"The Agency may, subject to its available resources and having regard to the required level of service identified in the corporate plan or annual business plan and any directions issued by the Minister under section 47 , enter, on such terms and conditions as it considers appropriate, into an arrangement with a person for the provision of child and family services or services provided pursuant to section 8 (3)(b)."

According to an internal departmental report, between 2017 and 2021, 85% of FSS were provided by external agencies for Tusla⁴³. Section 4.4 of the Section 56 grant agreement sets out that⁴⁴:

"The Funding is payable for the provision of the Services only (Pay and general administration, service provision/activity costs). Any other services provided by the Provider that have not been authorised in advance in writing by the Agency shall be outside the scope of this Arrangement ("Unapproved Services") and the costs of the unapproved services and all responsibilities, obligations and liabilities relating to or arising in connection with the Unapproved Services shall be the sole responsibility of the Provider."

The case of FSS is interesting insofar as the vast majority of these services are provided by Family Resource Centres (FRCs). Direct funding to FRCs accounted for 14.2% of Tusla's overall expenditure in 2021 and represented 57.1% of its overall expenditure in the community and voluntary sector for that year.⁴⁵ There are other Tusla funding streams open to FRCs in addition to section 56 contracts, but the vast majority of FRCs are 100% State-funded entities while also being independent actors, a unique position when it comes to the freedom to advocate and campaign.

2.2.2 The Key Tension: Campaigning or Service Provision?

There is a certain inevitability that the dual role of the community and voluntary sector as a significant service provider and a driver of social change will cause tension. One of the most critical functions of the NGO sector is the capacity to advocate, campaign and mobilise on behalf of their constituents. The sector brings the voices of marginalised groups into the policy space, monitors government activities, provides an opportunity for active citizenship⁴⁶ and acts as a critical agent of change. That organisations serve as policy experts on issues and communities while also sometimes representing those communities means that they are ideally placed to contribute to policy formation and deliver services.

The transformation of parts of the sector from a voluntary and charitable basis to State-funded service provider is evident in Ireland and the scale of this was explored in the previous section. It has been argued by Alexander and Fernandez that⁴⁷:

⁴⁰ [Irish Government Economic and Evaluation Service \(November 2021\) Social Impact Assessment Series: Homeless Services](#)

⁴¹ [Department of Housing, Local Government and Heritage: Homelessness Data Local Authority Regional Financial Reports](#)

⁴² [Child and Family Agency Act \(2013\)](#)

⁴³ Madden, Ciarán., Quinn-Hemmings, Dearbhla., & Tully, Luke. [Tusla Funded Community and Voluntary Sector Family Support Services Spending Review 2022](#). Government of Ireland' Research and Evaluation Unit, December 2022,

⁴⁴ [Tusla Generic Section 56 Service Arrangement](#)

⁴⁵ Madden, Ciarán., Quinn-Hemmings, Dearbhla., & Tully, Luke. [Tusla Funded Community and Voluntary Sector Family Support Services Spending Review 2022](#). Government of Ireland' Research and Evaluation Unit, December 2022,

⁴⁶ Alexander, Jennifer and Fernandez, Kandyce (2020), [The Impact of Neoliberalism on Civil Society and Nonprofit Advocacy](#) pp368 as included in Nonprofit Policy Forum Published by De Gruyter

⁴⁷ Ibid pp 376

*“in a neoliberal environment where nonprofits are regarded as primarily service providers, **advocacy has ceased to be a valued organizational activity.** The civic and political roles of nonprofits hold little salience in the now economized third sector (Bode 2014). Advocacy requires organizational resources that are increasingly in scarce supply. **Political advocacy is affected because it is not a program and thus requires investment in infrastructure such as human resources and communications to support engagement with and mobilization of various organizational constituencies** (Lang 2013). The combined trends of marketization, precarity and commodification have progressively undermined the capacity of nonprofits to represent community interests (Feldman 1997; Feldman, Strier, and Koreh 2017).” [Emphasis added]*

These sentiments are reflected in our survey findings. 59% of respondents highlighted a lack of organisational capacity as a “frequent” or “very frequent” barrier to having their messages heard and acted on (Fig 4.16). This is in addition to a strong perception among survey participants that the State would prefer if they only delivered services and did not engage in advocacy or campaign work. 82% of participants either strongly agreed or somewhat agreed with the statement “The government would prefer if we engaged in no advocacy and only in service delivery”.

This was explored extensively in the 2013 Advocacy Initiative report “Funding Dissent: Research into the Impact on Advocacy of State Funding of Voluntary & Community Organisations”. In this report, the phrase “services paradigm” is used to refer to the funding of voluntary organisations to deliver “frontline services only”. This “service only” model implies that advocacy or campaigning is, at best, expendable or, at worst, to be prevented outright. According to the report⁴⁸:

“The precise origin of the services paradigm is not known and cannot be exactly traced: it has never been formally articulated in an over-arching state policy document, but found some expression in the National Economic and Social Council. There had never been a debate or a place where the proposition could have been challenged. One official in a state agency spoke of how there had been a lot of background discussion around it supporting ‘services not advocacy’, but was not aware of where it had actually come from.”

This would suggest that the “services paradigm” may have been a response to the conditions which the State found itself in post-independence, the hostility of the church to State control of health and educational infrastructure, and the tendency to imitate UK policy.

The limitation of the use of funding for “services only” seems reasonable. The State has a responsibility to ensure that public funds are used for their intended purpose. To this end, in many of the contracts, the State does set limits on the use of the funds. The most well-known of these restrictions are those which are included in Section 39 Contracts. Section 4.3 of these contracts sets out that⁴⁹:

“The Funding is payable for the provision of the Services only. Any other services provided by the Provider that have not been authorised in advance in writing by the Executive shall be outside the scope of this Arrangement (“Non-Scope Services”) and the costs of the Non-Scope Services and all responsibilities, obligations and liabilities relating to or arising in connection with the Non-Scope Services shall be the sole responsibility of the Provider.”

⁴⁸ The Advocacy Initiative: [Funding Dissent: Research into the Impact on Advocacy of State Funding of Voluntary & Community Organisations](#) (2013)

⁴⁹ The Advocacy Initiative: [Funding Dissent: Research into the Impact on Advocacy of State Funding of Voluntary & Community Organisations](#) (2013)

Even more explicitly, the Section 39 Grant Aid Agreement for Drug and Alcohol Taskforces sets out under heading 2.6 (ii) that funds cannot be used for⁵⁰:

*“campaigns whose primary purpose is to obtain changes in the law or related Government policies, or campaigns whose primary purpose is to persuade people to adopt a particular view on a question of law or public policy, or which is in conflict (as determined by the Executive) with the stated policy of the Executive; **(This subsection is not intended to affect the Organisation’s right to utilise other sources of funding to raise awareness of issues or to run campaigns on issues of public policy directly related to the Organisation’s work)**”* [Emphasis added]

Despite the section highlighted above and the absence of formal non-State-funded advocacy restrictions, there is no doubt there is a strong perception that the State seeks to actively prevent community and voluntary organisations from engaging in campaigning. This is evidenced in the responses to the survey as outlined in section 2.3 below and more extensively in Chapter Four.

It would be untrue to say that the relationship between these providers and funders hasn’t gone unexamined by the State. Of particular relevance are the recently agreed “Partnership Principles” and the 2019 Report of the Independent Review Group (IRG)⁵¹ established to examine the role of voluntary organisations in publicly funded health and personal social services. While both documents recognise the value of the advocacy role of voluntary and non-profit organisations in social care and health provision in Ireland, they fail to explicitly name the issue of self-censorship attached to State funding. Nonetheless, the Partnership Principles report does acknowledge⁵²:

“The interdependent nature of the Irish system ensures that all actors have a role to play in designing and delivering national policies. Indeed, the new national strategy for the mental health sector was co-designed by the state, service providers and service users. [...] There are evidently differences of opinion regarding how best to achieve improvements in health and social care. At the same time, the shared commitment to a strong and dynamic public healthcare system remains strong.”

The IRG report described the relationship between the State and the voluntary sector as “dysfunctional” and in response a Dialogue Forum was established. As part of its work, the forum highlighted a set of values and principles to guide engagement between the State and civil society which was developed in the 2019 “Sustainable, Inclusive and Empowered Communities” strategy document. One of the listed values (Human Rights, Equality and Antidiscrimination) refers to⁵³:

“A commitment to human rights, equality and anti-discrimination, involving promoting human rights and equality in society and committing to addressing the multiple forms of discrimination experienced by many groups. Specifically, recognising the experiences of people in relation to gender-based issues and, in particular, the impact of gender inequality on women (including women from marginalised communities and minority groups) and on society as a whole. In accordance with the Public Sector Duty, we are committed to eliminating discrimination, promoting equality and protecting human rights.”

However, this commitment is not fully reflected in the corresponding principles. The principle of “Subsidiarity” comes closest:

“We will develop approaches that safeguard the ability of communities, whether communities of interest or geographic communities, to influence and, where possible, take decisions and actions, promoting power sharing and the exercise of power as close to communities as possible.”

⁵⁰ [HSE Generic Drug Task Force Grant Aid Agreement](#) (Accessed October 13th 2023)

⁵¹ [Department of Health; Independent Review Group examining role of Voluntary Organisations](#) (2019)

⁵² [Partnership Principles: Building A New Relationship between Voluntary Organisations and the State in the Health and Social Care Sectors \(2023\)](#)

⁵³ [Department of Rural and Community Development: Sustainable, Inclusive and Empowered Communities A five-year strategy to support the community and voluntary sector in Ireland 2019-2024](#) pp37

Unfortunately, the absence of an explicit acknowledgement of the role and rights of the sector to challenge and influence government policy is reflected in the principles which were developed. The “Active Participation and Engagement”⁵⁴ principle sets out the need to engage and consult with the sector in the development of policy, but at no time mentions the campaigning role that NGOs play and their rights to oppose government policy even if they are in receipt of State funds for service delivery.

The absence is particularly stark when the comparative policy for Northern Ireland (The 2011 *Concordat Between the Voluntary & Community Sector and the Northern Ireland Government*) is examined. It sets out as a principle⁵⁵:

“Respect the right of the Voluntary and Community Sector to comment on, to challenge and to seek to influence Government policies.

Understand that advocacy and campaigning on behalf of individuals, groups and causes is a distinctive characteristic of the voluntary and community sector.”

This concordat is interesting insofar as it explicitly acknowledges, in a jurisdiction where the commissioning of the community and voluntary sector for health and social care provision is also prevalent⁵⁶, the role of the sector in challenging and opposing government policy and engaging in advocacy and campaigning.

While the development of the principles by the Department of Health is a welcome step, even taking into account their shortcomings, there is little evidence of an implementation, monitoring or evaluation plan for their adoption being produced.

2.3 Pushing the Limits: Restrictions on NGO Freedoms

In section 2.1, we explored the right to public participation and the relationship of this right to freedom of association and expression. In this section, we will explore restrictions that are placed on these rights.

The rights to public participation, freedom of association and freedom of expression are not absolute. The State can seek to limit these rights if it has a valid purpose. In the domestic context, the relevant constitutional provision (Article 40 (iii)) is limited as follows⁵⁷:

“The State guarantees liberty for the exercise of the following rights, subject to public order and morality: - [...]

*iii The right of the citizens to form associations and unions. **Laws, however, may be enacted for the regulation and control in the public interest of the exercise of the foregoing right**”.*
[Emphasis added]

This however must be understood in the context of Article 40 (i) where the right to oppose government policy is explicitly cited as a key component of freedom of expression.⁵⁸

In the international context, the ECHR provides for limits on the right to freedom of association and assembly in Article 11.⁵⁹

“No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.”

⁵⁴ [Partnership Principles: Building A New Relationship between Voluntary Organisations and the State in the Health and Social Care Sectors \(2023\)](#) pp25

⁵⁵ [Concordat between the voluntary & community sector and the NI government \(2011\)](#)

⁵⁶ [House of Commons Northern Ireland Affairs Committee Health funding in Northern Ireland First Report of Session 2019](#)

⁵⁷ [Bunreacht na hÉireann Article 40](#)

⁵⁸ [Bunreacht na hÉireann Article 40\(i\)](#)

⁵⁹ [European Convention on Human Rights Article 11.2](#)

Freedom of association can also be limited under Article 22 of the ICCPR:⁶⁰

“No restrictions may be placed on the exercise of this right [Freedom of Association] other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”

Similarly, article 10.2 of the ECHR provides for limits on the right to freedom of expression⁶¹:

“The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”

Finally, Article 25 of the ICCPR on public participation sets out that:⁶²

“Every citizen shall have the right [to take part in public affairs etc.] and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions.”

Article 40 (iii) of Bunreacht na hÉireann sets out the permissible restrictions on these rights. As with all restrictions on rights, they must be considered proportionate to be acceptable. Under the ECHR and ICCPR there is a tripartite test to justify the restriction. It must:

- (a)** Be prescribed by law;
- (b)** Pursue a legitimate aim, and;
- (c)** Be necessary in a democratic society.

The European Court of Human Rights has made clear that a restriction on a right will only be proportionate if it is as minimal as possible to achieve the legitimate aim.

The Irish Courts have laid out the proportionality test slightly differently, but the fundamental aspects are the same⁶³; restrictions on constitutional rights must:

- (a)** Be rationally connected to the objective and not be arbitrary, unfair or based on irrational considerations
- (b)** Impair the right as little as possible, and
- (c)** Be such that their effects on rights are proportional to the objective.

As we saw in the previous section, while formally there exists restrictions on civil society advocacy and indeed in at least one contract, a codicil guaranteeing the right to engage in campaigning work is provided by the funder, this, is not reflected in the findings of the survey.

