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# **Agreeing to Disagree**

**Maintaining dissent in the NGO sector**

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## Summary

Non-government organisations (NGOs) contribute to the Australian community in many ways. This paper focuses on their advocacy work. Through advocacy work NGOs help produce an active and vibrant democracy as they provide representation to marginalised members of the community. NGO advocacy also informs debate, rendering it more substantive and less likely to be captured by business or more powerful members of the community. During the years of the Howard Government, however, the contributions of NGOs were not always valued. Indeed, some commentators suggest that not only did the Australian Government reject NGO input, it actually employed mechanisms to silence dissenting, critical voices. These mechanisms included:

- the public denigration of NGOs
- the inclusion of gag-clauses in government contracts
- the de-funding of organisations critical of the government.

This ‘silencing of dissent’ is one of the reasons many advocacy NGOs welcomed the election of the Rudd Labor Government in November 2007. Many NGOs believe that the election of the new government will provide an opportunity to rebuild a relationship that has become difficult and, for some, unworkable. As one of our interview participants stated:

*There is a lot of potential with the new government and expectations are high.*

To guide this relationship renewal, the Australian Government is actively considering the introduction of a compact for the NGO sector. Compacts are non-binding agreements between governments and NGOs, taking different forms depending upon where and why they have been created. Broadly speaking, however, compacts have focused on defining the relationship between government and the NGO sector. Within a compact, governments will typically acknowledge the independence of NGOs, agree to consult with them and ensure funding arrangements are adequate and long-term. In return, NGOs will agree to be accountable, transparent and adopt good practice principles in their use of government funds. Senator Ursula Stephens, the Parliamentary Secretary for Social Inclusion and the Voluntary Sector, announced in April 2008 that the Australian Government would begin consulting with the NGO sector regarding the development of such an agreement.

This paper examines what advocacy NGOs stand to gain from entering into a compact, as well as what they may lose. It further considers the conditions necessary for a compact to be effective. Conclusions are reached through an assessment of the existing compacts in England and NSW, an extensive examination of relevant literature and an analysis of interviews with selected Australian advocacy NGOs. On balance, the conclusion is that while compacts may offer certain benefits, they are unable to guarantee lasting legitimacy for NGO advocacy. Nor can they be relied upon to ensure an effective and respectful long-term relationship between government and NGOs.

*Benefits of a compact*

In their ideal form, compacts present a number of advantages for NGOs engaged in advocacy.

First, where conflict exists between governments and NGOs, the process of developing a compact obliges the parties to begin talking to each other again. Compacts therefore offer an opportunity for relationship renewal, allowing government and NGOs to work together on a more respectful footing.

Second, the development of a compact allows considerable public debate to occur regarding the legitimate and important role of NGO advocacy. If such debate does occur, then the legitimacy of advocacy NGOs may be considerably strengthened in the eyes of the community. This should provide NGOs with a stronger long-term platform upon which to engage in public debate.

Third, successful compacts can improve funding arrangements for NGOs. UK research suggests that the English Compact has provided some NGOs with more consistent and stable funding policies and procedures, allowing them to plan and deliver their services more effectively. If this situation can be replicated in Australia, the implementation of a compact will allow NGOs to become more financially secure and hence, more focused advocates.

Fourth, successful compacts should facilitate improved communication between government and NGOs. The English Compact includes a commitment from the UK Government to consult with voluntary and community organisations on matters likely to affect them. In order to ensure that this is more than just rhetoric, supporting Compact Codes of Good Practice provide NGOs with a 12-week consultation period in which to comment on government policies and proposals. The English Compact is therefore intended to provide channels for structured, more equal and formal contributions to policy debates on the part of NGOs, arguably an improvement on the situation where government ignores NGOs and other dissenting voices. The framework of a compact does not cover the more radical activities that some organisations or individuals may engage in; rather, compacts are about creating closer, more professional relationships between NGOs and government.

Finally, for some NGOs, compacts may be the best way to manage their relationships with government. Those NGOs that work with more controversial clients groups, for example sex workers or drug users, are less likely to receive financial support from business, the community or their clients. These organisations will therefore have little choice but to engage with government, as they will need government funding to survive. A strong and effective compact may be the best way to manage these relationships, establishing a solid set of guidelines to define the association and thus affording these organisations more independence than they might otherwise have.

At their best, compacts help create stronger and more effective NGOs. They create clearer pathways to government and thereby offer some organisations greater opportunity to influence the development of policy.

### *Problems with a compact*

Compacts are not, however, universally regarded as the solution to the problems that exist between government and advocacy NGOs. The literature describes a number of problems with such agreements.

First, compacts are neither permanent nor binding agreements and do not offer long-term strategies for supporting advocacy NGOs, regardless of the government of the day. The championing of compacts by centre-left governments may result in their becoming, in practice, agreements made only with particular political parties. This can create problems when governments change. In the case of NSW, the Carr Labor Government's *Working Together for NSW* compact was abandoned by Iemma Labor Government. If organisations have based their sustainability on a compact rather than on galvanising public support for their work, the subsequent removal of the compact may leave them in a weak advocacy position. Organisations may be better served in the long term if they direct their energies into more sustainable practices, such as building community support for their advocacy roles.

Second, compacts are not always successful. For a compact to be effective, all stakeholders need to understand the details of the agreement. This rarely happens, however, as ensuring that relevant stakeholders understand what a compact entails requires a large amount of money and resources, which cannot be guaranteed. One of our interview participants explained that:

*... it would require money to educate the public servants and to educate all the NGOs. Enter into a compact and there are literally thousands of NGOs needing education, and a decent education program costs a lot of money.*

Compacts bring with them no legal weight and thus the only enforcement mechanism available is a potential loss of face for a defaulting party. But if parties are not even aware of the terms of the compact, they are in no position to call attention to breaches of it. Advocacy NGOs must, therefore, be convinced that the provisions of any compact they enter into will be adequately communicated to the relevant parties. NGOs themselves must also ensure that they create structures to keep this awareness 'alive' in their organisations, despite staff turnover. If organisations are not certain that these conditions can be met, their energies are probably better directed elsewhere.

Third, compacts may reinforce existing structures of devolved government. Compacts form part of a bigger picture, in which governments have progressively withdrawn from service provision, preferring instead to 'outsource' this function to the private and not-for-profit sectors. Compacts therefore prop up and entrench the market-driven reforms of both Coalition and Labor governments, supposedly making it easier for NGOs to deliver services. Organisations that may once have disagreed with the concept of a government outsourcing essential services (and may still disagree), can find themselves competing for funding to deliver such services. Compacts can therefore act to deflect real criticism because they defuse the voices of those likely to be most critical of government policy.

Finally, working closely with government is not necessarily the most effective way to influence policy. Many argue that working closely with government is a form of co-option, in which the more activist elements of NGOs are tempered by being brought

‘inside the tent’. In this view, far from encouraging dissent, compacts provide convenient and neat channels for it, merely giving the impression that government is listening.

*Conditions necessary for a compact to be effective*

Although this paper finds that compacts are not necessarily optimal for the NGO sector, there are a number of factors necessary to ensure success should government and the NGO sector agree to one in the future. In particular, a compact must:

- **Be known:** government officials and both large and small NGOs whose work falls within the ambit of the compact must be aware of its existence and understand its implications.
- **Be monitored:** a check of some sort is required to ensure that the commitments made within the compact are being met. One way the compact could be assessed is through a regular and comprehensive survey of NGOs.
- **Include penalties:** a penalty needs to apply if NGOs or government bodies do not comply with the arrangements made in the compact.
- **Have champions:** there must be people in both the Australian Government and the NGO sector who firmly support the development and operation of a compact.

These conditions, at minimum, are necessary for a compact to be effective, but they are not easily met because they require considerable effort and money on the part of both NGOs and government. Nonetheless, if both the Australian Government and NGOs genuinely seek a successful compact, they must ensure that all of these requirements are in place.

*Conclusion*

This paper recognises both the costs and benefits of a compact. However, on balance, the conclusion is that, while compacts may offer certain benefits, they are not always effective and may not provide long-term solutions to the relationship predicament between government and NGOs. Instead of relying on a compact to solve their difficulties, both the Australian Government and NGOs should channel their efforts into promoting the political and cultural legitimacy of NGO advocacy.

If NGOs promote the message that they are vital to the creation of a healthy democracy, then this will provide a firmer, longer-term foundation for NGOs to better engage in public debates. A shift in cultural attitudes, in which the worth of NGO advocacy is recognised, is the most effective defence against government attempts to undermine and constrain the sector. NGOs should, therefore, direct their energy towards the promotion of this message rather than towards an often ineffective, and usually short-term, agreement.

The Australian Government must also play a part in creating this cultural shift. Governments have a responsibility to support NGO participation in public and policy debates; they rely on these organisations to deliver necessary community services and

have therefore made them important constituents in policy production. There are numerous ways in which governments might assist NGOs, including the encouragement of philanthropic support for them and increased funding of their infrastructure. The Rudd Government's removal of gag clauses from NGO funding agreements is a step in the right direction.

Compacts themselves are unable to guarantee the long-term legitimacy of NGO advocacy. Nor can they be relied upon to ensure an effective and respectful long-term relationship between government and NGOs. These things will only occur if NGO advocacy is widely recognised as having a legitimate and valuable place in public debate. It is towards this recognition that NGOs should strive.



## 1. Introduction

Non-government organisations (NGOs) contribute to the Australian community in a myriad of ways, creating a rich, supportive and inclusive community (Lyons 2001a). They help produce an active and vibrant democracy as they provide representation to marginalised members of the community. NGOs can also inform public debate, rendering it more substantive and less likely to be captured by business or more powerful members of the community.

In recent years NGOs have had an increasing role in the delivery of social services, as Australian governments have moved away from direct involvement in service provision. As a consequence, many NGOs now receive the bulk of their support from government rather than from volunteers, charitable donations and/or philanthropy.

This shift has changed the way many NGOs operate. For example, some of the organisations that grew out of the ‘new social movements’, such as the women’s and environment movements, may once have had strong activist and collectivist work practices. Now, many of these NGOs have more bureaucratic and professional structures, implement models of good governance and best practice into their work, and seek out stable and secure funding sources, often from government.

