

Overview

ACOSS has extensive experience and a keen interest in ensuring adequate, appropriate processes of engagement between governments and the community and not-for-profit sector, including from our extremely close involvement in the development of the National Compact between the Commonwealth Government and the Not-for-profit sector.¹

The Code of Best Practice for Engagement (Code) flows from the National Compact and is intended to be a practical reference tool for public servants and not-for-profit (NFP) organisations to support the work of the National Compact. It has been co-developed by the Office for the NFP Sector and the NFP Sector Reform Council, in consultation with the broader NFP sector who have provided input through an online survey, face-to-face workshops around Australia and an online forum. This submission is in response to a consultation on the Code, by the Department of Prime Minister and Cabinet.

ACOSS welcomes the development of this Code and the opportunity to comment on it, as an important next step in the evolution of the Compact. We are broadly supportive of the Code's intended purpose and the key points it sets out.

However, we seek a clarification of the Code's status: whether it places obligations and expectations on Commonwealth departments and agencies or whether it is a guide only. If the Code has no 'teeth' and can be ignored, we run the risk of poor consultation processes continuing. In addition, there are a number of elements to the Code Undertakings that could be used to justify a rushed or ineffective consultation. Doing the right thing by stakeholders is as much a culture as a set of required practices, but it is unclear how either will be engendered by this Code.

With that context, we make the following response to specific elements of the Code for consultation.

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¹ Our network has extensive experience of these issues with other governments, see for example 'Collaboration and Consultation Protocol' (2004) developed between the Victorian Department of Human Services and Victorian community service sector, http://www.dhs.vic.gov.au/_data/assets/pdf_file/0009/623664/collaboration-and-consultation-principles-poster.pdf

1. Application and key principles of the Code

We support the stated application of the Code and the key principles it sets out.

2. Code Undertakings

a) Preparing for consultation

- i. We note that the expectation that sector organisations assist in the development of consultation materials often requires resources to be sustained and undertaken adequately.
- ii. The requirement for confidentiality in consultation processes has been extremely vexed in a number of recent examples, including the NFP sector regulation and tax reforms. We remain uncertain whether confidentiality requirements from Government can be reasonably balanced with the responsibilities sector organisations' have, including to members and colleagues and the broader public, given that the essence of the sector is its independence; and, to the extent that they have charitable status, to work for the public good, not as an agent of government. Confidentiality requirements are particularly fraught for peak bodies who derive much of their legitimacy from their relationships with their members. It is evidently fraught from the Government's own expectations also, given that the value of peaks consulting with their members is expressly stated in subsequent Undertakings of the Code. The expectation that Government can select representative policy input at some times and confidentiality at others creates significant barriers to the processes of accountability that membership bodies should be constantly striving for.

b) Timing of consultations

- i. A considerable factor in the timing of consultations is not just the individual process but the context in which it takes place. As we complete this submission it is one of three papers out for consultation, all due within five days of each other, and all related to critical issues about sector effectiveness and the regulatory and other processes that can support this. The Code needs to reflect the burden falling on Government departments to plan their processes across Government, not just within their particular bureaucracies.
- ii. Given the point at i) above, the expectation of continuity from sector organisations *throughout* policy processes sounds reasonable in the abstract. However it is important to recognize that reform takes time, and the length of time is often well outside of the sector's control, particularly for reforms requiring legislation or other machinery of government. For example, the time it has taken to modernise the definition of charity in Australia is already over 12 years, since the Charities Definition Inquiry in 2001 (CDI), and it continues. Organisational priorities, scope and resources can change significantly over time and capacity to remain engaged is dependent on many of these factors.

- iii. We appreciate the recognition that capacity to engage on a process can be effected by particular points in time. Another good example here for many of our members is the December-January, which for many organisations is a time of much-needed shutdown, but for others can be the busiest and most demanding time of year (eg ER, family relationship and crisis services).
- iv. Our involvement in developing this Code is for all of Government, not just particular bureaucracies. When reflecting that Ministers may choose alternative processes to those set out in this Code, it would be useful to identify a responsibility on the public service to brief and reiterate the values and objectives of this Code. The sector wants to feel confident that these issues have been raised with Ministers, in the context of frank advice from the public service, even if an alternative approach is adopted.

c) Policy Development and Implementation

- i. Other key information to be made available by Government is any departure from previously expressed or supported positions, and the reasons why. For example in splitting the statutory definition of charity and the consequent tax arrangements, which was coupled in the CDI recommendations.
- ii. The note about sector conflicts of interest requires further elaboration here. Particularly, it would be useful to clarify the boundaries of what is considered a *conflict* of interest for a sector organisation, as opposed to the standing interest that motivates the sector organisation to be involved in the process in the first place.

d) Consulting with diverse stakeholders

We note the comment, 'whilst peak bodies play an important role, organisations that deliver services should also be included in consultations'. This reflects a refrain that we have observed in several Government consultative processes recently. We seek clarity about what is driving the concern reflected here, particularly given a key role for peak bodies is to consult with their members, and that many service organisations are members of their peak bodies to enable their views to be represented. It also appears to be at odds with another expressed view that that the sector should present representative views.

e) Information sharing and confidentiality

While we support the responsibility for sector organisations to share information they have learnt from consultation processes, we reiterate our concern at 2.a)ii above, that such an expectation is at odds with confidentiality provisions. What happens where confidentiality is the priority superior for Government, and information-sharing is the priority for the sector? Confidentiality also undermines the capacity of sector

representative bodies to consult with their members before expressing views to government. How do we respond to such competing interests?

3. Forms of engagement

In this discussion, it is important to reflect that consultation is also an opportunity to build support for an area of policy or a reform proposal. The capacity to develop 'buy-in' from stakeholders is a key driver of effective consultation, and can take place on both sides of an engagement process.

4. Considerations for engaging stakeholders

- i. Consultation generally should provide for a broad cross-section of input, therefore the recognition of processes necessary to make consultation accessible to a broad range of people is welcome. Importantly, accessibility needs to be a continuous feature of engagement processes. To take the example provided in the Code, ensuring that people with disability can review and engage in consultation materials through many formats is always important, not just for an issue deemed to be specifically relevant to disability.
- ii. The discussion of various options for engagement is useful, including in relation to online formats. ACOSS has used these effectively for recent consultation and has noted the reduction in burden of completing formal submissions accordingly. While innovation like this is welcome, it would be useful to consider formats where the online content can be downloaded, particularly in the interests of transparency by member-based organisations.

5. Evaluation of agencies consultation processes

Given that there has been some significant progress made in the engagement by Government with the National Compact, it would be good to promote this further across the not-for-profit sector. For instance, through our position on the NFP Sector Reform Council ACOSS is familiar with the example of how the Department of Health & Ageing's Compact Advocate responded when approached by a number of sector organisations concerned about unnecessary red tape in a Departmental contracting process, with very positive results for both Government and the sector. Promotion of these kinds of experiences would be an excellent and inspirational example of good practice for all.