When asked if any of the contracts their organisation is party to restrict their ability to make public comment on government policy, 29% of respondents said yes. This might suggest informal understandings that advocacy is banned or that contracts are understood to imply a level of, if not outright, silencing. Such restrictions on advocacy are deeply problematic from a rights perspective, even if they are not explicitly provided for in contracts.

This sentiment borne out in other survey findings, most notably in the wider sense of unease associated with “speaking out” as reported in Figs 2.4 and 2.5 and in the responses provided in text throughout the survey.

While restrictions are often implicit and therefore hard to quantify or measure, the findings of the survey

⁶⁰ [International Covenant on Civil and Political Rights \(ICCPR\) Article 22](#)

⁶¹ [ECHR Article 10.2 Freedom of Expression](#)

⁶² [International Covenant on Civil and Political Rights \(ICCPR\) Article 25](#)

⁶³ [Heaney v Ireland \[1994\] 3 IR 593](#)

point to the fact that some organisations who are in receipt of State funding do not feel free to engage in advocacy at all. Some participants report being told so outright by State funders.

What is demonstrated in these findings is an unofficial, implicit State restriction on fundamental freedoms enforced by the threat of funding withdrawal. If we are to apply the tripartite test as per the Heaney vs Ireland ruling, alongside the framework for restrictions to rights provided for by the ECHR and ICCPR, to this type of restriction, it would fail all three tests to be considered permissible. This is because;

- (a)** The restrictions are not provided for by law. They are arbitrary, as they exist only by way of subjective unwritten contractual interpretations or expressed and/or implied threats. Therefore, they are fundamentally unfair, as the restrictions are not applied in a clear or consistent manner. This is borne out by the survey findings which point to variances across funders.
- (b)** The aim being pursued (to inhibit criticism of State policy by organisations which accept State funding) cannot be considered a legitimate aim outlined in the Constitution, the ECHR or the ICCPR. The message that has been conveyed to or interpreted by survey participants is that funders wish to prevent *any* criticism of relevant State policy by organisations that accept funding. This aim runs directly contrary to the essence of the right to freedom of expression, as well as the right to public participation. The constitutional provision of Article 40 (i) on freedom of expression guarantees the right to oppose government policy as a key pillar of freedom of expression, as was set out earlier in this Chapter.⁶⁴
- (c)** Public participation in law and policy-making is a key pillar of democracy and therefore such restrictions cannot be considered necessary in a democratic society. Furthermore, they contravene fundamental rule of law principles such as foreseeability and clarity. Because the implicit restrictions seem to apply to all advocacy (and are not provided for by law) there is no way in which organisations can anticipate the scope of their application. This creates a chilling effect on all organisations in receipt of State funding. The scope of the restrictions is indeterminable.

In light of the above, we can conclude that restrictions placed on organisations which prevent expression of views on State law and policy are disproportionate. As frontline health and social care organisations are most likely to be subject to these restrictions, they have the effect of removing organisations from the policy discourse which have highly important insights into the reality “on the ground”.

2.4 Conclusions

In this chapter, we examined the rights of the community and voluntary sector to be vocal on issues and on behalf of communities. The findings of the survey suggest that implicit and disproportionate restrictions on fundamental freedoms exist by way of outright or implied threats to funding and self-censorship to prevent the loss of funding. This creates a particular problem in the Irish context as many Irish NGOs are also involved in the delivery of critical social services. Ultimately, this means that organisations which are in receipt of State funding (over 80% of organisations which took part in this survey) may, to a greater or lesser extent, face disproportionate infringements on their rights to public participation, freedom of assembly and freedom of association.

Furthermore, the restrictions are not provided for by law; they only exist by way of implication or outright threats from funders to withdraw funding. To this end then, they also violate the fundamental rule of law principle of foreseeability and therefore can be considered arbitrary. This phenomenon is widely recognised and experienced in the community and voluntary sector. As previously mentioned, the Advocacy Initiative examined this issue in 2013-14.

The next chapter sets out the methodological underpinnings of the survey.

⁶⁴ [Bunreacht na hÉireann Article 40 \(6\)](#)

CHAPTER THREE

Methodology

3.1 Previous Domestic and International Studies

This study draws primarily on two existing studies for subject and methodological guidance. In terms of subject guidance, the work of the Advocacy Initiative⁶⁵ has been critical in highlighting some of the issues that we wished to explore in more detail. Of particular note are their two reports *Are We Paying for That? Government Funding and Social Justice Advocacy*⁶⁶ and *Funding Dissent: Research into the Impact on Advocacy of State Funding of Voluntary and Community Organisations*⁶⁷. These reports provided valuable insights into the overall context this current study was seeking to explore.

In terms of their methodological underpinnings, this study was highly influenced by the work of the Australian Civil Voices initiative⁶⁸. This was a widescale survey of the Australian not-for-profit sector carried out in 2017 which sought to examine the context in which advocacy work was being conducted by NGOs. Of particular interest was its exploration of the impact of funding agreements on NGOs and the restrictions these placed on their ability to advocate for their causes. Given the similar model of public services being commissioned through not-for-profit organisations as in Ireland⁶⁹, this study provided a useful framework which could be adapted to the Irish context.

The Advocacy Initiative reports focus on desk research and qualitative data gathering, in the form of case studies and interviews. The Civil Voices initiative conducted a large-scale, quantitative, mixed methodological study⁷⁰ of Australian NGOs by way of an online survey with qualitative elements. In the next section, we set out how the latter was adapted to the Irish context.

3.2 Refining Methodology and Adapting to the Irish Context

Previous research in Ireland had focused on case studies and qualitative analysis. It was felt that a different approach was required and therefore for this study, we decided to adapt the Civil Voices survey to the Irish context. This involved making changes to account for the differing governance and government structures between Australia and Ireland (e.g., the absence of the federal-state distinction in Ireland) and to add some additional specific qualitative elements which would explore the Irish context in more detail. It was also imperative that the study would seek to provide results which would allow us to investigate our guiding thesis as outlined in Chapter One:

The rights of civil society organisations to engage in campaigning or advocacy as part of their legitimate work cannot be disproportionately limited purely because they accept funding from the State. This study seeks to investigate the existence of explicit or implicit restrictions on civil society advocacy imposed by the State on the basis of the receipt of State funding.

A large-scale survey of the sector was seen as providing an incisive “snapshot” of the reality in 2023 for a wide array of organisations. We utilised the wide networks within civil society that ICCL has established through our chairing of a number of coalitions⁷¹ and our work coordinating submissions to international

⁶⁵ [The Advocacy Initiative](#)

⁶⁶ The Advocacy Initiative: “[Are we paying for that?](#)” - Government funding and social justice advocacy [Research on government funding and social justice advocacy](#). (2013)

⁶⁷ The Advocacy Initiative: “[Funding Dissent:](#)” [Research into the Impact on Advocacy of State Funding of Voluntary & Community Organisations](#) (2013)

⁶⁸ Civil Voices: [Researching Not-For-Profit Advocacy](#) (2017)

⁶⁹ Housego, Anthony and O’Brien, Terry; [Delivery of Public Services by Non-Government Organisations \(非营利组织的公共服务提供\)](#) (2012) as included in *The Australian Journal of Public Administration*, Volume 71, Issue 2 Special Issue: Citizen’s engagement in Australia and China June 2012

⁷⁰ Civil Voices: [Researching Not-For-Profit Advocacy; Survey](#) (2017)

⁷¹ For example, the [Coalition for Civil Society Freedom](#) and the [Coalition Against Hate Crime](#)

bodies⁷². We also consulted with a number of organisations, including Community Work Ireland (CWI)⁷³ and The Wheel⁷⁴ to seek advice on how best to adapt the survey and what additional elements to include. Feedback was also provided by a focus group of CWI members who made additional recommendations. A full copy of the survey is included as an annex to this report. It contained five sections covering four key topics:

- Sections one and five established the nature of the organisations (size, geographic location, type of work they engage in, policy focus, etc.).
- Section two explored government funding and the limits (if any) the acceptance of this funding places on organisations' ability to advocate or campaign on policy.
- Section three dealt with the issue of stakeholder engagements and how effective, impactful and worthwhile organisations felt these were.
- Finally, section four looked at how the sector perceives the government's attitude to the sector and its role in the policy formation process, and how the sector themselves sees their role in this.



FULL SURVEY TEXT AND GRAPHS

The full text of the survey, the findings and all the graphs can be seen by scanning the QR code, or by visiting www.iccl.ie/news/thats-not-your-role/. For the sake of clarity and space, not all graphs referred to are included in this report. They are, however, all accessible at this link.

In total the survey consisted of 64 individual questions. The vast majority were point and click responses, while some open-ended qualitative questions allowed for more detail to be provided.

In line with the Australian study, to fully establish the impact of funding on advocacy activities, it was decided to also examine the wider issues of stakeholder engagements and perceptions about government attitudes to the sector. This study did diverge somewhat from the Civil Voices study insofar as we did not seek to track perceptions of changing attitudes of various governments over time to the sector.

The survey was disseminated by email to ICCL, CWI and The Wheel networks on April 11 2023, with periodic reminders sent subsequently. The email stressed the importance of the research from a human rights perspective and emphasised the anonymity of any responses which would be provided given the sensitive nature of what was being asked. A QR code to enable people to access the survey was included alongside a request to share with their own networks.

The survey, hosted on SurveyHero, closed for inputs on June 9 2023, having received 248 responses. Accounting for population, this was in line with the response rate for the Civil Voices study which received 1,462 responses⁷⁵. Given the number of responses and the wide variety of organisations which took part, we are confident the findings represent a realistic snapshot of the sector.

Are you concerned that the way in which you engage in policy debate/ advocacy/campaigning may affect your charitable status? Can you describe the activities which you believe may make you vulnerable?

“We feel that we could not publicly criticise the [State Agency] due to potential risk of current or future funding.”

⁷² For example the [shadow report on the ICCPR](#) and [the Rule of Law reporting cycle](#)

⁷³ [Community Work Ireland](#)

⁷⁴ [The Wheel](#)

⁷⁵ Civil Voices: [Researching Not-For-Profit Advocacy](#) (2017) pp25

Are you concerned that the way in which you engage in policy debate/ advocacy/campaigning may affect your charitable status? Can you describe the activities which you believe may make you vulnerable?

“If we speak out about the current issues affecting our communities, if we criticize government policy and link it directly to actual cause of social exclusion, substandard housing, community under threat due to lack of resources for other services particularly for young people who are at risk of being sucked into the drugs economy.”

3.3 Segmenting the Data for Analysis

The headline findings of the survey are set out in Chapter One and the full set of findings are set out in an annex to the report. Chapter Four presents segmented data where we consider specifically responses from homelessness and addiction organisations which are involved in advocacy and/or service delivery.

These organisations are at the frontline of the model of service delivery as described in Chapter Two and segmenting the data allows us to explore if and how the responses of this cohort differ from the responses of the full group. The findings should enable us to draw additional conclusions about the type of restrictions organisations face, their attitudes to stakeholder engagement and their views on how their role is perceived by government.

While respect for freedom of association generally and expression for NGOs is critical, additional considerations may need to be given to how these rights should be guaranteed for organisations who are not only in receipt of State funds, but also those who receive these funds to deliver critical State services. This will be examined further in Chapter Five.

Have you ever felt that your organisation’s funding was put at risk because of commentary, campaigning or advocacy that you engaged in? How did this risk present itself?

“It was subtly done, but had real consequences e.g., including defunding of a project (it was made clear privately why); not winning a particular contract (it was made clear privately why); etc. At one point it was stated by a public servant in a meeting that the organisation was to choose between advocacy or service delivery. That the organisation couldn’t do both.”

CHAPTER FOUR

Analysing the findings

4.1 Introduction

This chapter sets out some of the key findings of the survey in more detail and examines how responses from organisations engaged in activities that are more likely to include frontline service delivery differ from the general (i.e., all) responses. The two areas selected for segmentation were Drugs/Addiction and Homelessness. The general responses and the Drugs/Addiction and Homelessness responses are analysed comparatively below under three headings:

- Activities;
- Funding and restrictions;
- Stakeholder engagements and government attitudes to the sector.

Based on the analysis of the segmented data, we make recommendations in Chapter Five.

While a very broad set of questions were asked as part of this survey, it is beyond the scope of this project to analyse all the responses in this report. The full set of responses are set out in an online annex to the report.

A Note on Graphs:

It is worth noting that in many of these questions, a “mid-point” response on the graphs should not be read as a finding that is “neutral” or “acceptable”. For example, if we look at Fig 3.6 on difficulty keeping track of stakeholder engagement, we can see that the average figure is 5.9 on a scale between 0 being easy to keep track and 10 being extremely difficult. In reality, any situation whereby organisations involved in a policy area are unable to stay informed on relevant stakeholder engagements, represents a communications failure on the part of the State agency or department with responsibility for same. We can see similar issues in many of the other findings in this chapter.