As a result, there has been an enormous change in the relationship between government and these NGOs, with one of the most troubling and difficult effects being that many NGOs are no longer so clearly independent of government. Rather, as providers of services that were previously the responsibility of government, their role is now quasi-governmental, which has led to questions about the ability of the sector to participate in advocacy or offer criticism of government. After all, what checks exist if the organisations designed to act as a check on government are now an arm of government?

These new arrangements prompt questions about managing the dealings between government and NGOs. For example, to what extent and how should NGOs be accountable for the government money they receive? On the other hand, what degree of independence should advocacy NGOs be able to retain?

It is in Australia’s best interests to find a way to reconcile government support with organisational independence. A fresh approach to the relationship between government and NGOs is required. It is for this reason that a compact has been suggested to help frame and support these new relationships.

### 1.1 What is a compact?

For the purposes of this paper, ‘compacts’ are defined as non-binding agreements between governments and NGOs<sup>1</sup> that provide a framework for guiding how these two groups can work together for ‘mutual benefit’ (Casey *et al* 2008a, p. 3), and hence for the benefit of the community as a whole.

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<sup>1</sup> This paper uses the lower case ‘compact’ to describe these agreements, unless reference is made to a particular compact, such as the *Compact on Relations between Government and the Voluntary and Community Sector in England* (‘the English Compact’).

Such agreements have been considered and/or developed in a number of countries, including, the United Kingdom (UK), Canada, New Zealand, Estonia and Croatia (Liiv 2001, Lyons 2001b)<sup>2</sup>. In the UK, these agreements have been termed ‘compacts’ whereas Canada adopted the term ‘accord’. Australian state and territory governments have also developed similar agreements; for example, NSW prepared the *Working Together for NSW* agreement in June 2006 and the ACT developed the *Social Compact: A Partnership between the Community Sector and the ACT Government* in 2004.

Compacts have taken different forms depending upon where and why they have been created. However, broadly speaking, they have focused on defining the obligations government and NGOs have towards one another. Typically, governments will acknowledge the independence of NGOs, agree to consult with them and ensure funding arrangements are adequate and long-term. In return, NGOs agree to be accountable, transparent and adopt good governance principles.

Compacts are often created when tensions between NGOs and government have reached a crisis point. Undoubtedly, some tensions should exist between these two sectors, because a strong civil sector should act as one of the checks on government. Occasionally however, tensions have become so severe that relations between government and NGOs have become destructive and unworkable. When this occurs, compacts are often instituted as a way to renew and improve the relationship. In these cases, ‘the process of developing a policy or agreement is as important as the product’ itself (Craig *et al* 1999, p. 1).

## 1.2 Why the fuss about compacts?

The new Rudd Government has been vocal in its criticism of the Howard Government’s treatment of NGOs. Deputy Prime Minister Julia Gillard has stated that the previous government ‘did not want to hear the contribution of the third sector, the not for profit sector, and deliberately took steps to silence [its] voice’ (2008).

The Rudd Government has stated that it intends to develop a productive relationship with the NGO sector, contrasting with the mostly fraught relationship that developed between the Howard Government and NGOs. In Julia Gillard’s words:

We want to make sure the not-for-profit sector, the advocacy sector, can do what it does and have a say within the public domain ... We think it’s important to a mature democracy that people who have got expertise in dealing with provision of services with disadvantaged groups in our society aren’t constrained from entering the public debate (Gillard quoted in Franklin and Lunn 2008).

The Australian Government has already begun to put these promises into effect, raising hopes that its statements may be more than just political rhetoric. For example, it has announced the removal of the controversial ‘gag clauses’ that were included in government contracts with NGOs (Franklin and Lunn 2008). Senator Ursula Stephens, the Parliamentary Secretary for Social Inclusion and the Voluntary Sector, has also written to federal ministers requesting the identification of ‘contracts

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<sup>2</sup> New Zealand decided not to develop a compact-style agreement.

and funding agreements’ which include ‘instances where it may be considered that an NGO could be “gagged” from making public comment’. Stephens has also suggested that contracts now include a clause making it clear that ‘contracts are not intended to inhibit criticism’.<sup>3</sup>

These initiatives are having some effect, and there appears to be genuine excitement amongst NGOs as to how the relationship with the Rudd Government will develop. Adele Horin has written that ‘a whiff of compassion is in the air. Welfare organisations that have languished in the cold since 1996 are getting calls from ministers and have a seat at the table’ (2008, p. 27). This optimism has been reflected in the interviews undertaken for this paper. For example, one interview participant stated:

*I feel almost completely confident that the relationship will be very much better, though not perfect ... I know many of the people ... and they are seriously committed to listening to various NGOs.*<sup>4</sup>

Another felt that:

*In terms of the quality of interaction there is no comparison ... The level of access we are getting is beyond what we could have hoped for.*

The development of a national compact is one way the Rudd Government is trying to renew the relationship between the Australian Government and NGOs. Before the 2007 election, Labor stated in its Social Inclusion Agenda that it ‘will consult with the sector about whether such a compact ... could or should be developed in Australia, and what might be included in such a partnership’ (Gillard and Wong 2007, p. 11). Post- election, Senator Stephens has announced that:

... the Government is moving forward on its election promise to consult on a National Compact between Government and the non-profit sector ... I am excited by the prospect of working with the sector to develop a National Compact (2008).

President of the Australian Council of Social Service (ACOSS), Lin Hatfield Dodds,<sup>5</sup> has also declared her support, saying that compacts are ‘an opportunity to express common values and approaches. These will assist the not-for-profit sector in its relations with the Government, particularly in tendering and contracts’ (ACOSS 2008).

Clearly, a number of stakeholders want to improve the relationship between the Australian Government and advocacy NGOs. A national compact may be one way to achieve this.

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<sup>3</sup> The Australia Institute gained a copy of this letter through a Freedom of Information request.

<sup>4</sup> The research methodology and interview participants are explained in Chapter 2. Within this paper, all quotations from our interviews are written in italics.

<sup>5</sup> Ms Hatfield Dodds is also a Director of The Australia Institute.

## 2. Method: Speaking with advocacy NGOs

### 2.1 Method

#### *Literature review*

An extensive examination of relevant literature, comprising academic work, media reports, speeches from parliamentarians, annual reports from various NGOs, Australian, UK and NSW government documents and policies and Hansard, was undertaken for this paper. The literature provides a thorough understanding of how compacts have worked in NSW and England and includes information on constructing a compact and what has and has not worked in other localities. The Australian literature is used to examine some of the difficulties that have arisen in recent years between Australian governments and advocacy NGOs.

#### *Qualitative research*

To supplement the literature review, the paper relies upon interview data gathered from a number of advocacy NGOs. These data are not intended to provide a statistically relevant snapshot of the organisations; rather they reflect the ‘multiperspectival orientation’ of advocacy NGOs (Snow and Trom 2002, p. 154), represented by interviewing people with different experiences and opinions from various organisations. The varied perspectives help to ground some of the theory discussed elsewhere in this paper.

The Australia Institute’s discussion paper, *Silencing Dissent*, was based on quantitative survey research of nearly 300 NGOs (Maddison *et al* 2004). It provided a map of NGO opinion at a particular time, and the data generated by that research help to inform this paper. However, there is also value in the use of qualitative methods to better understand these organisations.

First, qualitative methods allow ‘thicker’ material to be generated; for example, NGOs, which may consider that their relationships with government have constrained their capacity to advocate for their clients, are able in the interview process to provide contextual support for such views (Heyl 2001).

Second, participants are able to provide feedback in their own words, a useful process as data is then more likely to reflect the genuine ideas of the participants, rather than the language of the survey (Kurti 2005, p. 86).

Third, sometimes more revealing than statistics alone can be the use of research participants’ own language, allowing readers to identify more closely with them.

#### *Generalisability*

The organisations selected to participate in this work were not intended to be strictly representative of advocacy NGOs more broadly. Additionally, because the sample group is small and the NGO sector so diverse, these findings cannot necessarily be generalised across the sector. Rather, the results of the interviews are intended to provide a snapshot into the experiences and thinking of some NGOs that engage in advocacy in Australia. Nevertheless, the experiences and thoughts of these

informants are useful in understanding the advocacy NGO sector and they provide an opportunity for the sector to reflect broadly upon its relationship with government.

The sample group includes a diversity of organisations, not only in terms of the groups they represent but also in terms of their formal relationships with government. For example, some receive core funding from state or federal governments while others are funded entirely through philanthropic support (as is explained in more detail below). The sample therefore includes a multiplicity of viewpoints rather than one coherent perspective.

### *Interview method*

Semi-structured interviews were conducted with representatives from seven Australian organisations. Participants were interviewed by phone. While the format was standardised, the interviews were intended to be flexible enough to allow participants to expand upon particular thoughts and stories.

Notes were taken during the interviews and then analysed so that relevant data could be extracted. In particular, broad themes were identified and transcripts appropriately coded. Any quotations suitable for publication were then sent to each participant who could remove or retract, without reason, any of their statements. By providing participants with this 'safety net', it was hoped that they would speak more freely during the interview stage.

## **2.2 Participants**

Participants were selected primarily on the basis that they were advocacy NGOs operating in Australia. The intention was to hear multiple viewpoints so the selection represented a diversity of concerns and included organisations that had experienced both positive and negative relationships with the former Howard Government.

Organisations were emailed or mailed information regarding the research and asked to participate in an interview. Seven organisations agreed and were then interviewed. All organisations (and their representatives) remain anonymous, this allowed the participants to speak more freely than they otherwise might have. Although some organisations may have tempered their comments, particularly when discussing funding issues, it was hoped that their anonymity would allay some of these concerns.

Participants included:

- a peak health organisation operating in NSW that engages in both service provision and advocacy. This organisation receives funding primarily from the NSW Government
- an international environmental organisation
- an organisation that engages in advocacy and education regarding international affairs. This organisation was de-funded by the Howard Government

- a youth organisation that engages in advocacy and education regarding international affairs. It is run by volunteers and receives project based funding from the Australian Government
- a large Christian welfare organisation that engages primarily in service provision and project work. It has a substantial volunteer base and receives funding primarily through donations and bequests from its membership. It is also funded for some service provision and project work by both state and federal governments
- a small national policy and advocacy body funded by membership fees, donations and project grants from foundations and government agencies
- a peak youth organisation that receives no government funding.

