



public interest
ADVOCACY CENTRE LTD

**Valuing the not-for-profit sector: comments on
the National Compact Consultation paper**

30 September 2009

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Introduction

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from the NSW Government Department of Water and Energy for its work on utilities, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

PIAC's work with the not-for-profit sector

PIAC has taken an active role in supporting the not-for-profit sector with the aim of:

- enhancing the capacity of individuals and not-for-profit organisations to undertake advocacy and related activities on public interest issues;
- enhancing community awareness of and engagement in government; and
- promoting and enhancing transparency and accountability in the exercise of government power.

In making this submission, PIAC draws on its experience in realising these goals through:

- partnership with the Centre for Australian Community Organisations and Management (CACOM) at the University of Technology, Sydney in a research project funded by the Australian Research Council (ARC) Linkage Program. The research involved an in-depth study on trends in advocacy within the Australian community sector in the context of recent state government partnership agreements;
- partnership with the Whitlam Institute and the Social Justice and Social Change Research Centre, University of Western Sydney in a project examining contracts between government and non-government agencies;
- participating in sector forums such as the Forum of Non-Government Agencies;

- submissions to the Australian Senate *Inquiry into the disclosure regimes for charities and not-for-profit organisations*;
- submissions to the Henry Review of Taxation focusing on the need to reform the complex taxation regime for charities and not-for-profit organisations.

PIAC welcomes the opportunity to comment on the *National Compact Consultation Paper* released by the Hon Ursula Stephens, Parliamentary Secretary for Social Inclusion and the Voluntary Sector. PIAC is supportive of a compact between government and the third sector. Such a document has the potential to recognise the importance of the not-for-profit sector in the community. The PIAC submission to the Australian Senate *Inquiry into the disclosure regimes for charities and not-for-profit organisations*¹ recommended a compact, providing it was adequately resourced and backed up by a firm commitment to its implementation.

This submission will comment on the gaps in the draft National Compact principles, governance arrangements and priority areas for further action. The recommendations within this submission are based primarily on the experience in NSW where research indicates that anticipated benefits of the *Working Together for NSW*² compact have not been realised. The poor outcome was the result of the lack of ongoing commitment from the NSW government and the failure to use *Working Together for NSW* as a guide for future relationships with the sector or to encourage a whole-of-government response to work towards improving social conditions in partnership with the sector.³

¹ Brenda Bailey and Deirdre Moor, *Not-for-profit accountability: Submission to the Inquiry into the disclosure regimes for charities and not-for-profit organisations* (2008) Public Interest Advocacy Centre <http://www.piac.asn.au/publications/pubs/sub2008091_20080910.html> at 30 September 2009.

² NSW Department of Community Services and the Forum of Non-Government Agencies, *Working Together for NSW* (2006) <<http://www.communitybuilders.nsw.gov.au/site/govinfo/150.html>> at 30 September 2009.

³ John Casey et al, "An Opportunity to Increase Positive Results" or "So Disappointing After So Much Energy"? A case study on the long gestation of Working Together for NSW', (Working Paper No 79, Centre for Australian Community Organisations and Management, University of Technology Sydney, 2008).

1. Issues

1.1 Principles – rules of engagement

Studies of international agreements and those in Australia have found that the success or failure of a compact will be determined by the nature of the political and social framework in which it is developed. Failure occurs when government is not ready to support the agreement and sufficient resources are not allocated to fully implement the commitments. The National Compact should address these concerns, and give the not-for-profit sector confidence that the compact will address key issues such as funding and respect for the sector's independence.⁴

Including or clarifying the following concepts in the document could improve the draft National Compact.

Interpretation of principles

The principles should be interrelated and indivisible, in the same way that human rights principles cannot be separated. They must be viewed in their entirety; one principle should not have supremacy over another. For example, using 'effectiveness' in isolation from respecting diversity could be used to justify forced amalgamations of small organisations or to discount certain types of work. In addition, all principles should be applied equally to both government and the not-profit sector, particularly the efficiency, accountability, planning and program delivery requirements.

