Mental Health
Coordinating Council

Submission to FaHCSIA
A National Compact

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A National Compact

About MHCC

MHCC is the state peak body for non-government organisations (NGOs) working for mental health throughout NSW. We represent the views and interests of over 200 NGOs. Our member organisations specialise in the provision of a diversity of support services for people with a disability due to mental illness. MHCC provides leadership and representation to its membership and seeks to improve, promote and develop quality mental health services to the community. Facilitating effective linkages between government, non-government and private sectors, MHCC participate extensively in public policy development.

The organisation regularly consults broadly across all sectors in order to respond to legislative reform and sits on National, State (NSW) and State Government Department (NSW) committees and boards in order to affect systemic change. MHCC manages and conducts research projects and develops collaborative programs on behalf of the sector. MHCC also provides accredited mental health workforce development training through its Learning & Development Unit.

MHCC thank the Commonwealth Government, FaCHSIA and ACOSS for inviting us to the consultation in Sydney in July 2008, and for providing us the opportunity to input into discussions regarding the development of a National Compact for Australia. We have consulted the sector for the purposes of this submission in which we focus specifically on the potential benefit or downside for the mental health non-government sector.

The NSW Experience of a Compact – *Working Together for NSW*

Whilst MHCC welcome the Commonwealth's initiative to put relationship building between Government and the NGO sector high on the agenda, previous experience in a NSW context has not been encouraging. The final draft of an agreement between the NSW Government and NSW Non-Government Human Services Organisations entitled *Working Together for NSW* was signed by the then Premier Bob Carr. The final publication was signed off by the then newly installed Premier Iemma. It soon became clear that there was little commitment to the agreement despite the fact that the change in Parliament was the leadership not the political party.

When the NSW NGO sector referred to the document in its workings with Government departments, few knew of its existence. Neither did most of the sector, other than the peak bodies sitting on committees at NCOSS, or those well connected to policy reform agendas at a state level. We therefore pose the question – if such an agreement cannot withstand a change of leader on a state level, could it withstand a change in federal leadership or government party?

Agreement or compacts in themselves do not secure good collaborative and mutually respectful relationships or partnerships. Neither do they stand up in law in terms of any action or appeal - they are merely an intention of the good will of two parties.

The UK Experience

In 1998, a National Compact was signed between the Government and the voluntary and community sector in England to work in partnership with each other and foster good relationships for mutual advantage and community gain. The agreement recognises shared values, principles and commitments, and sets out guidelines for how both parties should work together.

These principles are further developed in five Codes of Practice which have also been agreed between the Government and the community sector. The 1998 agreement together with the five codes constitute **The Compact**.[1]

However, The Compact is a voluntary two sided agreement between Government and the community sector, and whilst both may be committed to follow the principles of the Compact, it is not legally-binding and the undertakings in the Compact cannot be legally enforced.

Some requirements of administrative law are replicated in the Compact - for example: that government and public institutions are required to act equitably, be reasonable in making decisions, and explain their decisions. All are legal requirements, present in the Compact enforceable by the court because they are part of the law, not because they are present in the Compact.

So whilst the Compact is not part of the legislation, it can be taken into account by a court when considering the actions or decisions of public bodies. Since the Compact contains undertakings freely given by the Government, a court would expect a Government body to meet its undertakings unless there were good reasons not to. The court cannot, however, force a Government body to comply with Compact undertakings.

The Compact is a national agreement for England (other arrangements exist for Scotland, Wales and Northern Ireland). Central Government has signed up collectively to the Compact so it applies to all central Government bodies in England.

From 1998 local governments were also encouraged by Government to agree to local Compacts to work with community organisations in their areas. Every top-tier local authority in England now has a Local Compact for its area, based on similar partnership working principles to the national Compact, but varying from area to area in detail that reflects distinctive local issues and partnership arrangements.

Information from the Commission for the Compact.
Available: www.thecvompact.org.uk

[1] Commission for the Compact (2008). *Debating the future of the Compact*. Available: www.thecvompact.org.uk

The UK Government has had ten years to embed the Compact into the policies and processes of its departments, agencies and public institutions and recently there is a debate in process around the proposal that the Compact should be "made statutory". This 'suggestion', not surprisingly, is advocated by the community sector.

Sentiments behind those suggestions seem to be that: despite the government having had ten years to meet Compact undertakings, it has failed to do so, fully and consistently, and that as Government cannot be relied on to meet its undertakings voluntarily, it must be put under legal obligation to do so.

To put this into practice, the Compact would need to be converted by an Act of Parliament from a voluntary agreement into a set of statutory obligations. That would represent a radical change to the purpose and character of the Compact.

MHCC suggest that current discussions in Australia merely delay the inevitable call for statutory obligations to be put into place - the NSW experience is evidence of the level of commitment required by Government for the success of a Compact. The model under discussion may render Compact objectives impossible to effect or sustain unless the principles and codes of practice are entrenched in the law.

A different debate?

We propose that a different debate needs to take place - one that gives rise to other questions as to what it would mean to make a Compact statutory for both parties, for example: What would be the legal obligations falling on both sides? (Government and the community agencies); what would be the justification for imposing obligations on only one party? Is the Compact actually about addressing the imbalance of power between sectors? These are very different questions to those posed in the consultation MHCC participated in.

Let's move forward a few steps…….