### **2.3 Limitations**

The interviews carried out for this research are not intended to provide a representative sample of advocacy NGOs. More substantive interviews and survey work has been undertaken on these types of organisations previously (see Melville and Perkins 2003; Melville 1999; Maddison *et al* 2004). The interviews do, however, allow the reader a more grounded consideration of the issues experienced by advocacy organisations. Furthermore, the diversity of viewpoints reflects the fact that advocacy NGOs themselves comprise an extremely diverse group with many views on how best to work with government.

### 3. Non-government organisations

#### 3.1 Defining advocacy non-government organisations

This paper is concerned with organisations that fall within the third sector — that is with organisations that are neither part of government nor part of the private, for-profit sector. They are often referred to as non-government or not-for-profit organisations (NGOs/NFPs). The third sector is made up of an extensive and diverse range of organisations and groups, including sporting groups such as local netball clubs and small social clubs such as parent groups. These organisations help to create a colourful, inclusive and supportive community life (Lyons 2001a) but they are not the focus of this paper, which concentrates instead on NGOs that engage in advocacy.

Advocacy activity includes a diversity of strategies. It may include ‘insider’ approaches, in which organisations participate within official policy-making spaces, such as through writing submissions to government and sitting on government committees. It may also include more ‘outsider’ approaches, such as more the radical activities of street protests or occupying spaces (Carbert 2004).

Organisations that engage in advocacy may employ any of the activities listed above, and they do so ‘on behalf of the interests they represent’. Their hope is that by engaging in the public sphere, they will influence ‘public policy or the decisions of any institutional elite’ (Casey *et al* 2008a, p. 5).

In Australia, advocacy is sometimes, though not always, performed by peak groups, which are not usually service providers but rather bodies that represent a cluster of NGOs. The Industry Commission has defined a peak group as:

a representative organisation that provides information dissemination services, membership support, coordination, advocacy and representation, and research and policy development services for its members and other interested parties. The peak council role does not involve direct service delivery (1995, p. 181).

An example is ACOSS, the peak body for community services and welfare sector organisations. These organisations are unlikely to be able to provide much financial support for ACOSS’s operations since the majority work with individuals and families experiencing poverty. Like many peak organisations, ACOSS therefore receives financial support from the Australian Government (Lyons 2001a, p. 189-90).

Peak bodies are not, however, the only organisations that engage in advocacy. Many NGOs do as well and some are likely to be significantly larger than their relevant peak body. For example, both Oxfam Australia and the Salvation Army are larger than their respective peaks, the Australian Council for International Development and ACOSS. Moreover, not all NGOs have a peak body. For example, there is no peak environmental organisation in Australia. This can mean that large environmental organisations, such as the Australian Conservation Foundation, can become almost ‘quasi-peaks’ in that they are likely to be approached by government for their views on environmental policy.

Small and medium sized NGOs, primarily funded for service provision, are also likely to engage in some forms of advocacy. For example, a small organisation

working with homeless young people may engage in some advocacy work and not rely entirely on a peak body to speak for it. Such an organisation may lobby local MPs or councils to harness more funding support, or work to educate and inform the community so that the circumstances of its clientele are better understood. This kind of small NGO is likely to contribute something unique from its experiences at a local level to the debate on youth homelessness and would therefore seek to have its opinions heard in a number of different arenas.

Governments tend to seek out the sort of advocacy work performed by NGOs as they can contribute expertise that government agencies do not necessarily possess. In this situation, advocacy more generally occurs 'through predetermined institutional channels' than through the 'range of collaborative and confrontational strategies' (Casey and Dalton 2006, p. 26) organisations may otherwise employ.

Hence, advocacy organisations are political, though not always overtly so. Their intent is to influence change, or to shore up support for an existing position, and they are likely to encounter some form of opposition because advocacy can affect *interests*. This is so even where an organisation promotes the type of statement that is difficult to fault, such as Mission Australia's stated goal of 'eliminating homelessness in Australia' (2008). While the aim is uncontroversial, it contains inherently political concerns such as, for example, where should the money come from and who then misses out on funding? Some would also question whose role it is to solve homelessness.

It is worth emphasising that advocacy NGOs are political, because organisations that engage in advocacy operate within an environment that is contextually different from those that do not. This is because they are entering the political arena; trying to stir things up, to change minds and influence policy. As Marian Sawer writes, it is their job to 'get up the government's nose' (2002, p. 41). The point of these organisations is not simply to do the work of government; it is to *change* the work of government. Many organisations, however, believe that this is not the best way to approach policy change and instead seek to influence policy through close, 'insider' relationships with government. As 'insiders', the argument goes, organisations are better placed to influence policy development, ensure appropriate funding and improve their public profile (Maddison and Edgar 2008, p. 188).

Both forms of advocacy, 'insider' and 'outsider', expose organisations to the mood of the government of the day. Because they are engaged in the political arena, at some point they are likely to be critical of those in power, or indeed of those who might one day be in power. If they annoy certain individuals through public criticism or by appearing too 'cosy' with political opponents, they may find that they no longer have access to policy-making spaces and hence are constrained in their capacity to advocate.

### **3.2 The value of advocacy organisations**

The value of having a strong, diverse and active advocacy NGO sector has been described extensively (Lyons 2001a; Sawer 2002; Maddison and Denniss 2005; Gutmann and Thompson 2004; Dryzek and List 2003). As this paper will argue, even those who do not access the services of advocacy NGOs themselves benefit from living in a community in which these organisations are active. This is because an

active NGO sector is essential to maintaining a democracy that is both participatory and deliberative.

*Participatory democracy* is premised on the notion that a legitimate and healthy democracy is one where citizens are able to participate in decisions that affect their lives (Hauptmann 2001, p. 398-399). Under a participatory democracy model, the media, NGOs, businesses, unions, churches, different levels of government and individuals are all able to make substantive contributions to why something should or should not be done.

*Deliberative democracy* is based primarily on the belief that ‘citizens and their representatives’ must ‘justify the laws they would impose on one another’ and these justifications must be of the sort that can ‘be accepted by free and equal persons seeking fair terms of cooperation’ (Gutmann and Thompson 2004, p. 3). Under the deliberative democracy model, decisions can be publicly debated and citizens are given the opportunity to have input into how policies are decided. This does not mean that all government decisions should be ratified through referenda but it does mean that when government makes a decision, it must provide its reason for doing so. Even if the public disagrees with the rationale behind the decision, it gains an understanding of why it was made.

These models are complementary; while participatory democracy demands the participation of individuals and groups; deliberative democracy explains how it is they should participate. Both are important models because they recognise the public to be agents, not ‘passive subjects to be ruled’ (Gutmann and Thompson 2004, p. 3). A participatory and deliberative democracy requires NGOs to take an active role in public debates and in policy-making, thus ensuring that ‘those affected by a collective decision’ are able ‘to deliberate in the production of that decision’ (Dryzek and List 2003, p. 1).

NGOs assist in the maintenance of a participatory and deliberative democracy in a number of ways.

First, advocacy NGOs speak up for the interests of marginalised groups. This function is particularly important since many groups within the community can be considered ‘electorally unpopular’ (Sawer 2002, p. 39), and may lack the influence and/or means to speak for themselves. Unlike ‘working families’ or ‘soccer moms’, groups such as sex workers, the unemployed or prisoners are unlikely to be embraced by politicians seeking votes. Instead, they are more likely to be the victims of wedge and/or dog-whistle politics (Fear 2007). Policy-makers may attempt to implement policies that affect these groups without first engaging their input because they lack the status in the community to demand fair treatment. Similarly, groups such as young people or those experiencing homelessness, may be less likely (or, as in the case of young people, constitutionally unable) to engage in democratic processes such as voting. These groups may be unable to mount a successful argument to government and hence find themselves disenfranchised from policy decisions that could affect their lives.

NGOs that work with, or are constituted by, the people from these groups are able to represent their interests by airing their concerns within policy-making arenas and thus

enabling them to participate in the democratic process. In this way, marginalised people are not further marginalised by the inaccessibility of government.

Second, this extra-parliamentary involvement in the political process also acts as a check against stronger, better-organised and better-financed interests. Organisations such as business councils and employer groups are influential enough to have their interests heard in policy-making arenas, but advocacy NGOs can provide a counter to their ability to dominate the process. One interview participant stated:

*You can't do your job as a politician unless you listen. They listen to business and unions of course, so why not the NGOs?*

Third, the participation of NGOs in the policy making process may decrease the likelihood of public policy mistakes occurring. The involvement of more people, particularly experts, within decision-making spaces 'provides an opportunity for advancing both individual and collective understandings' (Gutmann and Thompson 2004, p. 12). For example, one interview participant explained their organisation's role in the production of policy as being one in which:

*We will talk to a policy adviser ... We can float an idea off them, so that we get better feedback. We can then put that idea out into the community ... Alternatively, we might be approached by a department regarding a particular policy ... We give them feedback and they may upgrade the policy.*

In this case, it is substantive debate itself that produces better policy.

Fourth, policy is also more likely to be effective when it is 'grounded in lived experience' (Sawer 2002, p. 39). Those working with individuals suffering mental health issues, for example, develop a good understanding of the circumstances of their clients. They are experienced in the implementation of government policy on mental health and possess some knowledge of its effectiveness, making them able to identify unintended consequences. One interview participant made this point; arguing that the opinions of those doing the work should matter because:

*We are at the coalface. We give the emotional and social support they need.*

These 'coalface' experiences allow organisations to develop knowledge of client needs, something that those not engaged in service delivery are unlikely to have. Consequently, NGOs provide a 'route into genuine local and community experience and views' (Osborne and McLaughlin 2002, p. 56). It is therefore useful, and indeed necessary, for governments to harness this knowledge to better inform policy development so that it is more effective, legitimate and appropriate to the circumstances of those it affects.

### **3.3 Conclusion**

NGOs play a vital role in the construction of a democracy in which the participation and engagement of citizens is central. They engage government, demanding public explanations for the reasons behind policy decisions and they lead and contribute to public debates, helping to ensure that government policy is not implemented upon a passive public. When NGOs take part in community debates, speak up for more

marginalised members of society, bring expert advice to government and work as a 'check' on the powers of government, they help produce a more vibrant, effective and legitimate democracy.

There is not, however, universal agreement about this concept of democracy. The next chapter considers, in part, some of the views of those who consider NGO advocacy to be illegitimate, and some of the ways they have attempted to constrain it.