4.2 Activities

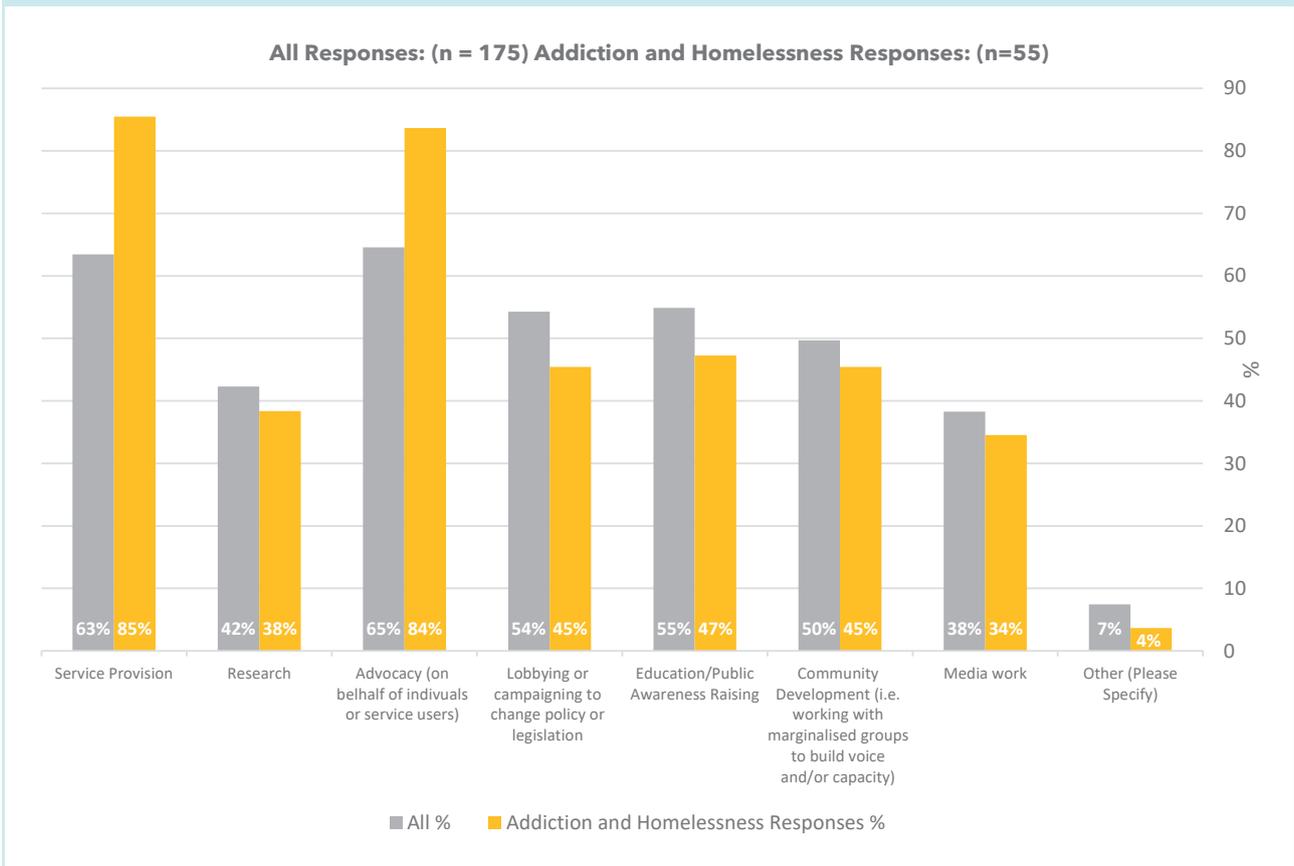
Survey respondents were asked what activities their organisation engages in and the overall and segmented responses are set out in Fig 1.2 below. The activities in which homelessness and addiction organisations are more involved are frontline in nature, i.e., the provision of services and advocacy on behalf of individuals or service users. 85% of addiction and homelessness organisations report being involved in service delivery compared to 63% of all organisations, a difference of 22 percentage points. This gap is almost replicated in the advocacy category (84% vs 65%).

In all other categories, the overall response to each activity shows that a higher proportion of general respondents engage in non-service/client activities, including e.g., lobbying, research and media. In several of these cases, the proportional difference is very small. Of note, however, is the lower proportion of addiction and homelessness services which engage in lobbying or campaigning (45% vs 54%). This indicates that organisations predominantly involved in critical service delivery are less likely to be involved in lobbying or campaigning, despite being very well placed to provide valuable insights during the policy-making process.

Does consideration/anxiety regarding your organisation's charitable status impact on decisions as to whether or not you engage in policy debate, campaigning and/or advocacy? Why/ why not?

“We always have to temper our messaging; the board are concerned about upsetting Government. They don't like us to be publicly critical.”

FIGURE 1.2: What kinds of activities does your organisation engage in?



Looking at the levels of importance attached to each of the activities, we can see that the higher level of engagement in service/client activities reported by addiction and homelessness respondents is reflected in higher levels of importance being afforded to these activities than general responses. For example, in Figures 1.3 and 1.5 below, we can see that the average score of levels of importance attached to service delivery by homelessness and addiction respondents is 14.29 points higher than the overall response rate (75.64 vs. 61.17), while that attached to advocacy is 6.83 points higher (60.41 vs 53.58).

FIGURE 1.3: Service Provision (n = 128)

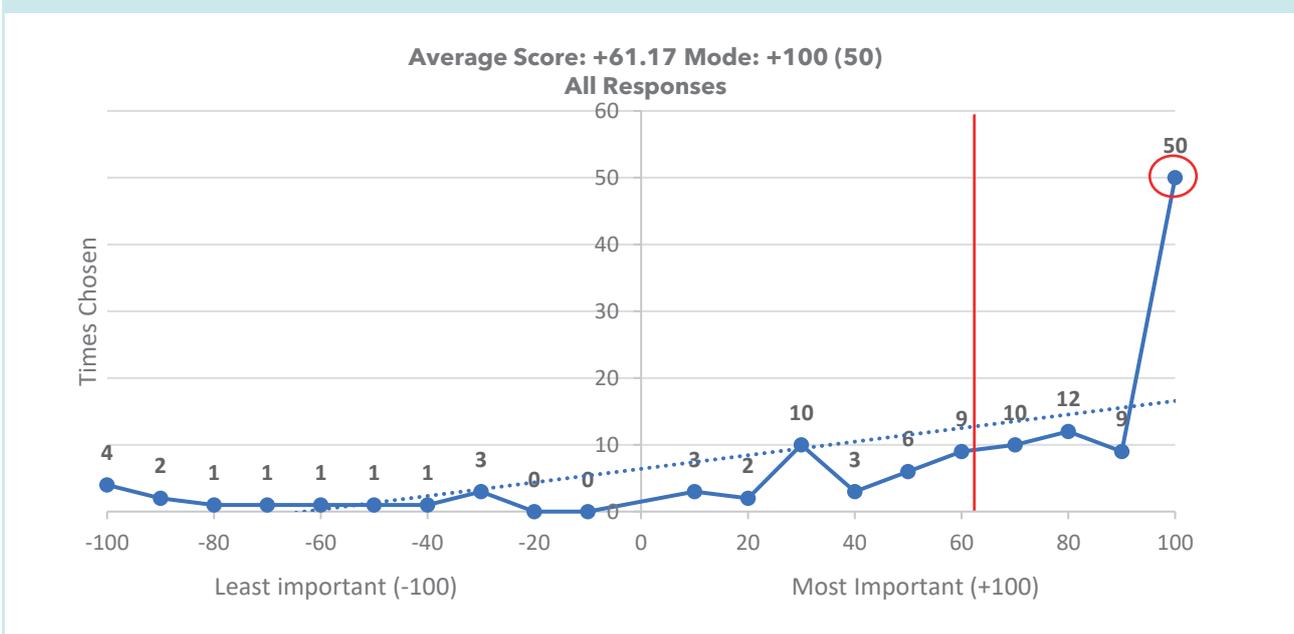


FIGURE 1.3: Service Provision (n = 55)

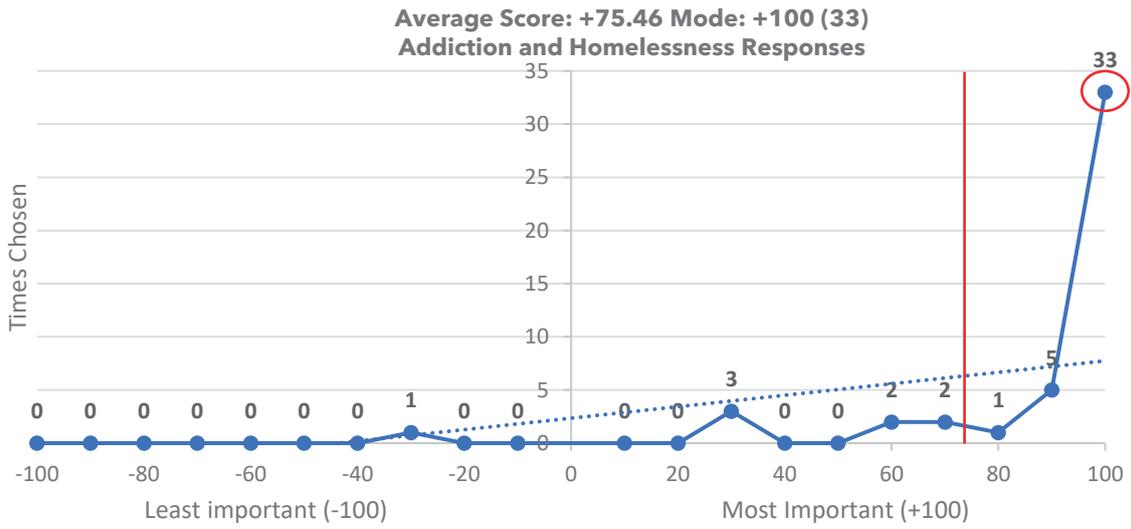


FIGURE 1.5: Advocacy (n=135)

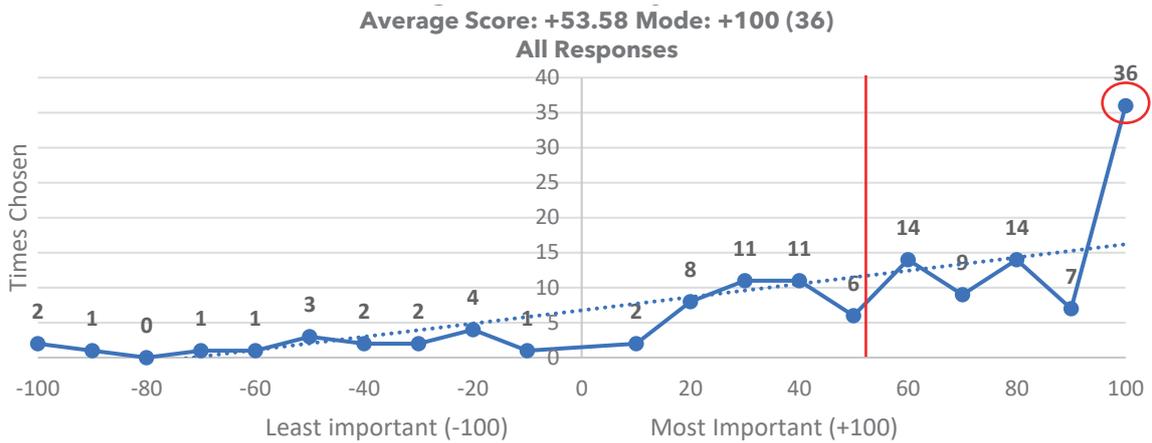
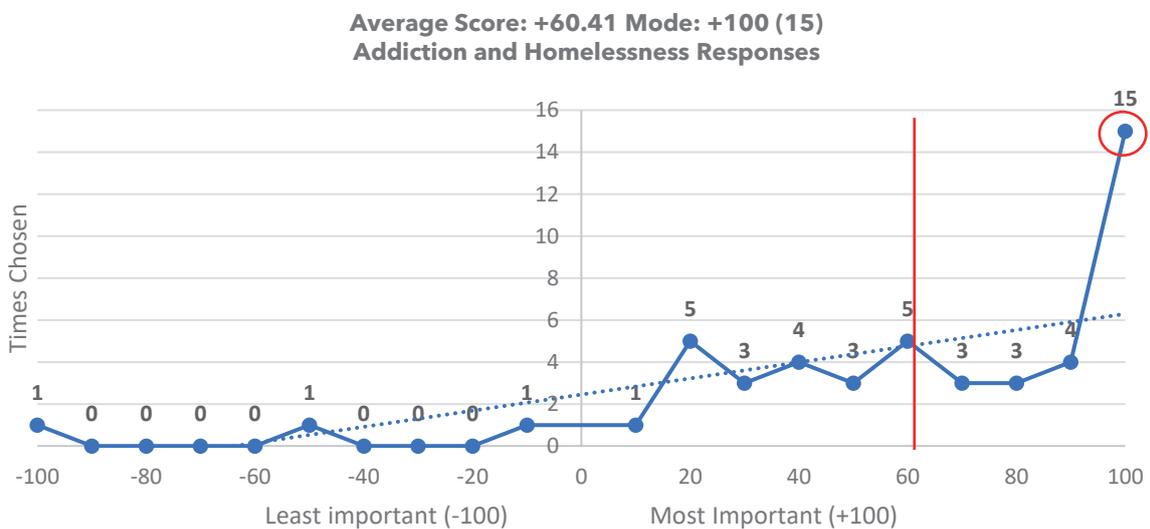


FIGURE 1.5: Advocacy (n=49)