MHCC recommend that the community should be moving ahead of what are now stated as shared values, principles and commitment between Government and the NGO sector. We suggest that at this time, across all human service sectors every State and Federal Strategy or Framework document, Action Plan or New Direction paper uses the language of Social Inclusion, expressing the need for Governments to find better ways of working in partnership with the community sector. Most important is to state the acknowledgement and recognition of the value of the sector, and the necessity for it to maintain independence, retain its uniqueness and flexibility, and for the sector to be an integral part of consultative processes, planning and development of the sector.

We suggest that if Governments are committed to improving relationships with community organisations both parties need to be accountable. Whilst the Compact under discussion talks about improved models for planning, making both parties accountable, mutual recognition and respect, there needs to be a partnership relationship shift that enables an organisation receiving funds and meeting KPIs to maintain their commitment to aspects other than service delivery, such as social justice, and to be able to truly question the decision making processes of their funder, other than from a position of weakness.

MHCC suggest some broader questions that could be explored as part of the current consultative process:-

Questions

1. *If the Compact were made statutory should it be two sided with legal obligations falling on community services as well as on the Government?*

2. *Alternatively should it become one-sided, with legal obligations falling only on the Government?*

3. *If it were to become one-sided, what is the justification for imposing obligations on one partner but not on the other?*

4. *Should the Compact remain primarily about building constructive partnerships or be more explicitly about addressing the imbalance of power between sectors?*

5. *If it is two-sided, should the obligations on community organisations apply to all organisations? Or should individual organisations be allowed to choose to opt in or out? Opting in would mean that an organisation could force the Government to meet its obligations and, in return, would accept that the Government could force it to meet its own obligations.*

6. *What would the penalties be for failure (by Government or by NGOs) to meet obligations?*

7. *Who would enforce those penalties?*

8. *What effect would making the Compact statutory have on the overall state of Government / NGO relations, and on the capacity of NGOs to work effectively?*

9. *Would making a Compact statutory improve the quality of services, facilities and opportunities for people in Australia?*

Alternative model

In Wales, an alternative arrangement exists between ‘making the Compact statutory’ and leaving it as a voluntary agreement. In this example, the Assembly Government is required by statute to make a scheme setting out how it proposes to promote the interests of voluntary organisations.

If this model were adopted this aspect would need to be embedded in an Act of Parliament, obligating the Government to state how it proposes to promote the interests of NGOs. The Act could also require annual reporting to Parliament on how the Government had implemented its proposals during the year.

This would not put the Government under an enforceable legal obligation to implement each and every one of its proposals, but it would mean that Government was acting under a requirement of Parliament and was formally accountable to Parliament each year for its performance.

10. What are the advantages/disadvantages of the Welsh model of a statutory provision requiring the Government to set out its proposals towards NGOs and to account to Parliament each year?

There is another model equally requiring an Act of Parliament. The Government and NGOs could be put under a statutory obligation to 'have regard' to the Compact principles and undertakings in its relations with each other.

Whilst not making it compulsory to follow the Compact in every case it would force Government and NGOs to take the Compact seriously: they would have to be able to explain and justify why it was not followed in any particular case. The main difference between this and a non- statutory Compact is that Parliament would be endorsing the Compact, though it would be encouraging rather than forcing organisations to follow the Compact.

11. Is this model worth consideration?

12. What impact is it likely to have on relationships between Government and NGOs.

In the UK, the Compact originally was an agreement between the Government and the 'voluntary and community sector', which consists of charities, non-charitable voluntary organisations, and community organisations. More recently, the Government has adopted the wider term 'third sector', which consists of all organisations free from Government control that exist for a socially-useful purpose and that spend all their resources (including any surpluses) for that purpose. The third sector, as defined by the Government, therefore includes not only community organisations but also social enterprises, cooperatives, and some mutual organisations.

13. Should Australia consider a compact between Government and NGOs or extend the agreement to a wider definition of community organisations?

MHCC questions under whose responsibility would leadership, operation and accountability of the Compact reside. We suggest that unless the Compact is written into an Act of Parliament that political imperatives will strongly influence the ability for a commitment to be sustainable.

However, whether a Compact is developed within or outside of statutory law, it would require a body or Commission (such as the Health Complaints Commission) with a constitution to implement Government policy. A Commission would need to remain operationally independent, and act in the interests of strengthening partnership working between the Government and NGOs - not in the interests of any Minister or of the Government generally.

The Commission could be given the power to investigate actions and decisions of organisations with or without their consent, such as: ensure that organisations supply the information and documents requested; require organisations to explain and justify their actions; and ensure that organisations take note of and respond to Commission recommendations within a reasonable time.

Establishing a statutory Commission would transfer from Ministers to Parliament, in an Act of Parliament, the task of deciding on the Commission's objectives, functions, powers, and other important elements of its constitution. Its constitution could then not be changed, and the Commission could not be abolished, without another Act of Parliament.

14. Should we explore the establishment of a Commission for the Compact as a statutory body?

15. If the Commission is established as a statutory body, should its membership reflect the full range of Compact stakeholders?

16. Would the Commission's independence be compromised by Ministerial control of its constitution in practice?

Conclusion

MHCC suggest that both Government and the community sector focus on this important initiative with a firm commitment and preparedness to learn from the evidence available to us both in Australia and overseas and not tentatively 'dip a toe in the water'.

Let us ask questions that more broadly cover the issue, because if the option of a statutory Compact is not discussed at the outset and responses to that option not discussed, we will only have gathered half the information necessary to make a decision either way.

MHCC applaud the Government for putting the Compact on the agenda. We hope that as a result of the nationwide consultations will be a dynamic outcome that will provide a solid rock on which working relationships between Government and the community sector may be dramatically improved and sustained into the future.

MHCC look forward to the outcome of the Government's deliberations.

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