## 4. The ‘silencing dissent’ thesis

In June 2004 The Australia Institute published the discussion paper, *Silencing Dissent: Non-government organisations and Australian democracy* (Maddison *et al*). In 2007, two of the authors went on to edit the book, *Silencing Dissent: How the Australian government is controlling public opinion and stifling debate* (Hamilton and Maddison).

These publications were based on what is referred to here as the ‘silencing dissent’ thesis. They argued that the Howard Government was ‘silencing, or at least muting, its critics in civil society’ using a number of methods, including ‘denigration and public criticism ... bullying ... management of consultation processes ... [and] diversionary tactics’ aimed at NGOs (Maddison *et al* 2004, p. xii).

This chapter outlines this thesis, and considers some of the mechanisms used by the Howard Government to constrain the advocacy capacity of NGOs.

### 4.1 The undermining of NGOs

In 1996, the Coalition campaigned on the platform that the Keating Labor Government was governing not ‘For All of Us’<sup>6</sup> but rather for ‘the urban “merlot and escargot” crowd’ (Mason 2006). Indeed, the opinion that the Labor Party was in thrall to a ‘chardonnay swilling, leftist elite’ still holds influence, with former Foreign Affairs Minister, Alexander Downer, recently describing the 2020 Summit as ‘a Keating-style gabfest with the Keating-loving elite’ (Coorey 2008).

The contention that critics of the Howard Government were ‘elites’ or captured by ‘special interests’ was powerful and politically successful. Marion Maddox describes how ‘it ushered in a government riding on the image of an alienated “mainstream”, said to feel excluded from other groups’ “special privileges”’ (2005, p. 77). This perception undermined the legitimacy of those who dared to criticise the government, branding them as unconnected to ‘mainstream’ concerns. The ambit of those who found themselves labelled as ‘elites’ was wide, and included many within the advocacy sector. Sawyer states that:

The Howard attack on special interest groups was by implication an attack on the extra-parliamentary forms of representation that had enabled more sections of the community to have a voice in policy development (2002, p. 44).

NGOs were depicted as ‘special interest groups’, intent on lobbying government in order to advance their own interests at the cost of ‘ordinary’ Australians; they were not seen as simply representing the interests of their clients or members. In stark contrast, politicians themselves were portrayed by the Howard Government as transparent and accountable, and hence the only legitimate players within the policy-making arena. This is illustrated by Liberal Senator Brett Mason’s statement that:

... politicians are responsible for their decisions, and the electorate periodically passes judgement over them. The NGOs are accountable to no

<sup>6</sup> This was the 1996 Liberal Party election slogan (Maddox 2005, p. 77).

one and answer to no one. Voters are surely entitled to expect that groups that claim to speak on their behalf and collectively represent their interests do have sufficient standing and are sufficiently representative (Mason 2004).

This argument was a serious challenge to the legitimacy of NGO engagement in public debate. Instead of government debating issues on their merits alone, particular criticisms were dismissed as illegitimate purely because of who had made them. That is to say, the man was being played rather than the ball.

Some of the organisations interviewed recalled such experiences. For example, one interviewee stated that the Howard Government:

*... wanted no relationship with us at all ... they had an at best sceptical and at worst hostile, view of the organisation.*

However, not all organisations felt that they had been barred from a role in policy making, with another interview participant describing their relationship with both the Howard Government and the new Rudd Government as:

*... respectful, confidential and solutions oriented ... The response we get with governmental departments is one of getting a good hearing.*

This divergence in perceptions possibly reflects two issues. First, organisations that represented interests that the Howard Government considered ‘non-mainstream’ (including refugees, Indigenous Australians, and gays and lesbians) often experienced negative relationships with government. Second, organisations that were highly critical of government policy were also likely to be ignored and/or derided (Maddison and Edgar 2008, p. 193). As the next section discusses, both circumstances could lead to organisations having their funding cut or removed.

## **4.2 The role of funding in ‘silencing dissent’**

Many NGOs and their corresponding peak bodies represent marginalised groups and therefore receive financial support from government. For example, ACOSS concerns itself with individuals and families experiencing poverty, a group of people unlikely to find the spare cash to support the organisation. Because of this, in the 2006–07 financial year, ACOSS received just under \$500,000 in funding from the Commonwealth Department of Families, Community Services and Indigenous Affairs (FaCSIA), or roughly a third of their income (ACOSS 2007, p. 9).

The provision of this funding suggests that government (in this case, the Australian Government) recognises the importance of secure and well-resourced organisations representing the interests of some of the more marginalised members of the community.<sup>7</sup> However, in recent years, many advocacy NGOs have observed that government funding does not always come without constraints. In particular, some have argued that their funding relationships with government have hindered their capacity to criticise government effectively, and hence to advocate effectively for their clients. This problem is magnified when organisations operate on short-term government contracts.

<sup>7</sup> A more cynical view suggests that it is also easier for a government department to consult with a peak rather than with the many organisations that fall under its umbrella.

Between 2000 and 02, Rose Melville and Roberta Perkins surveyed 142 peak bodies, of which 100 were primarily funded by either federal or state governments. Melville states that:

... the fragility of this situation was made clear by government threats to this funding. More than half of these government-funded peaks claimed to have received such threats and 10 were actually totally de-funded. Nearly 40% of the reasons given for these threats or funding loss were due to the peaks' political activity and changes in funding guidelines (2003, p. iv).

Their results were supported by The Australia Institute survey in which 90 per cent of respondents agreed with the statement, 'dissenting voices risk having their funding cut' (Maddison *et al* 2004, p. 39). The authors of that report also found that 70 per cent of the NGOs they surveyed felt that their advocacy work was constrained because they were recipients of government funding. As one respondent explained, 'We would be unwise to bite the hand that feeds us' (Maddison *et al* 2004, p. x).

In support of this viewpoint, a number of interview participants for this paper, deemed that it was their advocacy work that led to the de-funding of their organisations. One interviewee stated that:

*... we were never trying to simply have a go at government; [rather] we would be as constructive and positive as possible. But time after time it did things that were directly contradictory and opposed to what the rest of the world was supporting ... [it was] therefore our responsibility to say so ... and this led to the elimination of all our funding.*

Similarly, another interview participant regarded the de-funding of the youth peak, the Australian Youth Policy and Action Coalition (AYPAC) and its replacement with the National Youth Roundtable, as designed to silence an organisation that had been critical of the Howard Government:

*Our concern was that one of the motivations to remove the national youth peak was that it was too critical ... de-funding the peak limited our ability to dissent ... And whilst the [Youth] Roundtable was very good for some of the people involved, it had a strict agenda dictated by the Department and its membership did not include those connected to advocacy organisations ... The Roundtable structure is perfectly fine as part of a national conversation. It is not appropriate as a sole mechanism ... it falls drastically short.*

Another interview participant also believed that their organisation had been de-funded because it was critical of the Howard Government.

*We had received core government funding for eight to nine years, but our contract was cancelled after our organisation and others strongly criticised a series of government policies which were unacceptable to our membership. This was a significant financial blow to the organisation. The loss of our funding was definitely linked to our advocacy, and it still hasn't been restored.*

As these survey results and interviews indicate, under the Howard Government a number of organisations either lost their funding or had it cut. The 'silencing dissent'

thesis maintains that these funding cuts occurred in order to suppress organisations critical of government policy. Organisations such as the Australian Youth Policy and Action Coalition,<sup>8</sup> the Association of Non-English Speaking Background Women of Australia, the Coalition of Australian Participating Organisations of Women, National Shelter and the Association of Civilian Widows were all de-funded (Sawer 2002, p. 44). The Australian Conservation Foundation and the Wilderness Society also saw their Commonwealth grants drop ‘sharply’ when the Howard Government came to power (Hamilton and Macintosh 2004, p. 12).

The loss of funding created many problems for these organisations. Some NGOs are fortunate in having large funding bases that are not reliant upon government, but those that lacked this base and were de-funded were effectively silenced. For one organisation, the loss of federal funding meant that:

*... we were living on extremely limited financial resources ... we could only afford to pay for a one-day-a-week national administrator. We had no funding for meetings and no regular newsletter.*

The impact of de-funding for this organisation was significant. The ability to engage its membership and to employ staff to educate and contribute to public debate became almost non-existent, with implications beyond those immediately affected. The community loses when an articulate, specialist organisation is unable to contribute to public debate.

The de-funding of some critical NGOs had ramifications across the NGO sector. It meant that many organisations became less public in their criticisms of government, even if there was no specific threat to de-fund their organisation. This concern was evident in our interviews. One interview participant considered that being in receipt of government funding was:

*... a risky financial strategy. If you said something and the Federal Government disagreed, they would take away your funding.*

This awareness amongst the sector that some critical NGOs had been de-funded contributed further to a ‘silencing of dissent’.

### **4.3 Gag clauses**

A mechanism clearly intended to reduce public comment, and hence criticism of the Howard Government, came in the form of gag clauses. Many purchaser-provider contracts that were drawn up between the government and NGO service providers included the provision that an NGO must not speak publicly without first receiving approval from the relevant department. An example of such a clause is found in relation to a program aimed at alleviating homelessness.

The Reconnect program is funded by the Australian Government. It relies upon approximately 100 community organisations to provide early intervention services to young people who are homeless, or at risk of homelessness, and their families (Coorey 2007). These organisations are primarily service providers but they may

<sup>8</sup> The Rudd Government has recently announced that it will fund the Australian Youth Forum (AYF), effectively re-establishing a government-funded peak organisation for young people.

occasionally undertake some advocacy on behalf of their clients, work that was made somewhat difficult by the Australian Government. The Youth Program Guidelines for Reconnect Services 2006–2007 includes two clauses, which constrain the advocacy capacity of Reconnect services. Clause 3.71 states that: ‘all advertisements, publicity, or promotion of FaCSIA-funded services or programs must ... be approved in advance by FaCSIA’ (2006, p. 21). Clause 3.72 states that:

Service Providers require approval from FaCSIA prior to making public comment about their service or program ... Service providers are required to provide at least six weeks notice of program launches or public events relating to FaCSIA-funded services or programs (Department of Families, Community Services and Indigenous Affairs 2006, p. 21).