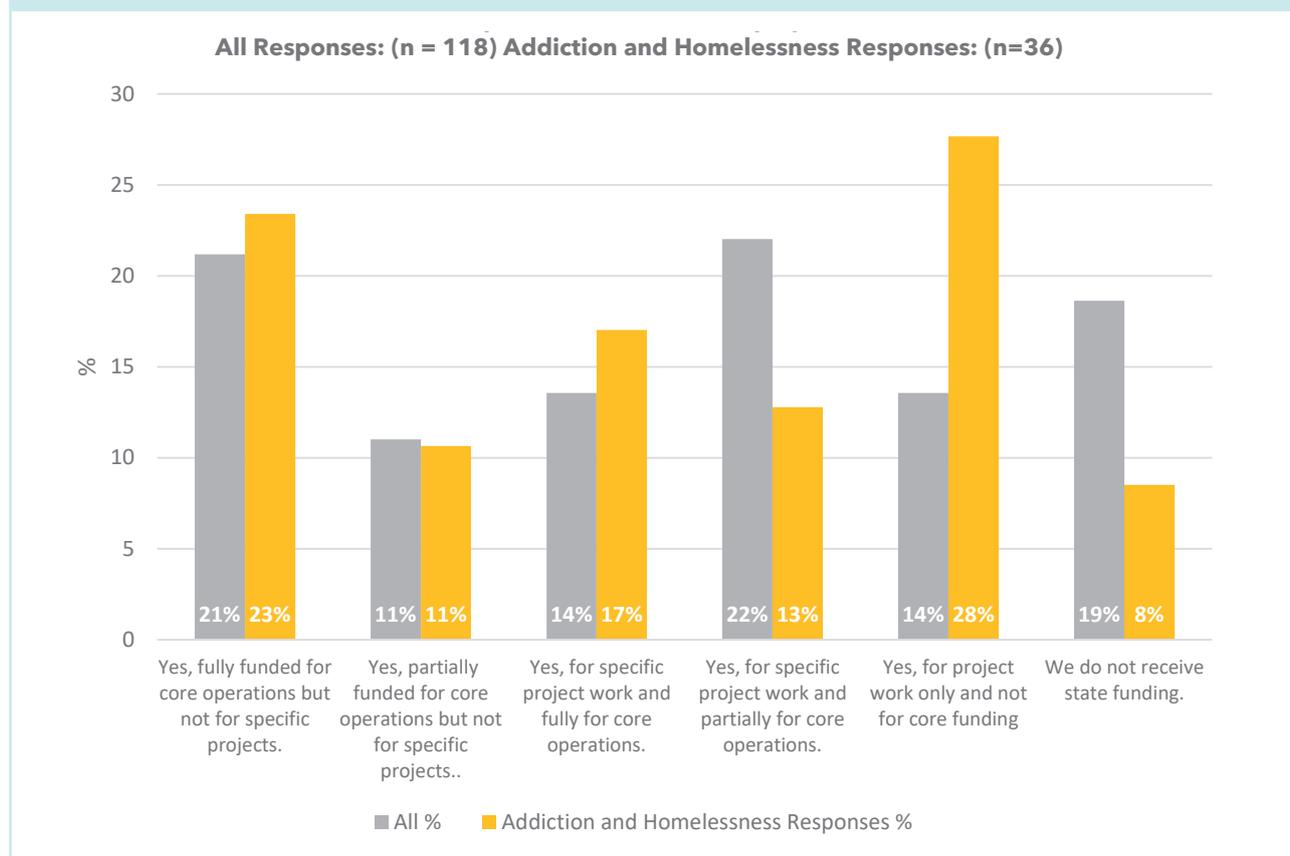


4.3 Funding and Restrictions

Moving on to funding and restrictions, there are some interesting divergences to note between homelessness and addiction responses on the one hand and overall responses on the other.

More than one quarter (28%) of addiction and homelessness respondents receive funding for project work only, compared to just 14% of all respondents. It is also of note that while 81% of general respondents report being in receipt of State funding of some kind, this rises to 92% for addiction and homelessness respondents. This points to a higher degree of reliance on the part of addiction and homelessness organisations on the State for funding.

FIGURE 2.1: Does your organisation currently receive any government funding for core operations or individual projects?

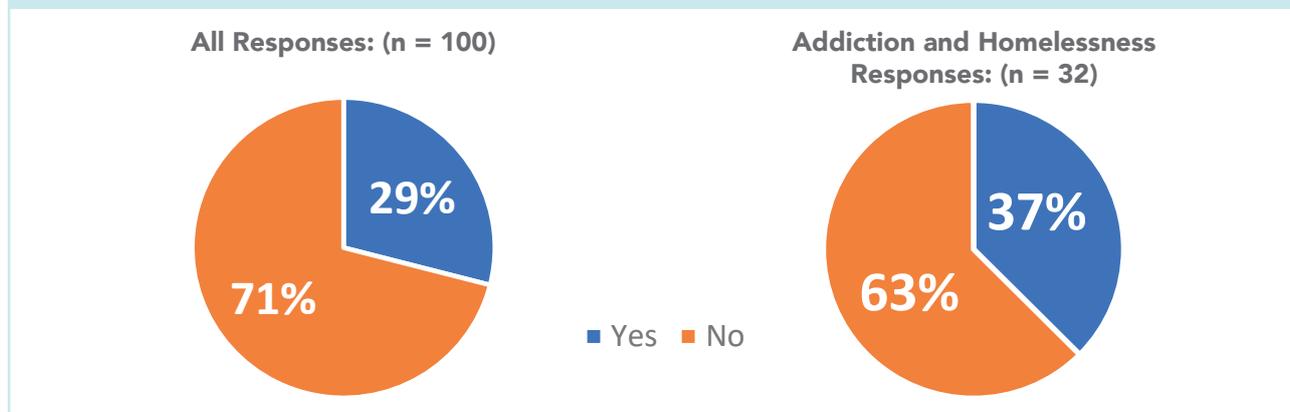


If there are any other specific instances of where you believe your organisation has faced pressure (overt or covert) in terms of your ability to advocate or speak out, please feel free to share here.

“It has often been alluded to, to not ‘rock the boat’ or it’s not the role of our organisation to bring certain issues to light.”

The funding sources of organisations are also hinted at in Fig 2.2 below. 37% of addiction and homelessness respondents report being subject to contracts which restrict their ability to comment on government policy, eight percentage points higher than the overall response rate (29%).

FIGURE 2.2: If applicable, do any of the contracts your organisation is party to restrict your ability to make public comment on government policy?



Respondents were then asked whether they have ever curtailed advocacy, campaigning or communications for fear of risk to funding (Fig 2.4) and whether they ever felt their organisation's funding was put at risk because of commentary campaigning or advocacy they engaged in (Fig 2.5). These questions were worded in a deliberately similar manner to test if a consistent response is provided to both.

FIGURE 2.4: Have you ever curtailed advocacy, campaigning or communications for fear of risk to your organisation's funding?

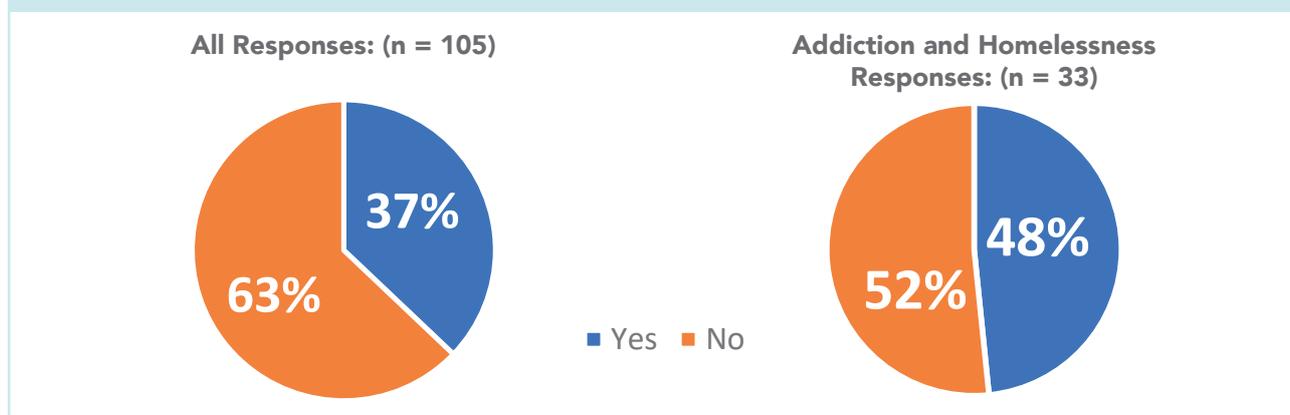
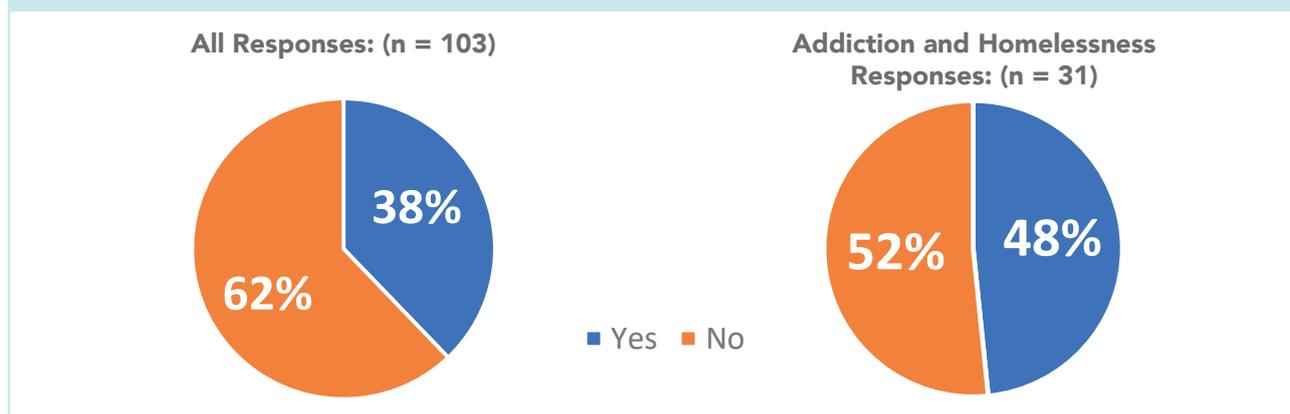


FIGURE 2.5: Have you ever felt that your organisation's funding was put at risk because of commentary, campaigning or advocacy that you engaged in?



The responses to these two questions paint an alarming picture. Almost two-fifths (38%) of all respondents believe that their funding has somehow been put at risk by speaking out or advocating for their cause. Incredibly, this figure jumps up to just short of half (48%) of addiction and homelessness responses.

These findings point to a worrying perception of curtailment of freedom of expression, freedom of association and public participation rights, which is even more pronounced for organisations involved in the delivery of critical frontline services.

This is further reflected in other survey responses, which demonstrate a general sense across the sector that organisations which dissent from government policy are at some risk of having their funding cut. There is also a strong sense that the government would prefer if organisations did not engage in advocacy work and were focused solely on service delivery.

Fig 4.4 below identifies the belief that there is a degree of pressure on organisations to keep public statements in line with government policy. This belief is significantly higher for addiction and homelessness respondents compared to all responses (3.5 vs 2.48).

FIGURE 4.4: In my experience NGOs/CSOs/CVOs face pressure to tailor public statements to be in line with government policy (n = 88)

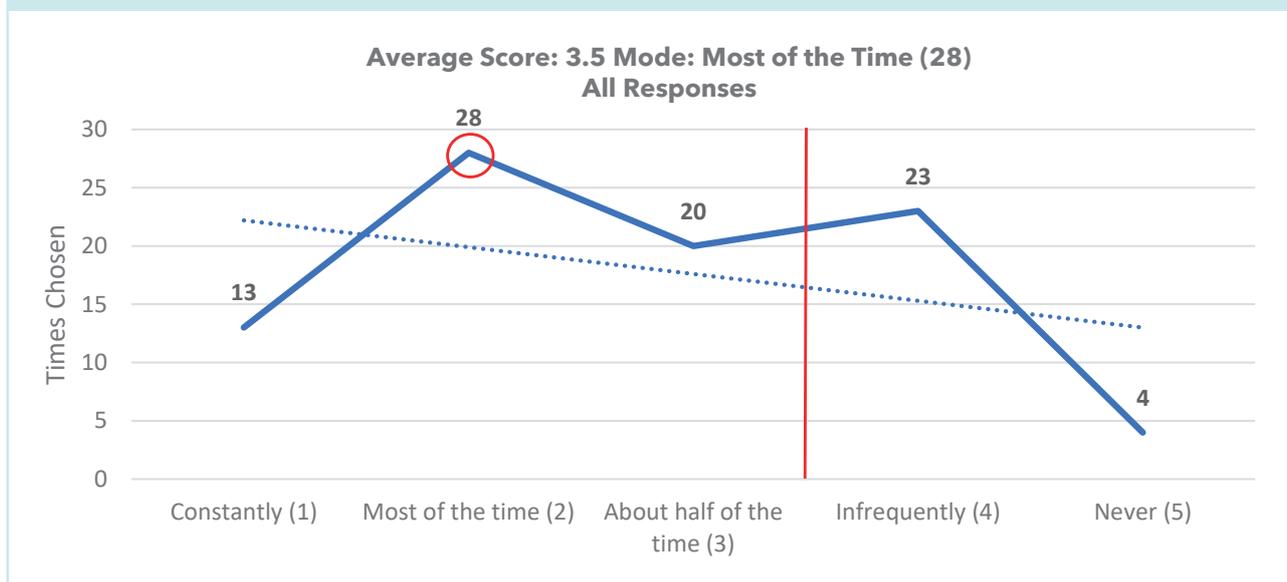
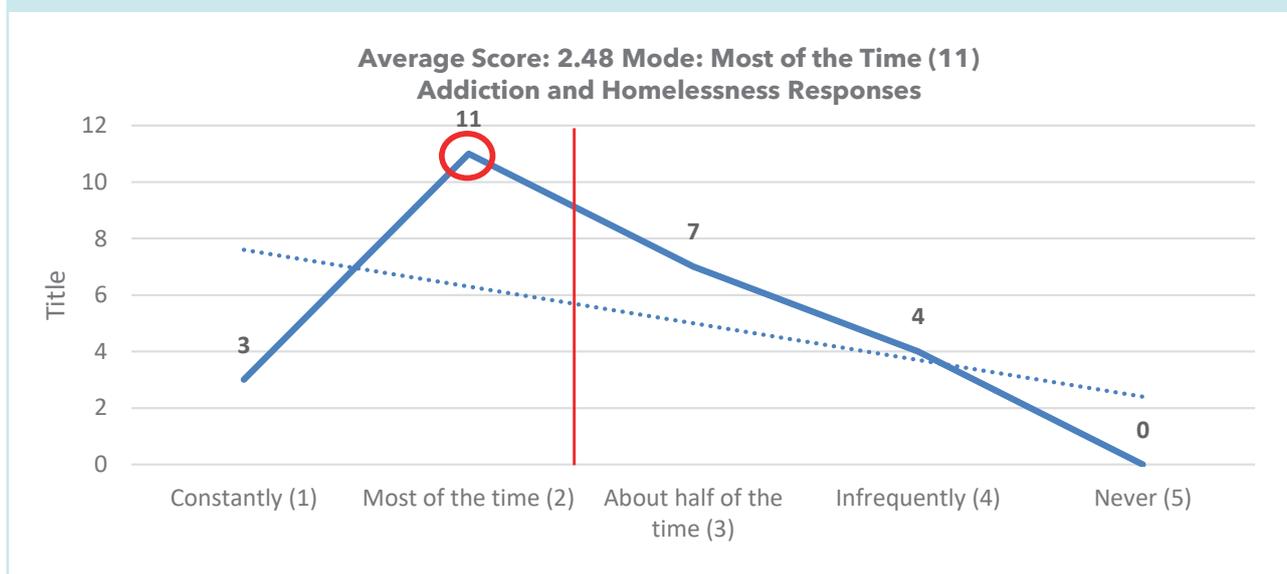