Funding and sustainability

The principles should be more specific in naming what and who is responsible for funding arrangements. International compacts usually include funding, obligations to develop codes of funding practices, commitment to revise tax systems, development of legislation to support self-sustainability of the third sector and full cost recovery for contracted services.⁵ The compact requires a commitment to clear and consistent resource allocation policies. Sustainability would be greatly enhanced if the compact committed to full cost recovery for service delivery.

Diversity of organisations

Although there are several references acknowledging the role of advocacy of organisations, the assumption in all the principles is that organisations are delivering a direct service on behalf of government. The principles must also be relevant to agencies that have a broader developmental role in the community or sector, undertake community education or research. For example, the 'efficiency' principles refer to service delivery and program alignment. If this remains the emphasis, the codes of practices, implementation strategies and evaluation will also lean towards direct client service delivery. This has the danger of ignoring important work the sector undertakes which requires specific evaluation tools. Retrofitting or adapting material and policies to fit a range of programs does not provide the government or the sector with credible and timely information. It causes delays and frustration for services that want to be acknowledged in evaluation reviews.

The compact acknowledges the diversity of the sector by including references to small and large organisations and Aboriginal organisations. The variety of political and social perspectives that organisations

⁴ John Casey et al, 'Advocacy in the Age of Compacts, Regulating Government - Community Sector Relations – International Experiences' (Working Paper No 76, Centre for Australian Community Organisations and Management, University of Technology Sydney, 2008).

⁵ Ibid.

hold should also be recognised, as such perspectives are fundamental to their purpose. For example, consumer or population based organisations (for example, ageing, youth) do not necessarily have the same interests as employer groups or large service providers. Special provision should be made to include references to consumer involvement and the value of public participation in decision making.

Autonomy

The inclusion of 'Respect' is an important principle; also important is the statement accompanying this principle about the important role of systemic advocacy and independence for not-for-profit organisations. However, there should also be a clear statement about respecting the autonomy of community organisations, which may from time to time come into partnership with government. Autonomy describes the status of the not-for-profit organisation, valuing autonomy is broader in scope. This is particularly important when an organisation enters into negotiations with funding bodies. Not-for-profit organisations can and will act independently from government and other organisations in the sector.

Sharing information

The principles refer to the importance of sharing information without acknowledging the barriers to exchange. There is no acknowledgment of intellectual and moral copyright, restrictions placed by commercial contracting arrangements, legislative barriers or the cost of purchasing or accessing information.

Other inclusions

Other concepts, which require further consideration, include:

- defining the areas of cooperation such as service delivery, policy formulation or whether the compact is limited to social service, health and recreation services;
- resolution of disputes and disagreements;
- provision for periodical review and modification;
- description of instruments of cooperation, consultations, joint decision-making bodies, partnership agreements;
- application of principles to contract negotiations;
- legal status of the compact.

1.2 Implementation, governance and evaluation

The workshop summary of the National Compact workshop held in Canberra on 20 July 2009 referred to the importance of committing to implementation, evaluation and monitoring. The vague arrangements in the draft document about implementation are not satisfactory. The Government should be clear on how the compact will be supported, how will it be monitored and how complaints will be mediated. PIAC submits that the following issues need further consideration. The implementation of the NSW compact provides an example of a document that the sector has found to be of no value. Five months after the NSW launch, even the State government officials were creating a distance from it, considering it something produced by the 'previous government', even though the new Premier was the same party as the previous Premier.⁶

Implementation

The experience of other compacts is that the adoption and implementation will determine whether the compact will assist Government and the sector. The status of the document, the governance arrangements

⁶ Above n 3.

and how the parties to the compact use the document are as important as the content of the document. As first step to implementation to and ensure commitment across government, all Ministers should sign off on the compact.

Essential to the implementation is:

- a commitment to establish a system and timeframe for the implementation, review and modification of the compact;
- the inclusion of long and short-term objectives;
- allocation of funding for governance arrangements, promotion of the document and development of priority projects. This funding should be available from the time the compact is launched.