Clauses such as these prevent organisations engaged ‘at the coalface’ in the provision of community welfare from contributing to public debates directly relevant to their areas of expertise without first receiving permission from their funders. Nor are these clauses unique to the Reconnect program; in fact, they occur across the NGO sector. Deputy Prime Minister Julia Gillard has stated that a review of contracts between the government and NGOs has found, ‘several thousands of contracts ... with gag clauses, in the employment, housing and social services sector’ (Franklin and Lunn 2008).

Not all of the organisations interviewed for this paper considered these gag clauses to be a problem. One participant stated:

*When we engage in service delivery ... you have to agree your communications because you are doing work in partnership with government and community funds.*

Nonetheless, the Rudd Government has been highly critical of these clauses and has begun removing them from purchaser-provider contracts. As stated earlier, the removal of the ‘infamous’ clauses is a key part of the Australian Government’s attempts to renew its relationship with NGOs and to differentiate itself from the previous government. The excision of these clauses is therefore to be welcomed.

#### **4.4 Contracting regimes**

The advocacy capacity of organisations has also been impacted by the policy shift away from funding NGOs for their core activities and instead funding them for specific projects and/or outcomes. Previously, organisations enjoyed significant discretion as to how they spent their money and were able to fund not only service provision but also activities such as research, which they could then use to improve their own service delivery and to lobby government. Core funding has now generally been replaced with purchaser-provider contracts, which ‘require the delivery of specific outcomes directly related to government policy and objectives’ (Staples 2006, p. 9). These changes also applied to peak groups, which ‘were forced into such contractual arrangements rather than funded for their representational roles’ (Sawer 2002, p. 45). These arrangements, which began during the Keating Government, deprived NGOs of the discretion they exercised under the old core funding agreements and created a number of problems.

First, the independence of the sector is undermined when its activities are so tightly controlled; without this independence, NGOs lose some of the creative capacity that makes their involvement in service provision so effective. An interview participant provided an example. Describing a program currently funded through supporter donations, the participant explained that the organisation had tried to access federal funding.

*It was a very successful program run across Australia. We had received testimony that it helped break down stigma around mental illness. Then, when federal money became available, we felt that this was a chance to go forward and expand our programs. Unfortunately our proposals didn't exactly fit the funding guidelines. The funding agreements called for a two-hour-a-week program, ours is one hour ... I couldn't get them to understand the value of our program, and the funding agreements were so specific ... we need flexibility, real flexibility. But the funding requirements were so restrictive that we couldn't do it.*

A successful mental health program was therefore not expanded because the government insisted on tightly defined contracts.

Second, the use of purchaser-provider contracts makes it difficult for NGOs to advocate on behalf of their clients. When funding is tied to outcomes, it cannot be used to engage in the sorts of activities useful in influencing policy, such as research, writing government submissions and speaking with policy-makers. Rather, as Lyons and Passey have found, 'organisations face large and unnecessary administrative burdens' (2006, p. 91) in order to meet contract requirements.

#### **4.5 Lack of government interest**

Many organisations have observed that the Howard Government was not interested in them or the causes they represented. The discussion paper, *Silencing Dissent*, found that 'lack of interest by the Federal Government and state governments' was the 'main barrier' to NGOs having their messages heard (Maddison *et al* 2004, p. 33-34). Because it considered NGOs to be 'special interest groups', the Howard Government was often unwilling to listen to NGO input, while those that represented interests the government did not value were even more likely to have their contributions ignored. This further increased the difficulties for NGOs to influence public policy.

The Howard Government's lack of interest was a common complaint among interview participants. One stated that:

*We had a particularly poor relationship with the previous Minister; he didn't seem interested in engaging NGOs at all.*

Another interviewee stated:

*There are many small, community NGOs, and large ones like us, with some very good ideas. And we often have trouble getting excellent and proven programs recognised and funded.*

On those occasions when the Howard Government did appear to consult NGOs, this was often considered to be done as window-dressing.

#### **4.6 Conclusion**

This chapter has considered only a few of the mechanisms the Howard Government used to constrain the advocacy capacity of NGOs. Further mechanisms included:

- The draft Charities Bill 2003 (Cth), which disqualified organisations from defining themselves as charities if they tried ‘to change the law or government policy’ when that action was ‘more than ancillary or incidental to the other purposes of the entity’ (Department of Treasury 2003, p. 5). This legislation was eventually abandoned, however, in some respects the damage was done; the Bill had contributed to a sense within the NGO sector that engaging in advocacy risked an organisation’s funding (Staples 2006, p. 11).
- The commission of the Institute of Public Affairs (IPA), an organisation with a long history of disparaging the legitimacy and worth of NGOs, to examine the relationship between NGOs and the Australian Government (Staples 2007, p. 5).
- Pressure on organisations to amalgamate thereby producing more homogenous advocacy.

This ‘silencing of dissent’ created an increasingly problematic relationship between the Howard Government and many advocacy NGOs. Promises by the Rudd Government to improve the relationship have raised hopes that a new, more respectful and productive relationship with government is possible. The development of a national compact is one of the ways being considered to help restore the relationship.

## 5. The Compact and *Working Together*

This chapter considers two compacts, the English Compact and the NSW *Working Together* agreement, in order to inform the analysis of the effectiveness of the development of compacts more generally.

### 5.1 The English Compact<sup>9</sup>

In order to better understand how compacts work and, indeed, if they work, it is useful to examine the English Compact, which was the first agreement of its kind. Solid consideration can be given to evidence of its success as nearly ten years have passed since its introduction and an extensive literature on its merits has developed. Its reputation as the ‘gold-standard’ (Casey *et al* 2008a, p. 6) of compacts has meant that the English Compact has influenced the creation of many other such agreements.

During the 1980s and 1990s, voluntary and community organisations assumed an increasingly important role in service provision in the UK. As the Thatcher Government ‘downsized’, it outsourced considerable service provision to the voluntary and community sector, a move that revolutionised the sector and, from 1982 to 1992, more than doubled its funding to £4,198 million (Plowden 2003, p. 416).

As occurred in Australia, these changes drew controversy and were not welcomed by all. Rather than NGOs getting ‘up the government’s nose’ (Sawer 2002, p. 41), they had become ‘indispensable partners for each other’ (Plowden 2003, p. 416), a situation that raised questions about the ability of the sector to advocate and criticise government. After all, what checks existed if the sector that was supposed to act as a check on government was now an arm of government?

The issue was not merely the new relationship between government and community organisations; how that relationship was managed was also of concern. In particular there was ‘a growing hostility between the sector and the government over ... the conversion of many government grants into contracts’ (Lyons 2001b, p. 5). And, just as in Australia, there was ‘pressure, sometimes subtle and sometimes crude, on organizations publicly criticizing government policies, to back down or risk losing their government grant or contract’ (Plowden 2003, p. 417).

The relationship between the UK Government and the voluntary and community sector became so problematic that an independent inquiry was held. Chaired by Nicholas Deakin, the inquiry produced a report which recommended that a compact-type agreement be developed in order to improve and regulate the relationship.<sup>10</sup> The Conservative Government was not convinced of the need for a compact; indeed, ‘the lack of enthusiasm for the idea was palpable’ (Plowden 2003, p. 418). However, the Labour Party under Tony Blair endorsed the concept and took it to the 1997 election.

<sup>9</sup> The English Compact was the first such agreement in the UK but agreements now exist in Northern Ireland, Wales and Scotland. This paper focuses on the English Compact, which is between the national UK Government and the English voluntary and community sector.

<sup>10</sup> The Deakin Report called the document a ‘concordat’.

The election of New Labour brought with it a ‘rhetoric of renewed relationship between government and the voluntary and community sector’ (Casey *et al* 2008a, p. 8), similar to the situation in Australia after the election of the Rudd Government. The creation of the Compact was intended to be part of this renewal, and post-election there was a ‘rapid movement’ to develop it (Hayton 2003, p. 3). Two working groups were set up, one headed by the new Minister of State and Deputy Home Secretary, Alun Michael, who was to become a ‘champion’ of the Compact.<sup>11</sup> The other working group was developed by the voluntary and community sector and included:

... representatives from leading voluntary and community sector umbrella bodies, including representatives from community groups and organisations, volunteering organisations, Councils for Voluntary Service, the National Council for Voluntary Organisations and Black and Minority Ethnic organisations (Home Office 1998, annex 3).

Both working groups consulted with voluntary and community organisations. The consultation process was substantial and included not only larger, more established organisations but also smaller organisations less connected to the national government and the National Council for Voluntary Organisations (NCVO).<sup>12</sup> The Compact states that the number of groups included in the consultations ‘is estimated to run into the hundreds of thousands’ (Home Office 1998, annex 6). Further, there was a ‘specific consultation process’ undertaken with Black, voluntary and community organisations (Home Office 1998, annex 8).

Prepared in approximately 18 months, the Compact runs to 18 pages and includes forewords from the then Prime Minister, Tony Blair, the former Home Secretary, Jack Straw and Sir Kenneth Stowe, the former Chair of the English voluntary and community sector’s Working Group on Government Relations. In his foreword, Blair states that, ‘this Compact will strengthen the relationship between Government and the voluntary and community sector and is a document of both practical and symbolic importance’ (Home Office 1998, p. 4). It was tabled in Parliament in November 1998.

At the time of its introduction, the Compact had considerable support from a variety of stakeholders. Backed by an extensive and well-planned consultation period and a receptive government, it was well-placed to improve and strengthen what had become a difficult relationship between the government and the voluntary and community sector. The Compact’s ‘underlying philosophy’ is:

... that voluntary and community activity is fundamental to the development of a democratic, socially inclusive society. Voluntary and community groups, as independent, not-for-profit organisations, bring distinctive value to society and fulfil a role that is distinct from both the state and the market. They enable individuals to contribute to public life and the development of their

<sup>11</sup> Mr Michael had been informally consulted by Nicholas Deakin in the production of the Deakin Report and had written a Labour Party report also proposing the development of a compact. His history with the concept was therefore considerable (Casey *et al* 2008a, p. 8).

<sup>12</sup> The National Council for Voluntary Organisations (NCVO) is the umbrella body for the voluntary and community sector in England.

communities by providing the opportunity for voluntary action (Home Office 1998, p. 7).