FIGURE 4.4: In my experience NGOs/CSOs/CVOs face pressure to tailor public statements to be in line with government policy (n = 25)



These findings are borne out by further responses (see Figs 4.8 and 4.11 below) as well as answers which were provided to the open-ended survey questions which are outlined more fully in the online annex.

FIGURE 4.8: Organisations which dissent from government policy risk having their funding cut (n = 88)

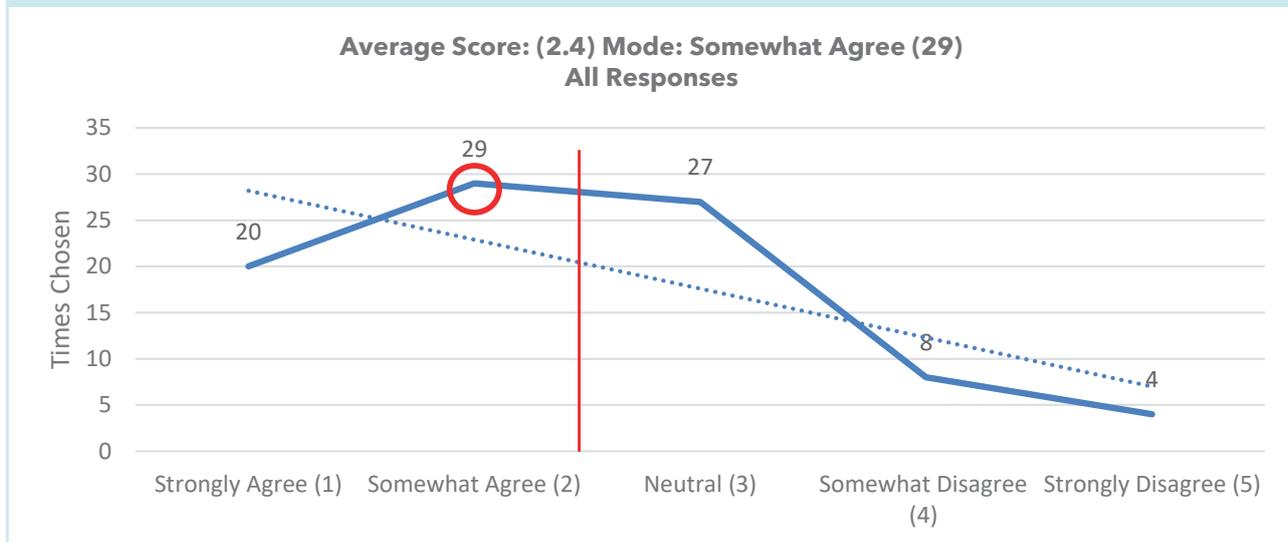
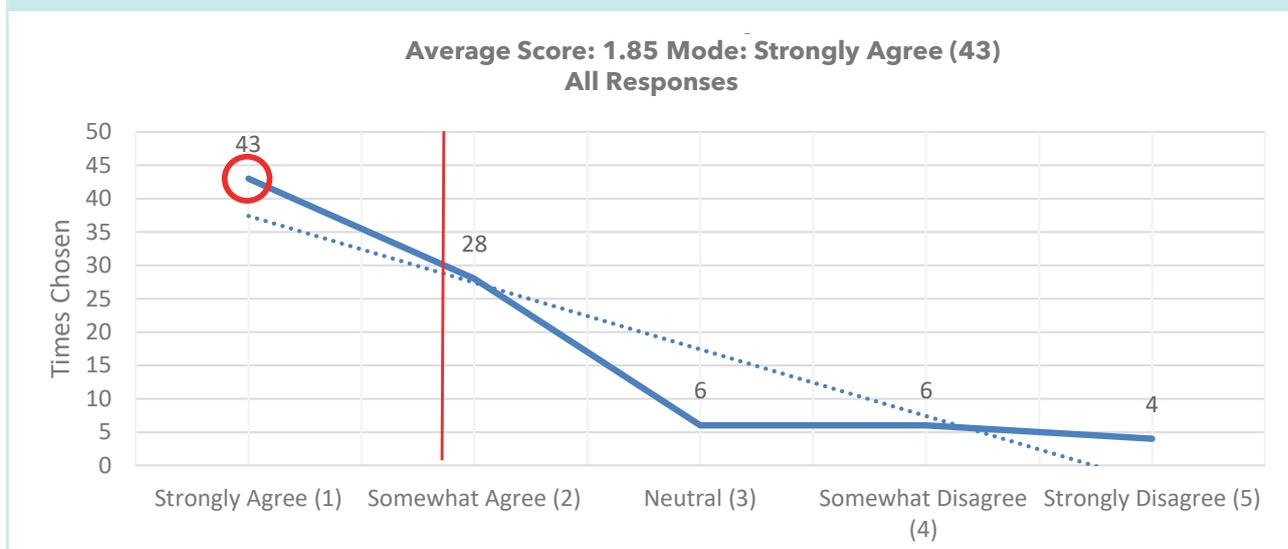


FIGURE 4.11: The government would prefer if we engaged in no advocacy and only in service delivery (n=87)



The findings in this part of the survey point to a potential failure by the State to respect, protect and fulfil the rights to public participation, freedom of expression and freedom of association, as guaranteed by the Constitution, the ECHR and the ICCPR, as funding is used bluntly as a lever to silence dissent. In Chapter Five we will discuss possible remedies to these findings.

If there are any other specific instances of where you believe your organisation has faced pressure (overt or covert) in terms of your ability to advocate or speak out, please feel free to share here.

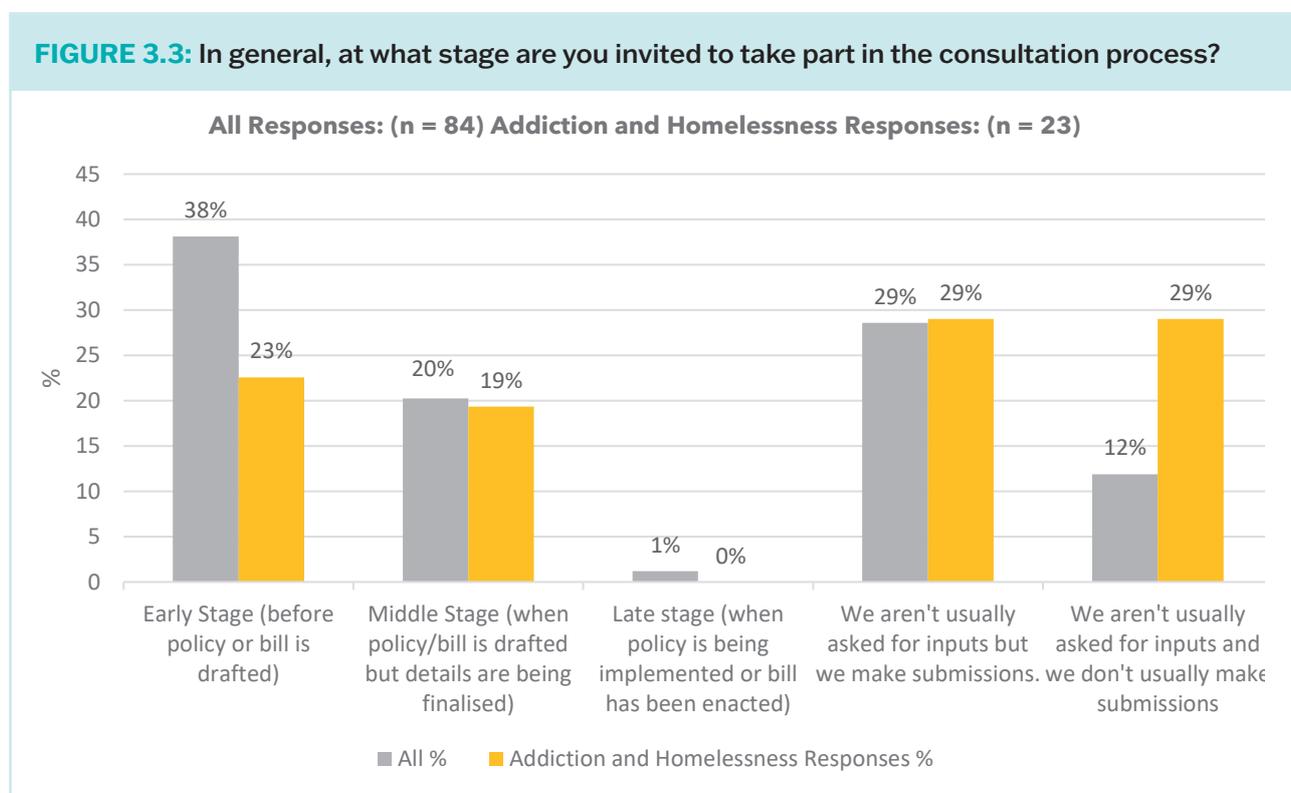
“We have been in the room when a senior civil servant said it was not our role to criticise government policy.”

4.4 Stakeholder Engagements and Government Attitudes to the Sector

The final substantial section of the survey sought to analyse respondents' attitudes to the State's stakeholder engagement and their perception of how the government views their role. To begin with, we asked if organisations have been involved in a stakeholder engagement. The responses to this question were consistent across the general and segmented data (78% yes vs 77% yes).

Fig 3.3, however, demonstrates that a far smaller proportion of addiction and homelessness respondents (23%) are invited to take part in the early stages of policy development than overall respondents (38%). It is also of note that more than one quarter (29%) of addiction and homelessness respondents tell us that they aren't asked for inputs into stakeholder engagement and they don't participate, compared to just 12% of all respondents. This points to a worrying lack of involvement in stakeholder engagement on the part of addiction and homelessness respondents. This may be down to a lack of resources or capacity to engage in these exercises, but given the critical role these organisations play in service delivery and the expertise they have developed in their areas of work, it is a matter that deserves further investigation.

FIGURE 3.3: In general, at what stage are you invited to take part in the consultation process?

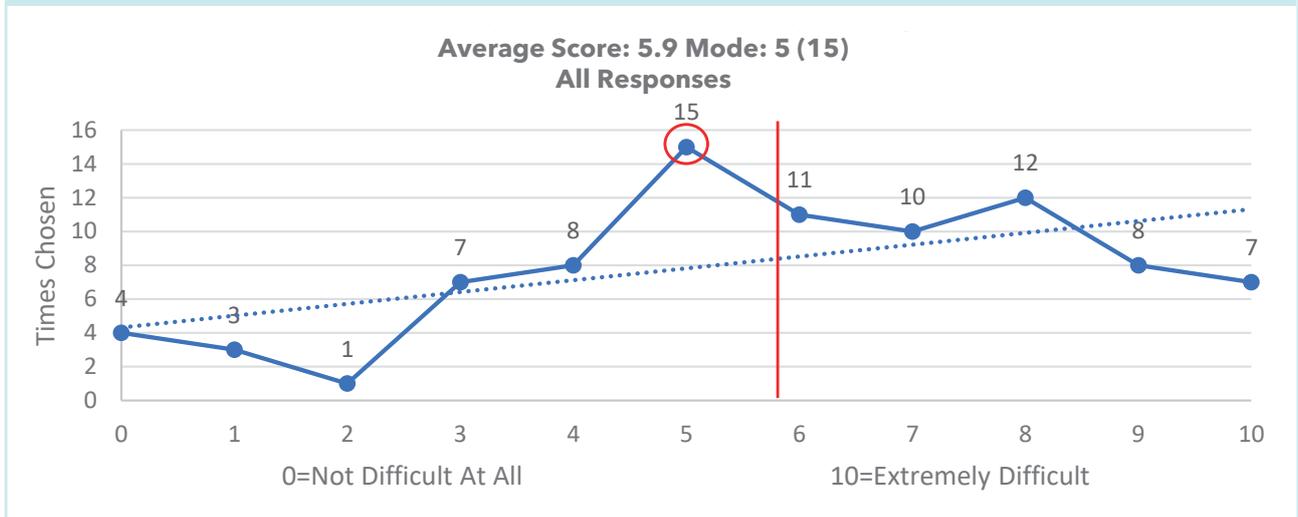


If you have any other thoughts to share on issues you have experienced with stakeholder engagements, please feel free to input below.