Governing body

The role of the National Compact Council should be supported by:

- a statutory authority for the third sector which provides a permanent secretariat and can work towards and monitor the recommendations from this and other relevant inquiries;
- being located under the Prime Minister and Cabinet portfolio. This is necessary for it to have authority to work across government departments;
- funding to implement the national compact;
- membership of the governing council which includes peak organisations as well as consumer representation;
- having access to independent arbitration for disputes regarding implementation.

Sector representation

Relationships or legislation may govern rules of engagement, but the sector does not have one voice, in the same way that employer groups or industry representatives do not speak for the whole businesses sector. The approach underlying the compact that the sector will have a unified voice is naïve and could potentially lead to failure of the compact. The Government needs to learn innovative and flexible ways to work with the sector.

There is not one body that can expect to represent the views of the whole sector. In the same way that different government agencies and programs work with small businesses, multi-nationals, export business and specific industries such as agriculture and mining, there are as many variations in the not-for-profit sector. The responsibility of the governing agency should include ensuring that consumer organisations, unfunded organisations and peak bodies, CALD and Aboriginal organisations are represented in the implementation of the compact. The lack of a united voice for the sector should not be considered an obstacle or something to be overcome.

1.3 Prioritising action for the short term

The draft document provides a list of activities that require immediate attention.⁷ Based on review of recent research evaluating international and local compacts,⁸ PIAC submits that the following should be added to the priority list:

- contracting relationships, processes and the contracts with the not-for-profit sector (with all Government agencies) should be reviewed to ensure they are compatible with the principles.

⁷ Commonwealth of Australia, *National Compact Consultation Paper*, (2009) 14.

⁸ Above n 4.

- the recommendations in the research report *A question of balance: principles, contracts and the government/not-for-profit relationship*, by the Public Interest Advocacy Centre, Social Justice Social Change Research Centre, University of Western Sydney and The Whitlam Institute should be considered;⁹
- recommendations from the 2001 *Inquiry into the Definition of Charities and Related Organisations* be implemented;
- a strategic plan be developed that includes short and long term objectives with funding allocated to implement reforms;
- review of policies, codes and rules for parliamentary committees to ensure consistency with principles.

2. Conclusion

The national compact will fail if government does not address key issues such as funding and respect for the independence of the non-government sector. Successful implementation will depend on strong governance structures and the allocation of resources to fully implement the commitments set out in the document.

⁹ Public Interest Advocacy Centre, Social Justice Social Change Research Centre, University of Western Sydney and The Whitlam Institute, *A question of balance: Principles, contracts and the government – not-for-profit relationship* (2009).

3. Recommendations

The Draft National Compact should be amended to:

- *ensure the principles are treated as interrelated and indivisible;*
- *remove language that limits reference to direct service or contracted services;*
- *specify that the principles apply equally to the Government and the not-for-profit sector;*
- *name what and who is responsible for funding arrangements and policies;*
- *recognise the value of consumer organisations and public participation in decision making;*
- *ensure the principle 'respect' reflects the importance of autonomy of organisations;*
- *acknowledge the practical barriers to information exchange and respect for intellectual and moral copyright;*
- *define the areas of cooperation, service delivery, policy formulation and what sectors are covered by the compact;*
- *describe the arrangements for resolving disputes and disagreements;*
- *provide for periodical review and modification;*
- *describe the instruments of cooperation, consultations and joint decision making bodies;*
- *describe the legal status of the compact.*

The Government should commit to implement the National Compact ensuring:

- *development of codes of practices for funding arrangements;*
- *full cost recovery for contracted services;*
- *the National Compact Council is supported by a statutory authority for the third sector which is located within the Prime Minister and Cabinet portfolio;*
- *all Ministers sign off on the compact;*
- *a system and timeframe for implementation and review and modification of the compact is established;*
- *funding for the implementation is allocated to coincide with the launch of the compact;*
- *Government contracting processes and contracts with the not-for-profit sector (with all government agencies) are reviewed to align with the principles;*
- *recommendations in the report: A question of balance: principles, contracts and the government - not-for-profit relationship are considered;¹⁰*
- *recommendations from the 2001 Inquiry into the Definition of Charities and Related Organisations are implemented;*
- *a review of policies, codes and rules for parliamentary committees to ensure they are consistent with the National Compact principles.*

¹⁰ Ibid.