The Compact contains commitments from both government and the voluntary and community sector. For example, the Labour Government responded to some of the difficulties NGOs had experienced under the previous Conservative Government by committing to the following:

- To recognise and support the independence of the sector, including its right within the law, to campaign, to comment on Government policy, and to challenge that policy, irrespective of any funding relationship that might exist, and to determine and manage its own affairs (clause 9.1).
- To develop in consultation with the sector a code of good practice to address principles of good funding for Government Departments. This will promote ... the value of long-term, multi-year funding, where appropriate, to assist longer term planning and stability (clause 9.3d).
- To consult the sector on issues that are likely to affect it, particularly where Government is proposing new roles and responsibilities for the sector, for example, in the delivery of statutory services. Such consultation should be timely and allow reasonable timescales for response, taking into account the need of organisations to consult their users, beneficiaries and stakeholders (clause 9.6).
- To review the operation of the Compact annually in conjunction with the sector (clause 9.12).

The voluntary and community sector also made commitments, including:

- To maintain high standards of governance and conduct and meet reporting and accountability obligations to funders and users. Where applicable, to observe the accounting framework for charities (clause 10.1).
- To ensure that service users, volunteers, members and supporters are informed and consulted, where appropriate, about activities and policy positions when presenting a case to Government or responding to Government consultations, and to communicate accurately the views put to them in the course of such representations (clause 10.4).
- To put in place policies for promoting best practice and equality of opportunity in activities, employment, involvement of volunteers and service provision (clause 10.8).

## **5.2 How does the English Compact work? And does it work?**

Osborne and McLaughlin have noted that it is possible to produce ‘great compact documents but not great “compacts”’ (2002, p. 58), an observation that has been borne out in the UK. Considerable effort on the part of both the UK Government and the voluntary and community sector went into the production of the Compact and its principles so that it could be the ‘great compact document’ that Osborne *et al* speak

of. Despite this, it has been difficult for both parties to live up to the ideals expressed in the document and the implementation of the Compact has been ‘patchy at all levels’ (Carrington 2002, p. 2).

### *Implementation*

Five Codes of Good Practice were developed to support specific issues within the Compact. These are:

1. The Funding and Procurement code, which contributes to ‘a constructive dialogue to improve funding and procurement practice. The Code covers how programmes should be designed and delivered’ (Compact Working Group and the Home Office 2005a, p. 3).
2. The Consultation and Policy Appraisal code, which is intended to ‘enable voluntary and community organisations to make an effective contribution to the development and implementation of policy’ (Compact Working Group and the Home Office 2000, p. 2).
3. The Black and Minority Ethnic Voluntary and Community Organisations code, which ‘recognises that the BME voluntary and community sector ... has an important and continuing role in helping it to achieve its objectives and that Government can play a positive role in supporting the work of the sector’ (Compact Working Group and the Home Office 2001, p. 2).
4. The Volunteering code, which ‘sets out principles and undertakings for both Government and the voluntary and community sector in England on how to work together to support and promote volunteering and voluntary action’ (Compact Working Group and the Home Office 2005b, p. 3).
5. The Community Groups code, which ‘aims to promote a better understanding of the community sector, within the voluntary and community sector as a whole’ (Compact Working Group and the Home Office 2003, p. 1).

The development of these Codes has given the Compact more substance. For example, organisations are now given a 12-week consultation period in which to comment on policies and proposals (Compact Working Group and the Home Office 2000, p. 10). This is clearly an assessable commitment from the government, moving beyond the symbolic nature of the Compact and into the practical. Some, however, have criticised the Codes because of their length. Combined with the Compact, they total 140 pages, conceivably making detailed understanding on the part of both NGOs and the government difficult (Home Office 2005a, p. 5).

Tripartite management of the Compact is shared by the Commissioner for the Compact, the Office of the Third Sector and Compact Voice. In 2005, a Home Office evaluation recommended that a ‘Compact Champion’ be appointed to act as a neutral intermediary between the government and the voluntary and community sector. In response to this recommendation, the role of Commissioner for the Compact was created in 2006 and a support institution, the Commission of the Compact, in 2007 (Casey *et al* 2008a: 11). The Commission engages in a number of activities, including improving awareness and understanding of the Compact, promoting its use,

collecting and publishing evidence of its benefits, identifying examples of good and bad practice and ensuring that it keeps up to date with relevant changes in legislation and policy (Cabinet Office 2008a).

The Commission is managed by the Office of the Third Sector, which was created in May 2006 and sits within Cabinet. It is the role of the Office to ‘support the environment for a thriving third sector, enabling people to change society’ (Cabinet Office 2008b). The voluntary and community sector developed its own organisation to represent its interests. The Compact Working Group, which had a key role in the development of the Compact, was relaunched in 2006 as Compact Voice (NCVO 2007).

The Compact has been further supported by government policy initiatives that have been ‘directed towards building the social economy’ (Lyons and Passey 2006, p. 92). These initiatives include the encouragement of philanthropic support for the sector, increased funding for infrastructure within the sector, a new *Charities Act (2006)* that provided ‘a modern, effective regulatory environment for charities’ (NCVO 2006) and the Futurebuilders Fund, intended to foster innovation within the sector (Lyons and Passey 2006, p. 92-97).

The voluntary and community sector have also undergone something of a reinvention. For example, the NCVO now represents not only the social services but also voluntary and community organisations. Moreover, the NCVO’s aim is ‘to strengthen and publicise the sector, rather than devoting most of its efforts to changing government social policy’ (Lyons and Passey 2006, p. 99).

In an attempt to achieve ‘local community renewal’ (Plowden 2003, p. 424), compacts have been developed at the local level across England. Local compacts are agreements between local government, local public bodies and organisations within the voluntary and community sector. All 388 local authorities in England are now ‘Compact-active’; that is they have either signed, or are in the process of developing, local compacts.<sup>13</sup> Local compacts are a useful measure as they allow smaller organisations to be brought into the compact process and the result is that larger national organisations are less able to dominate. They also enable locally specific principles to be developed and the increased engagement of individuals in their communities. The most important reason for them, however, is that ‘most statutory – voluntary/community sector interactions take place locally’ (Craig *et al* 1999, p. 2). For example, Black groups have argued that ‘for the black voluntary sector, the critical issue is local government. That’s where the majority of our relationships lie’ (quoted in Craig *et al* 1999, p. 2).

#### *Does the English Compact work?*

An independent survey of English community and voluntary sector organisations in 2005 found that the success of the Compact was mixed; ‘only 13 per cent of respondents feel like equal partners in their relationships with central government, while less than half feel that their overall experience of working with central government is positive’ (Das-Gupta 2005). Considering that one of the aims of the Compact process was to alleviate some of the inequalities that exist between NGOs

<sup>13</sup> Email communication received 8 May 2008 from Paul Barasi of Compact Voice.

and government, this result suggests that not all has gone according to plan. But this sense of being unequal partners, or as one organisation termed it, having a ‘master-servant relationship’ (Das-Gupta 2005), seems to be one of the most intractable problems between NGOs and government. As one survey participant explained, ‘it’s not equal when one party controls the cash flow’ (Das-Gupta 2005).

Another (perhaps more realistic) aim of the Compact was to adopt ‘principles of good funding for Government Departments’, which would assure that funding was to be both sufficient and long-term. Government was to provide ‘long-term, multi-year funding, where appropriate, to assist longer term planning and stability’ for NGOs (Home Office 1998, clause 9.3d). Again, surveyed organisations felt that these commitments had not been met by the government, with 53 per cent stating that ‘they are forced to subsidise their contracts with central government because the funding they receive doesn’t cover the costs of running the service they’ve been contracted to provide’. Further, ‘more than half find that their contracts aren’t long-term enough to be viable’ (Das Gupta 2005).

These survey results were replicated in research undertaken by Taylor *et al* (2002), who found that ‘central government has not been seen to keep its own pledge, for example, on ... funding initiatives, and this undermines the authority of the compact at local level’ (Taylor 2003, p. 434). The Home Office evaluation of the Compact (2005) reproduced the findings but pointed the finger at both the government and the voluntary and community sector. It stated that ‘there is evidence of poor practice among both public sector bodies and voluntary and community sector organisations in the area of funding in particular’ (2005, p. 5).

The implementation of the Compact has encountered difficulties, which are due, in part, to a failure to communicate necessary details to the parties involved. The research of Taylor *et al* (2002) found that ‘knowledge of the compact is limited within both sectors and at all levels of government’ (Taylor 2003, p. 433), with a result that the prescribed principles are not recognised or acted upon. This lack of knowledge is significant, because the Compact brings with it no legal weight. The only enforcement mechanism available is a potential loss of face for a defaulting party and if parties are not even aware of what a compact involves, they are in no position to call attention to breaches of it.

This situation compounds a further difficulty with the agreement, which is that few mechanisms have been developed to ensure that it is appropriately monitored. If the Compact cannot be monitored, it loses effectiveness. As the Home Office evaluation states, ‘over time the initial benefit from having negotiated a Compact might diminish significantly’ (2005, p. 6).

It is not all bad news, however, and as Compact advocates assert, ‘it is early days yet’ (Taylor 2003, p. 434). One real success of the Compact is apparent in the survey results, which reveal that organisations consider they are able to advocate without constraint. The Third Sector Survey found that ‘nearly two thirds say they don’t feel constrained when campaigning against government policy, despite receiving money from the state’ (Das-Gupta 2005). This result suggests that, while issues may still exist in regard to implementation of the Compact, government attitudes towards the voluntary and community sector have improved. Nonetheless, it appears that

organisations do not see this improvement as being due to the Compact, with only 15 per cent agreeing ‘that it has made a significant difference’ (Das-Gupta 2005).

Another achievement for the Compact has been the winning of bipartisan political support (Cameron 2005, Casey *et al* 2008a, p. 12), which suggests that the esteem in which the voluntary and community sector is now held demonstrates a key change in community thinking. Opposition Leader, David Cameron, has stated that ‘government and the public sector has to let the social sector and social entrepreneurs take wings and soar’ (2005), a conspicuous attitudinal change for a party that had bred hostility within the sector during the 1980s and 1990s by attempting to restrict its role ‘to that of the service agent’ (Osborne and McLaughlin 2002, p. 56). This shift in attitude is perhaps more important than the Compact itself. If wider political agreement exists about the important role voluntary and community organisations play in policy development, the long-term relationship between those organisations and government is likely to be more stable, secure and productive. This cultural shift may well outlast the Compact itself.