“Closer to partnership and taking on board civil society expertise & principles would be ideal. Stakeholder engagement ranges depending on the issue and the decision-maker in question. Sometimes we are genuinely consulted, other times we are informing (if issue is not a priority for the decision-maker or if they don't agree with our position).”

Delving deeper into stakeholder engagement, the findings present a worrying picture. Fig 3.6 points to a level of difficulty across the board in keeping track of relevant policy and legislative developments in the respondents' areas of expertise.

FIGURE 3.6: Overall, do you find it difficult to keep track of new policies/legislation of relevance to your organisation which is being developed? (n = 86)



Even more worrying, over 70% of the unsegmented respondents say that they missed contributing inputs into policy or legislation as they found out about the process too late (Fig 3.7*). While we don't have information on how this comes about, it could be a result of ineffective communication on the part of State bodies and/or unrealistic deadlines.

The findings also point to a mismatch between the efforts expended on taking part in stakeholder engagement and the benefits of same (Figs 3.8 and 3.11 below). While participation is viewed as moderately resource intensive, the benefits are not seen as worth the effort. This is particularly pronounced in the addiction and homelessness responses where the average score of 3.26 is 0.84 lower than the general response.

FIGURE 3.8: How would you describe your experiences of taking part in state/agency stakeholder engagements over the past 5 years. (n = 80) - Resource Allocation

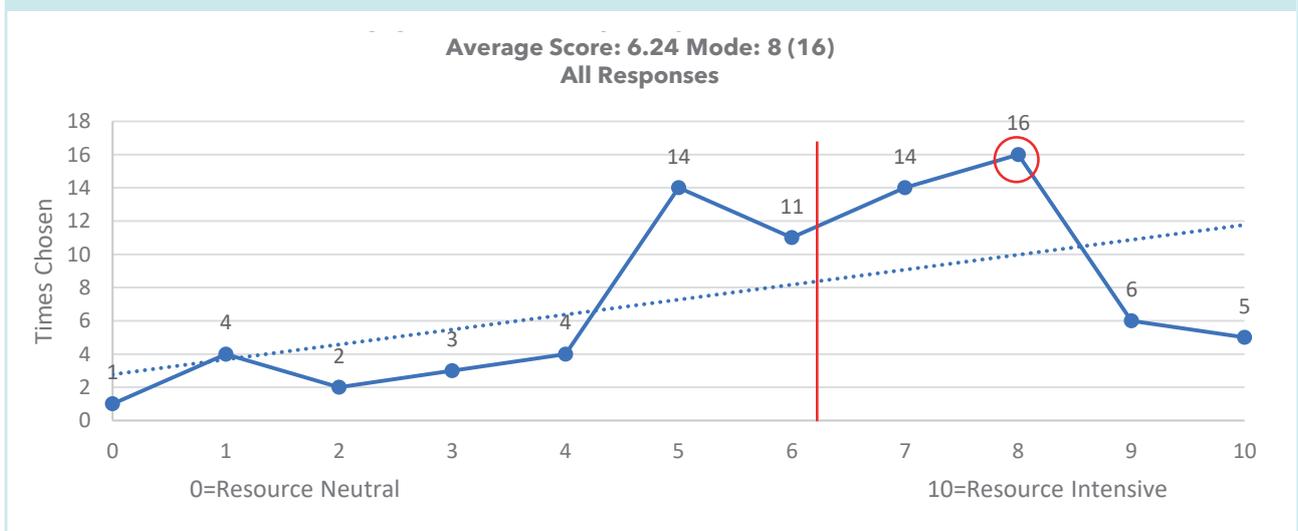


FIGURE 3.11: How would you describe your experiences of taking part in state/agency stakeholder engagements over the past 5 years. (n = 82) - Effort vs. Benefits

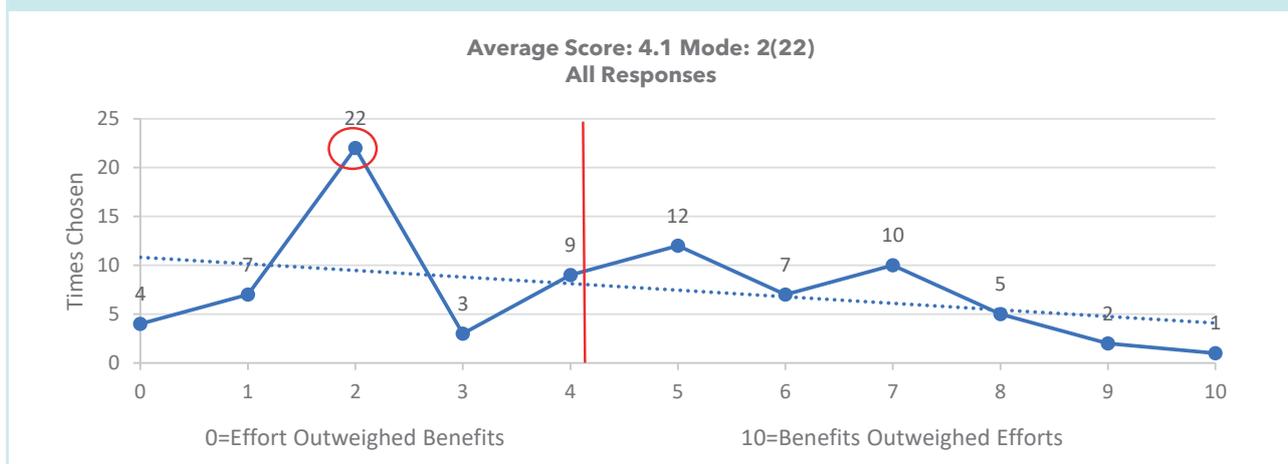
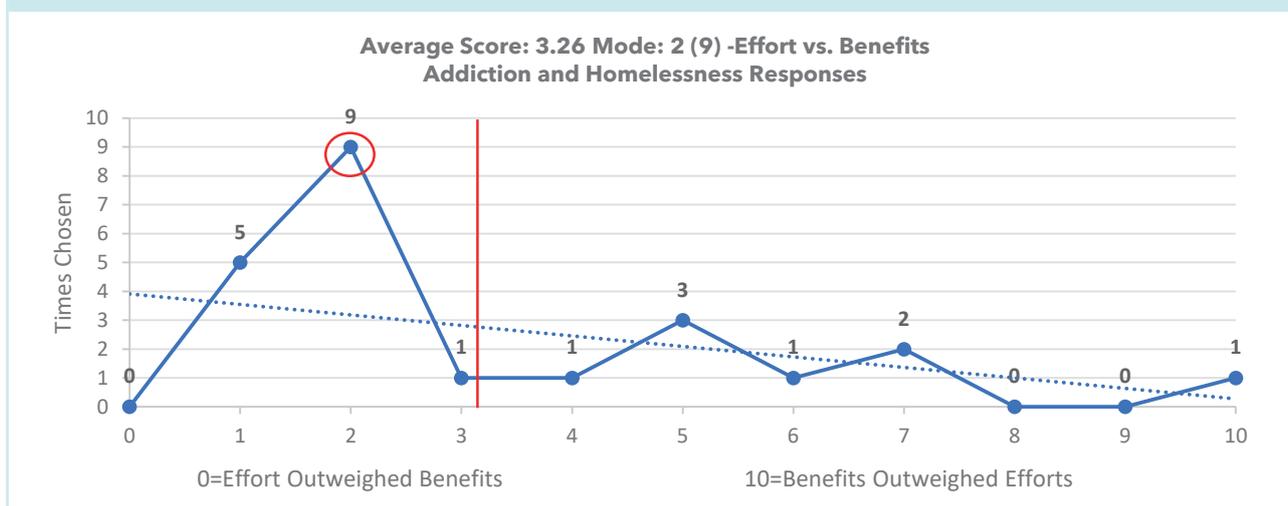


FIGURE 3.11: How would you describe your experiences of taking part in state/agency stakeholder engagements over the past 5 years. (n = 23)



A matter of concern is that all respondents (Fig 3.12) are ambivalent about taking part in future stakeholder engagement. This is reflected in Fig 4.1 which demonstrates that respondents feel that the government has an ambivalent, trending towards negative, attitude to stakeholder engagement. Figs 4.2 and 4.7 confirm this, while Fig 4.6 highlights a strong sense amongst respondents that organisations which dissent from government policy are not valued in the stakeholder engagement process.

It is also worth noting at this juncture that there are respondents who have highlighted positive and constructive engagements with agencies and departments. A lack of consistency with respect to the approaches taken to stakeholder engagement is as much of an issue as the absence of structure and meaningful dialogue in some areas.

If you work across multiple policy areas or have different experiences in engaging with a multitude of agencies, departments etc. please add more detail here.

“Strategies get produced in a consultative way and then implementation committees are very tokenistic and there’s no accountability for actions that are not progressed.”

FIGURE 3.12: How would you describe your experiences of taking part in state/agency stakeholder engagements over the past 5 years. (n = 83)

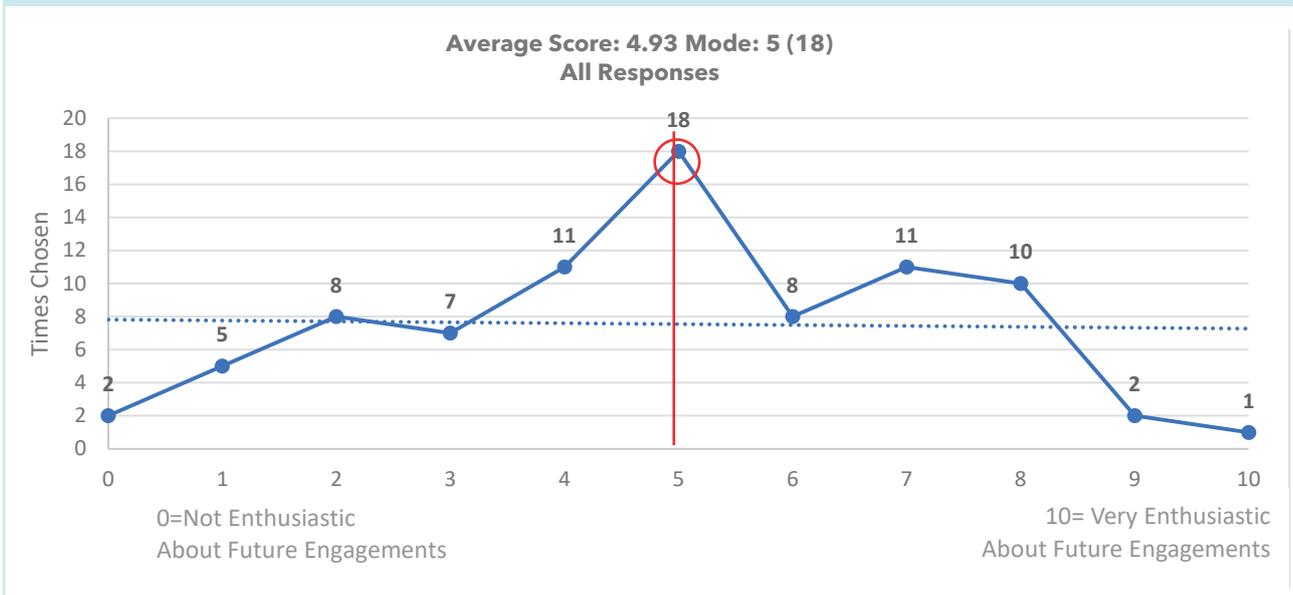


FIGURE 4.1: In your organisation's policy areas, what do you think the state's attitude to stakeholder engagement is? (n = 89)

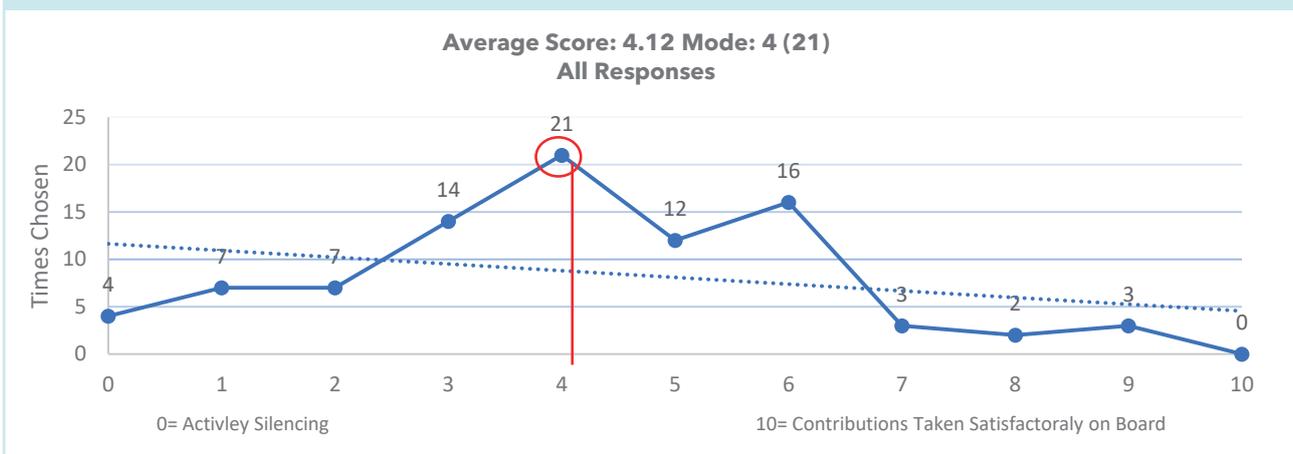


FIGURE 4.2: In general, current Irish political culture encourages the inclusion of the voice of organisations such as mine in policy formation. (n = 90)