The Compact does seem to have improved, in relative terms, the relationship between the UK Government and the voluntary and community sector despite many problems continuing to exist. Certainly, the relationship appears to be more collegial than in Australia. However, viewing these changes as ‘successes’ is dependent upon a particular view of how government and NGOs should work together. A successful compact is not necessarily a universal positive for NGO advocacy; it forces NGOs into close relationships with government and, in the opinion of some, is likely to ‘co-opt’ NGOs, dampening their advocacy work by moulding it into compact-styled channels (Ball 2006). These concerns will be addressed in Chapter 6 of this paper.

### 5.3 *Working Together for NSW*

In Australia, the provision of human services is usually the ambit of state governments. Therefore, it is not surprising that many of the states and territories in Australia have developed, or are in the process of developing, their own versions of a compact.

In NSW, the idea of a compact-style agreement was first documented at a Forum of Non-Government Agencies (FONGA) meeting in 1996 (NSW DOCS and FONGA 2006, p. 5).<sup>14</sup> Casey *et al* explain that early thinking about the compact focused on funding concerns as NGOs felt a need to ‘negotiate a set of relationships that didn’t lead simply to market-based competitive tendering’ (2008c, p. 5). During the late 1990s, the debate around the concept of a compact intensified, prompted by the rise of a compact champion, Gary Moore, Director of the New South Wales Council Of Social Service (NCOSS) from 1995 to 2006 (Casey *et al* 2008c, p. 4-7).

In the lead up to the 1999 election, the NSW Government agreed to ‘negotiate a compact between the Government and non-government organisations, which will promote greater understanding between the parties and a better working relationship’ (NSW State Government 2000, p. 33). But it was not until June 2006 that the state government introduced the *Working Together for NSW* agreement. While not adopting the label of ‘compact’, the agreement is a document similar to the English

<sup>14</sup> The Forum of Non Government Agencies (FONGA) compromises NSW peak NGOs.

Compact in that it provides a non-binding framework for the NSW Government and NGOs to work together for the benefit of the community as a whole.

*Working Together* contains a foreword from former Premier, Bob Carr:

The New South Wales Government values the vital contribution that the non-government sector makes to building a fairer, more sustainable and inclusive society. The non-government sector plays an essential role in the planning, delivery and management of human services in New South Wales and a significant role in policy and community development and in promoting community participation and engagement (NSW DOCS and FONGA 2006: 4).

Unfortunately, by the time the agreement was launched, Mr Carr had resigned as Premier of NSW and shortly after the launch the FONGA Chair and NCOSS Director, Gary Moore, also resigned (Casey *et al* 2008c: 8-9). The implications of these changes in personnel are discussed below.

*Working Together* sets out a number of principles agreed to by both the NSW Government and the non-government human services sector, including:

- the maintenance and further development of an independent, robust and diverse non-government sector
- transparency and community participation in decision-making
- trust and respect in partnership arrangements (NSW DOCS and FONGA 2006, p. 7).

The agreement also states that the responsibilities of the NSW Government include:

- providing resources to maintain community infrastructure and build the capacity of non-government organisations
- providing frameworks for consultation and negotiation with the non-government sector and service users in relation to social policy, service delivery and expenditure
- determining the best funding arrangements to ensure sustainable outcomes in line with planning and results (NSW DOCS and FONGA 2007, p. 7).

The responsibilities of the non-government human services sector include:

- partnering with government in its planning and service delivery role by identifying social needs and services, projects and programs to address these needs
- advocating the interests of disadvantaged people and communities across NSW
- facilitating the participation of people and communities in policy and decision-making processes

- identifying, developing and managing innovative programs and services, which effectively meet community needs and build community infrastructure
- ensuring that services are developed and provided in a non-discriminatory manner (NSW DOCS and FONGA 2007, p. 7).

#### 5.4 The implementation of *Working Together*

Far from providing the support accorded compacts in the UK, the NSW Government has not given the *Working Together* agreement any substantive backing. Lockie observes that ‘the NSW government ... has failed to make any meaningful commitment towards *Working Together*’ (2007, p. 47). Unlike the UK experience, no government agencies or offices have been established to provide support for *Working Together*, a situation that has rendered the majority of relevant bureaucrats largely ignorant of the agreement (Lockie 2007, p. 49, Casey *et al* 2008c, p. 8).

Similarly, beyond those involved in its negotiation, few NGOs are aware of its existence (Casey *et al* 2008c, p. 8). For a compact to be effective, all stakeholders need to be familiar with the details of the document. If parties are not aware of its implications, they are in no position to call attention to breaches of it. This is a key problem contributing to the failure of *Working Together*, which appears to have become irrelevant to the policy-making process in NSW.

There are important lessons in this for those seeking to develop similar agreements. NGOs must be assured that any compact they enter into will be adequately communicated to the relevant parties and they themselves must also create structures to ensure that this awareness remains ‘alive’ in their organisations despite staff turnover. If organisations are not certain that these conditions can be met, their energies are almost certainly better directed elsewhere.

Attempts on the part of NGOs to revive *Working Together* have also been disappointing. The Iemma Government, despite representing the same political party as former Premier Carr, argues that *Working Together* is ‘something produced by the “previous government”’ (Casey *et al* 2008c, p. 9) and therefore not something they need to honour.

That the actions of a previous government can be said to be irrelevant to the policies of an incumbent government goes to the heart of whether or not a compact is a sustainable way to manage the relationship between governments and NGOs. The abandonment of *Working Together* by the Iemma Government illustrates a key problem with compacts; they are neither permanent nor binding agreements and do not offer long-term strategies for supporting NGOs, regardless of the government of the day. If organisations have directed their energies into a compact, the election of a new government and the subsequent removal of the compact may leave them in a weak advocacy position.

#### 5.5 What makes a compact work?

This chapter has examined the relative success of the English Compact and the failure of the NSW *Working Together* agreement. Analysis of these agreements has revealed

some of the factors required to create a successful compact, which include the following principles.

*Be known:* Government officials whose work falls within the ambit of the compact must be aware of its existence and understand its implications (Taylor 2003; Plowden 2003). This is not a simple task. Plowden argues that ‘it is impossible to be sure that all these units can be informed simultaneously and effectively about the Compact or any other non-immediate issue’ (2003, p. 426). Government is not a simple, homogenous entity that works in uniform fashion; rather, it includes various departments, offices, agencies and individuals, each category bringing with it competing interests. In the UK there was a strong system of local government that needed to be brought into the process and made aware of the implications of the Compact, a situation that was addressed through a (fairly successful) system of local compacts.

If keeping government informed about a compact is difficult, keeping the NGO sector informed is even more so. Although heterogeneity is one of its attributes, the diversity and size of the sector make communication difficult. Yet it is imperative that small and medium sized NGOs are involved in the production of a compact and that they are aware of the consequences of the agreement. If organisations are unaware of how the government has agreed to work with them, they cannot be sure that government is doing what it has promised. Craig *et al* argue that the only way these organisations will be adequately brought into the compact process is if a ‘well-resourced voluntary and community sector infrastructure’ exists, which is ‘capable of reaching, and ... [is] accountable to, smaller, more marginalised groups’ (1999, p. 3).

*Be monitored:* A check of some sort is required to ensure that the commitments made within the compact are being met. For example, the English Compact is reviewed annually and the report tabled in Parliament. Monitoring a compact may not be a simple undertaking, however, because these agreements usually include ‘general principles’ (Plowden 2003, p. 429) that may be difficult to assess.

One way a national compact could be assessed is through a regular and comprehensive survey of NGOs (as done by the *Third Sector* magazine in the UK). In this survey, NGOs could provide opinions as to whether or not the compact has helped create a more respectful and equal relationship between the NGO sector and the government. Such a survey could provide incentive for government to fully engage with the agreement and would also generate knowledge of the document amongst the NGO sector. A survey such as this should be done before the introduction of the compact and throughout its existence at regular intervals to help measure the influence of the compact over time.

*Include penalties:* A penalty needs to apply if NGOs or government bodies do not comply with the arrangements made in the compact. The temptation not to comply is strong because working in accordance with a compact undoubtedly adds to the pressures on organisations and their employees. For example, ensuring that there is adequate consultation with the NGO sector is good for the development of policy but is likely to add to the workload of individuals within government departments and agencies. Hence, Plowden argues that penalties are necessary as ‘the willingness of any level in the hierarchy to incur the costs of changing practices will depend largely on the perceived rewards and sanctions for doing or not doing so’ (2003, p. 428).

However, because compacts are not legally enforceable, requiring penalties for non-compliance is difficult. This can often mean that ‘the only sanction for non-compliance by one party is the disapproval of the other’ (Plowden 2003, p. 429). It is important, therefore, that participants are well aware of the obligations created by the compact. If they are not, non-compliance with compact principles by one party, will produce no penalty whatsoever.

*Have champions:* Craig *et al* contend that for compacts to prevail, they require ‘the right person in the right place, at the right time’. These ‘effective champions’ are necessary to ‘drive the agreement forward and ‘sell’ it’ to both government and the NGO sector (1999, p. 3). A key champion in the UK Government was Alun Michael. While NSW had champions within the NGO sector, Lockie has shown that the lack of a clear champion within government is one of the key reasons *Working Together* has dropped off the agenda in NSW.

These conditions, at minimum, are necessary for a compact to be effective. Australian NGOs, which may soon have the opportunity to engage in the development of such an agreement, must think through these requirements fully. None of the conditions is easily met because each requires considerable effort and money on the part of both NGOs and government. If organisations cannot be convinced that these requirements will be met, the recommendation is that they direct their energies elsewhere. Otherwise the situation foreshadowed by Osborne and McLaughlin will occur, where there are ‘great compact documents but not great “compacts”’ (2002, p. 58).

## **5.6 Alternatives to a compact**

This chapter has demonstrated just how difficult it is to create effective compacts, even with the best of intentions and a supportive government. The failure of *Working Together* and the questionable success of the English Compact make it prudent for NGOs to consider alternatives to the compact process. It is imperative that the relationship between the NGO sector and the Australian Government is a productive one, but options other than those offered by compacts or the ‘silencing dissent’ model exist.

For example, Joan Staples argues that NGO energy is best directed towards promoting the message that NGOs are vital to the creation of an active, participatory democracy (2007). It is her position that this will provide a firmer, longer-term foundation for NGOs to engage in public debates. Changing cultural attitudes to accept the value of NGO advocacy is, in this view, the most effective defence against future government attempts to undermine and constrain NGOs.