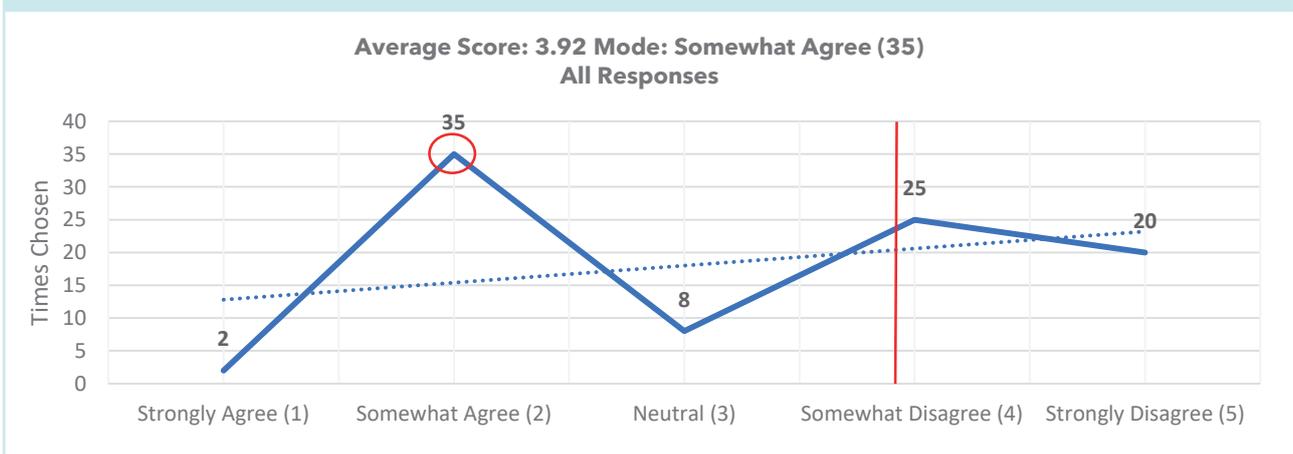


FIGURE 4.6: Organisations that dissent from current government policy are valued in the policy formation process. (n = 88)

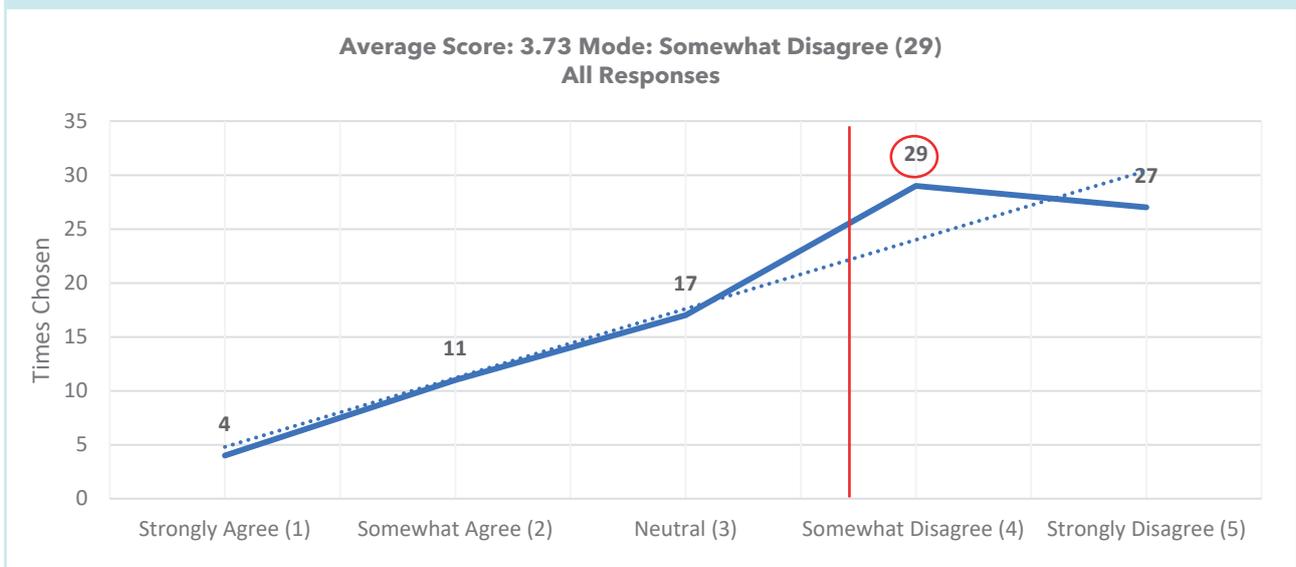
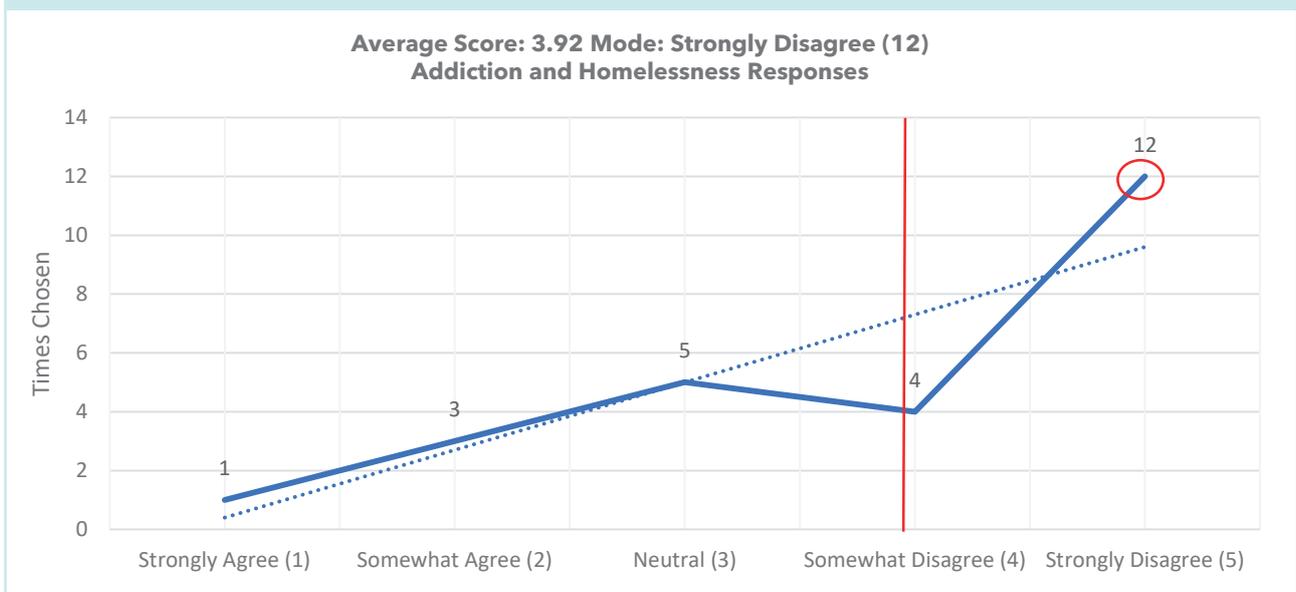


FIGURE 4.6: Organisations that dissent from current government policy are valued in the policy formation process. (n = 25)



If you have any other thoughts to share on issues you have experienced with stakeholder engagements, please feel free to input below.

“There is a lack of clarity as to when consultations will be done and when they will not. We had a recent experience of discovering an important legislative change was under contemplation without any apparent consultation process, which was only announced following intervention. Some consultations can feel tokenistic.”

If you work across multiple policy areas or have different experiences in engaging with a multitude of agencies, departments etc. please add more detail here.

“Variation across government. Often the detail of policy decision will be taken on board but rarely at a macro/budget level.”

FIGURE 4.7: The government values NGOs/CSOs/CVOs and respects our work as part of policy development process. (n = 87)

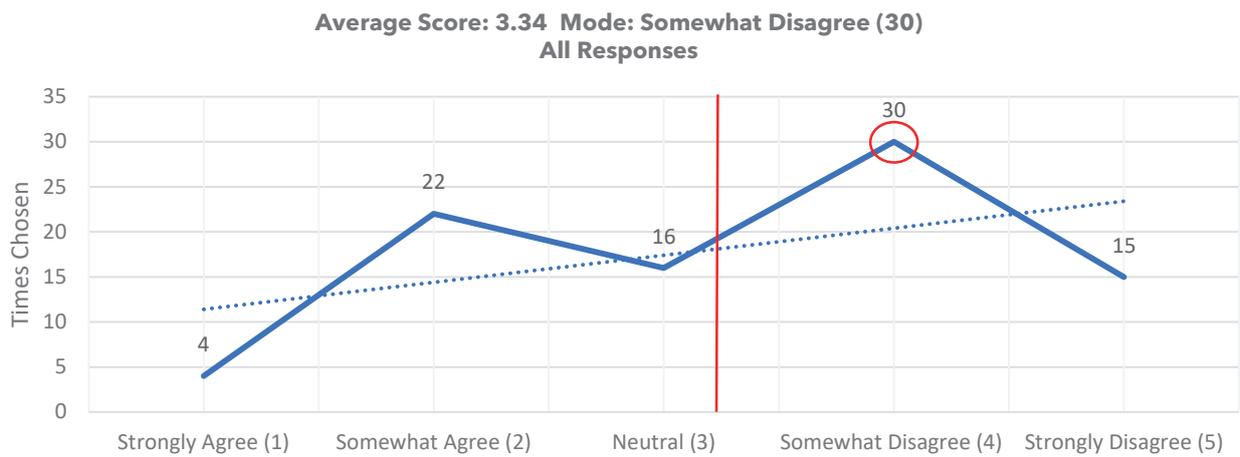
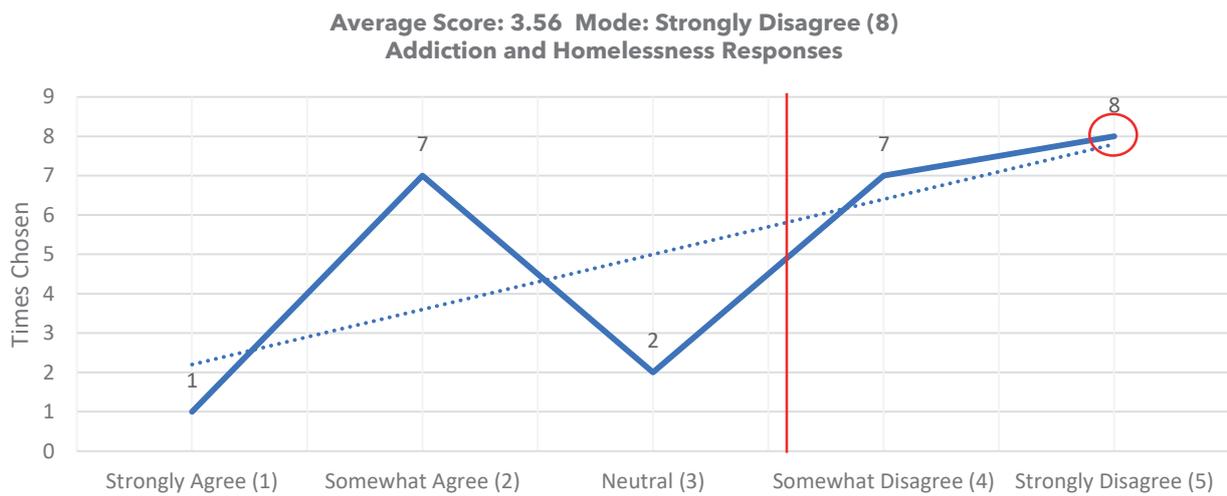
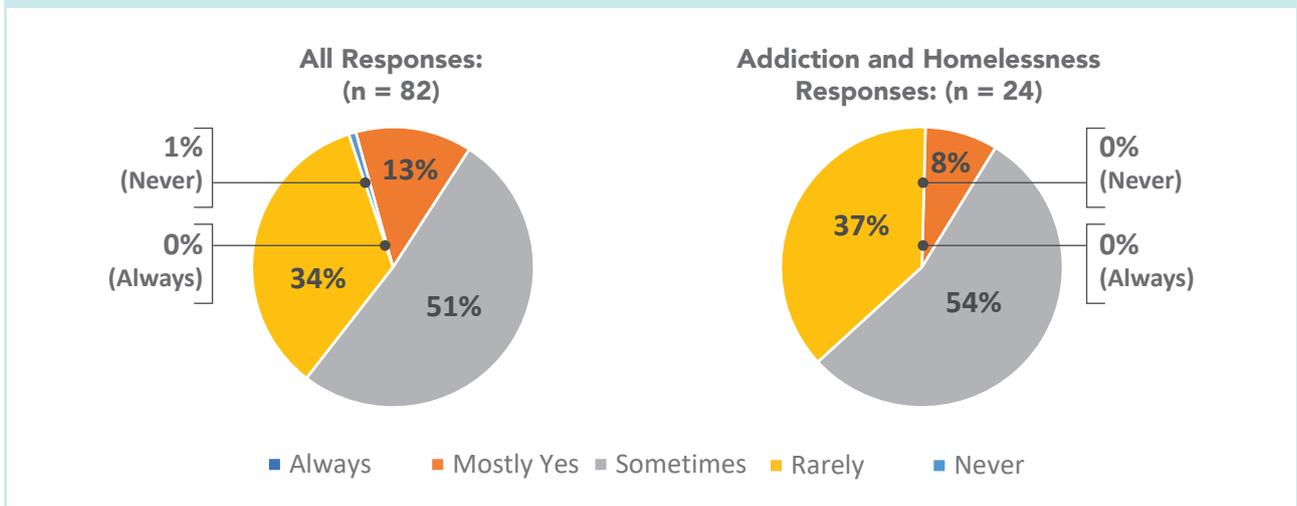


FIGURE 4.7: The government values NGOs/CSOs/CVOs and respects our work as part of policy development process. (n = 25)



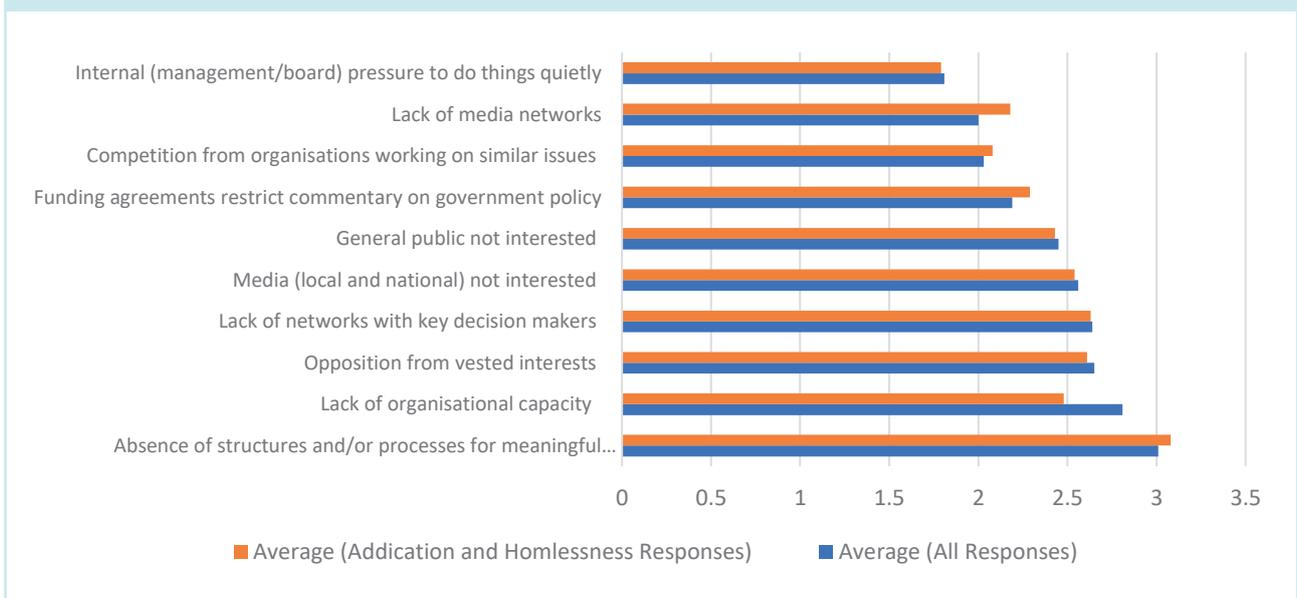
It is also worth noting that Fig 3.13 below demonstrates that over one-third (35%) of all respondents reported that the issues they raised were rarely or never taken on board in stakeholder engagements. Fewer addiction and homelessness respondents state that the issues they raise are “mostly” taken on board (13% vs 8%).

FIGURE 3.13: In general, are the issues you raise during stakeholder engagements taken on board?



A counter argument to the narrative emerging in these findings that the State is not receptive to stakeholder engagement efforts from organisations engaged in service delivery could be that these organisations have other avenues of dialogue open to them, such as the health dialogue forum, homelessness taskforces and the drugs and alcohol taskforces. However, in the survey data (see Fig 4.16 below) the absence of structures for meaningful collaboration is the most frequently cited barrier to having organisational messages heard and acted on by funders. This is reported as a barrier at a higher rate by addiction and homelessness respondents than all respondents.

FIGURE 4.16: What do you think are the main barriers to having your organisation's message heard and acted upon by funders?



4.5 Conclusions

Nonetheless, there is a strong desire on the part of the sector to have a more active and participatory role in decision-making. As outlined in Fig 3.14*, Arnstein's 'Ladder of Participation' provides a useful visual representation of where the level of citizen involvement in decision-making is now and where organisations would like to see it. The "ladder" is a visual tool designed by sociologist Sherry Arnstein in the late 1960s with each ascending rung representing increasing levels of citizen agency, control and power. In addition to the eight rungs of participation, Arnstein includes a descriptive continuum of participatory power that moves from nonparticipation (no power) to degrees of tokenism (counterfeit power) to degrees of citizen participation (actual power).⁷⁶ Manipulation and informing are grouped as "no power"; informing, placation and consultation as "degrees of tokenism"; and partnership, delegated power and citizen control as "actual power".

The results demonstrate that across both datasets, there is a sense that "consultation" (understood as "tokenism") is the current method of engagement. This is borne out in the findings previously outlined in this chapter. There is, however, a demonstrated strong desire to move to a delegated power/partnership model which would see more meaningful involvement of organisations in decision-making processes.

⁷⁶ [Organising Engagement: Ladder of Citizen Participation](#)

Conclusions and Recommendations

5.1 Conclusions

This study has demonstrated that while on paper there exist no excessive restrictions on freedom of expression and association rights for NGOs in Ireland, the experience of these organisations is somewhat different. In Chapters One and Three we set out as a guiding thesis:

The rights of civil society organisations to engage in campaigning or advocacy as part of their legitimate work cannot be disproportionately limited purely because they accept funding from the State. This study seeks to investigate the existence of explicit or implicit restrictions on civil society advocacy imposed by the State on the basis of the receipt of state funding.

The findings as outlined in Chapter Four clearly demonstrate that the thesis has been proven and that restrictions on advocacy activities are perceived and/or experienced by a high proportion of organisations generally (Figs 2.4 and 2.5). This is even more pronounced for organisations which engage in service delivery. The findings demonstrate that the Irish State breaches not only domestic and European law, but also a number of international human rights treaties to which it is party.

Furthermore, the survey findings on stakeholder engagement highlight a number of areas of concern. They suggest a level of apathy or cynicism in the sector (Figs 3.11 and 3.12), with organisations feeling that stakeholder engagement is a perfunctory “box-ticking” exercise (Figs 3.9* and 4.1) which isn’t really worth expending limited resources on (Fig 3.8). The findings also point to a high level of difficulty in tracking stakeholder engagements, with almost three-quarters of respondents saying they have missed out on contributing to a consultation or other form of engagement because they heard about it too late (Figs 3.6 and 3.7*). It should be noted that text responses suggest that these difficulties are not spread evenly. What is clear, however, is that there is a strong desire for more involvement in policy development and decision-making as evidenced by Fig 3.14*.

Finally, with respect to perceptions of government attitudes to the sector, there is a mix in terms of responses. There is an overall sense that the State is ambivalent, at best, to hearing the voice of the sector (Fig 4.1) and that there is a lack of welcome for critical or expert voices in the policy formation process (Figs 4.2, 4.6, 4.7 and 4.9*). This is strongly reflected by a perception that, for service providers, the government would prefer if they only engaged in service provision and no advocacy at all (Fig 4.12*).

When taken together, the findings suggest that, to differing degrees, there is a culture of self-censorship attached to the receipt of State funding. This self-censorship inevitably has implications for how honestly organisations can engage in policy formation and stakeholder engagement as they are constantly working with an eye towards maintaining funding relationships with the State. This is particularly problematic when we recall the degree to which the State relies on the community and voluntary sector for very high proportions of service delivery, including homelessness services, health and social care services and disability services.

The end result of this is a situation whereby those organisations which have the most direct relevant inputs to policy formation are the ones most likely to engage in self-censorship for fear of a negative impact on funding. This fails the organisations themselves as they cannot comprehensively share their expertise for fear of upsetting funders; fails the State as it cannot fully avail of the on-the-ground knowledge of those tasked with providing services to communities; and, most importantly, fails people availing of these services. The findings point to a mutually reinforcing cycle of degrees of self-censorship, disengagement from stakeholder engagement and more pessimistic attitudes on how the State views the sector and its role.

5.2 Recommendations

5.2.1 Advocacy Restrictions

While it is of note that guidelines and principles for engagement between the sector have been developed in a piecemeal manner, a more coherent response which fully outlines the obligations on the State to protect and guarantee the free exercise of freedom of association and expression is needed. This response should build on the aforementioned “Partnership Principles”⁷⁷ and the Department of Rural and Community Development “Values and Principles for Working with the Community and Voluntary Sector”⁷⁸ document. However, it should include explicit references to and acknowledgement that the role of the sector to criticise and oppose government policy cannot be compromised by the acceptance of state funds. An example of this can be seen in the Northern Ireland Concordat mentioned in Chapter Two.

As we have set out, while certain restrictions on the use of public funds by NGOs may be legitimate, these restrictions cannot extend to restrictions on the use of private funds for advocacy activities. It is critical that the State now take steps to address these issues in a manner that;

- (a) Is compliant with the obligations set out under international and domestic human rights legislation at a minimum.
- (b) Incorporates the guidelines issued by the Council of Europe’s Venice Commission on the Funding of Associations and related best practice guidelines.
- (c) Is widely disseminated through all state agencies and departments with particular emphasis on those actors which provide funding for service delivery.
- (d) Offers recourse and a platform for complaints to be made when these rights are infringed upon.

Based on the findings of this report, the Irish State is in breach of its domestic and international obligations in relation to freedom of association and expression. Urgent action must be taken to rectify these breaches. To this end, we make four recommendations:

1.	That all funding agreements between the State and non-governmental organisations are modified to set out clearly that the acceptance of funding does not preclude criticism of government policy or campaigning and advocacy. A complaints mechanism for breach of these agreements should be considered. This may be a role suited to the office of the Ombudsman.
2.	That the Irish Human Rights and Equality Commission, as part of their responsibilities under Section 42 of the Irish Human Rights and Equality Commission Act (2014) develops a set of guidelines for the sector and for funders outlining their rights and responsibilities regarding freedom of association and expression. These guidelines should take account of best practice internationally as set out by the Venice Commission and the domestic situation with respect to the role the sector plays in service provision. The guidelines should also set out, explicitly, the inherent role of the sector to criticise government policy, as seen for example in the Northern Ireland Concordat.
3.	That the State should commission a full investigation into the prevalence of self-censorship in the community and voluntary sector to understand the scope of the issues identified in this study. This should include an examination of the inconsistencies in the State’s approach towards stakeholders identified in this study. The investigation should be complemented by a full OECD “Civic Space Scan” ⁷⁹ to ascertain other issues in the sector, including the issues this study has identified related to stakeholder engagements.

⁷⁷ [Partnership Principles: Building A New Relationship between Voluntary Organisations and the State in the Health and Social Care Sectors \(2023\)](#)

⁷⁸ Department of Rural and Community Development; [“Values and Principles for Working with the Community and Voluntary Sector”](#) (2022)

4. That as part of the development of the next strategy on the Community and Voluntary Sector, the role of the sector to challenge and oppose government policy as a key function and right is explicitly acknowledged. The strategy should include a commitment to developing an updated collaboration guidelines document with State funding and advocacy as a theme.

5.2.2 Stakeholder Engagement

The survey findings point to a lack of appreciation of organisational capacity of the sector and the level of being “tuned in” to policy development. Almost half of the respondents to the survey report having fewer than 10 employees and more than one-third of respondents (35%) report having fewer than five. It is noted in Fig 4.16 that the two most frequently cited barriers to having messages heard were the absence of structures for meaningful participation and lack of organisational capacity. The recommendations here reflect these findings and attempt to focus on capacity meeting as opposed to capacity building, i.e., steps that can be taken to meet organisations “where they are at” in terms of capacity to engage, rather than placing an emphasis on upskilling or increasing capacity. These recommendations sit alongside those made by Community Platform in their 2022 discussion paper “Towards a Progressive Model of Collaborative Governance.”⁸⁰

To this end, we make three recommendations:

1. That efforts are made to improve the communication of stakeholder engagements. This could include, for example, building enhanced stakeholder networks for the dissemination of consultations and other engagements; a dedicated centralised portal for stakeholder engagements; and more effective communication strategies through Public Participation Networks (PPNs) at local level and peer networks at national level. This is particularly important for the inclusion of low-capacity and grassroots organisations.
2. That realistic and inclusive timescales and engagement typologies are developed for participants, including online roundtables, in-person meetings, workshops, etc. A statutorily guaranteed minimum of six weeks should be allowed for responses to consultations and different participation options should be offered (e.g. online surveys and written submissions) to allow for organisations’ individual capacity levels. The possibility of accredited anonymous contributions should also be examined as a way to overcome self-censorship.
3. Consideration should be given to examining the obligations set out under the Aarhus Convention that the government must take “due account”⁸¹ of issues raised by concerned parties as part of stakeholder consultations and developing a similar set of guidelines for non-environmental policy development. There is a responsibility on the part of those seeking inputs to honestly outline the purpose and scope of a stakeholder engagement to manage expectations and allow those consulted to properly allocate resources. A report on the findings of the engagement should be published alongside the rationale for accepting or not accepting the findings. The reasoning behind these decisions should be transparent and made available to the public as a matter of course.

⁷⁹ [OECD Civic Space Observatory: Civic Space Scan](#)

⁸⁰ [Community Platform \(2022\) “Towards a Progressive Model of Collaborative Governance](#)

⁸¹ [United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters \(Aarhus Convention\) \(1998\)](#)



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