However, this type of cultural change will require more than the efforts of NGOs; governments must also play a part. The Australian Government relies on these organisations to deliver necessary community services and it has therefore made them important constituents in policy production; it has a responsibility to support NGO participation in public and policy debates.

A way in which the Rudd Government might support NGO advocacy has been suggested by Onyx *et al*, who observe that a ‘major conflict of interest’ occurs when NGOs receive funding through government departments, offices or agencies, which

then monitor and evaluate those same organisations (2007, p. 12). The effect is to weaken advocacy because many NGOs worry that publicly criticising their funder may lead to the loss of their funding. Hence Onyx *et al* suggest that a fund be developed for NGO advocacy that is not overseen by NGO contract managers in government (2007).

They offer the example of the Public Purpose Fund (PPF) in NSW. The PPF is financed through the interest earned on solicitors' clients' funds, which are held in compulsory trust account deposits. This money is then made available for projects in the public interest such as the Legal Aid Fund, the Public Interest Advocacy Centre and the Law and Justice Foundation of NSW. Key to this model is that while funding comes from government, it is 'kept at arm's length from any government department' (Onyx *et al* 2007, p. 11), and is instead managed by trustees appointed by the Attorney-General. The NSW PPF is directed at organisations within the legal field and at the state level but the model could be extended to the NGO sector at a national level, or to particular fields within the sector.

This example is just one of the ways the Australian Government might support and encourage NGO advocacy. A public purpose fund, beyond the control of the relevant government departments and able to finance organisations for advocacy, could well remove some of the constraints NGOs currently experience and lessen the possibility of a compromised relationship arising between government and NGOs as a result of a compact. It would not require the energy involved in creating a compact, and could easily occur alongside other efforts to improve the standing of NGOs within the community; nor does this approach seek to direct advocacy and debate into official channels and away from the eye of the public.

If a national compact is agreed to in Australia, many organisations can still choose to opt out. Compacts rarely attempt to include organisations beyond those involved in service delivery. For example, the English Compact covers only those organisations that are part of the voluntary and community sector, and the *Working Together* agreement was made only with the non-government human services sector. In both examples, these sectors engage in the provision of services and are largely dependent upon government for funding. NGOs in these sectors are therefore likely to have relatively close relationships with government. Those organisations that engage in more activist, 'outsider' politics, for example, some of the environmental organisations, will likely find they have less to gain from entering into a compact.

## 6. The value of a compact

### 6.1 Introduction

This chapter begins with a discussion of the advantages compacts can offer to advocacy NGOs, and then goes on to consider the various difficulties associated with them.

Two issues direct this discussion:

- whether or not compacts actually work
- whether or not working with government is an optimal practice for advocacy NGOs.

Both require consideration because they measure the value of a compact and how it is assessed.

While some argue that a close relationship between government and advocacy NGOs is worthwhile, they may be less inclined to agree that compacts actually produce such an outcome. Compacts have often failed to deliver the benefits that their champions promote. For example, in NSW the *Working Together* agreement has been abandoned, leaving behind little in the way of long-term change. With this in mind, the question is less about whether or not compacts are a good thing and more about whether it is worth investing time and energy into a process that carries with it a high possibility of failure.

The value of compact-style agreements also depends on how close the working relationship between NGOs and government should be. Those who consider that advocacy NGOs should (at times) work closely with government to develop better and more effective policy, will be more likely to support a compact. Those who consider that advocacy NGOs are more effective when they are independent, operating as ‘outsiders’ rather than ‘insiders’, may instead regard compacts as a way for governments to ‘co-opt’ these organisations.

### 6.2 The value of a compact

There are several areas where, by advancing the development of better policy, compacts can provide benefits both to advocacy NGOs and to the wider community.

#### *A chance to improve relationships*

As already noted, the meetings, conversations and thought that go into producing a compact are usually just as important as the final document itself (Craig *et al* 1999, p. 1). These processes are significant for a number of reasons, and remain so even if government and NGOs eventually decide not to continue with the project.

First, a spirited and inclusive debate on the idea of a compact may allow advocacy NGOs to think through the type of relationships they want to have with government. This is valuable because if NGOs are able to articulate a stronger definition of their

roles, they are likely to be better able to respond to attempts to undermine their legitimacy and constrain their advocacy.

Second, a public debate as to the nature of the relationship between advocacy NGOs and government may serve to strengthen the legitimacy of these NGOs in the eyes of the community. Again, this is a useful strategy for these organisations to adopt. If the wider community develops a better sense of the value contributed by advocacy organisations to the democratic process, it may be less willing to accept the argument that they only represent ‘special interests’.

Third, in cases where the relationship between government and advocacy NGOs has become dysfunctional, compacts can create an environment where these groups are encouraged to resume communication. Compacts can offer a mechanism for relationship renewal, so that the parties involved are able to work together on a new, more respectful basis.

These arguments hold even if neither the government nor the NGO eventually agrees to sign a compact. As long as the discussions involved are respectful and carried out in good faith, a more effective relationship with ‘confidence on both sides’ can be established (Taylor 2003, p. 435).

#### *A long-term framework for a stronger relationship*

Whether or not compacts adequately meet their goals is a question open to some debate. However, engaging in the process of successfully implementing a compact can hold several long-term advantages for advocacy NGOs

First, compacts may improve their funding arrangements. While not all stakeholders agree that the English Compact has achieved this outcome, Marilyn Taylor’s research suggests that, in some localities, the Compact has been ‘a way of establishing consistent and stable funding policies and procedures so that [NGOs] can plan and deliver services effectively’ (2003, p. 433). If this goal is achieved, NGOs are also likely to be better advocates for their clients and constituents.

Second, the underlying rationale behind the development of compacts is recognition of the value of NGOs, therefore compacts can help to bring the ‘state into line’ and create a more ‘even handed relationship’ than previously existed (Taylor 2003, p. 432). Instead of occupying the weaker side of a ‘master-servant’ relationship, an advocacy organisation, when party to a compact, is recognised as a major player in the development of policy.

Both these factors support what may be the key benefit of a compact for NGOs, the creation of a stronger foundation. However, the participation of advocacy NGOs in the policy-making arena is somewhat controversial; it can be very beneficial but the form this should take is, in many respects, the issue that divides those who do and do not support a compact. Accepting the value of a compact also presupposes that the most effective way to contribute to policy debates is through the ‘orthodox processes of consensus politics’ in which institutionalised, ‘insider’ relationships are relied upon to effect policy (Whelan and Lyons 2005, p. 596). Such a position values the contribution of advocacy NGOs to debates through formal consultative mechanisms, and even through more informal mechanisms such as regular contact with key

bureaucrats. These activities are in contrast to ‘the more messy processes of community mobilisation’ (Maddison and Edgar 2008, p. 207) that more radical, activist organisations may take.

Those who support ‘insider’ politics, argue that the most effective policy is created when there is a strong relationship between government and advocacy NGOs. For example, one interview participant stated that the organisation had a *close* and, it was felt, *mutually beneficial relationship* with the NSW Government, including with government members and bureaucrats. Key bureaucrats would be consulted:

*... at least weekly, sometimes more. I sit on committees; on tender-selection processes ... It is a real mutual relationship.*

Another interview participant argued that working with government has forced their organisation to think through its policy positions more thoroughly, and that this leads to the production of better, more effective policy. The participant stated that:

*Working with government results in better policy, without a doubt. More constructive engagement results in better policy all round. We have to be much more thoughtful. In the past, we would put a policy out, and get no response. Now we hear, in detail, what the government thinks. This means we have to rethink our positions, which leads to more careful reflection on our part. NGOs therefore have to go beyond slogans and sit down and think through their positions carefully.*

From these perspectives, a compact can be a good option for NGO/government relations because it allows neater, more equal and formal contributions to policy debates. Effective compacts afford NGOs access to the ear of government, embodying ‘a focus on inclusion and representation in the polity and in policy making — rather than on opposition and overthrow’ (Djo Everett 1992, p. 971). Compacts do not, however, facilitate the more radical activities, such as the protests or boycotts that some organisations or individuals may engage in. Rather, they foster closer, more professional relationships with government. If the advantages of such an approach are appealing, then a compact may be an attractive proposition.

#### *Improved public perception*

Fenton *et al* argue that if NGOs are ‘to thrive, they must hold high levels of public confidence’ (1999, p. 27). But what invokes confidence differs from person to person. For some, organisations have legitimacy only if they adopt ‘outsider’ strategies and do not work with government; these people would not support NGOs, which work closely with government and operate in more ‘conservative’ ways. However, less radical, ‘insider’ organisations may be able to garner support from a different sector of the community. Indeed, many members of the public may prefer to support an organisation that presents itself as working closely and respectfully with government in order to effect change. Some may also feel that an organisation approved by government is more legitimate and stable than the ‘ratbag’ groups that make a lot of noise but do not appear to achieve a great deal.

Organisations working closely with government may find a solid source of financial support from the community in the form of membership revenue and donations,

thereby becoming more stable and doing more effective work. Moreover, these organisations may also be able to attract different types of volunteers. Miriam Smith argues that while ‘the activist participated in collective action, the volunteer makes a decision to give, a new form of *noblesse* based on the individual’s decision to allocate money and time’ [Smith’s italics] (2005, p. 79). NGOs with a more ‘conservative’ public image may find that they are better able to attract the sort of volunteers willing to join management committees rather than tie themselves to a tree in protest.

If this is the sort of membership that an organisation wants and is able to attract, then entering into a compact with government may be a good way to garner support from a more ‘mainstream’ membership base.

#### *The best alternative?*

Although some NGOs are able to manage with the work of their volunteers or a strong donation base, many are not. Certainly, those that represent or work with the more controversial and/or unpopular social issues and/or clients, are less likely to receive corporate or philanthropic support than, for example, an organisation that supports sick children. Moreover, not all organisations possess the skill set or the resources to manage a corporate relationship. This was, to some extent, the issue for one of the organisations interviewed. The participant stated that:

*We find it quite hard to get a lot of sponsorship ... We have never really secured a corporate sponsorship partner, perhaps that’s because we have never really had any marketing students involved.*

Another interview participant noted that while their organisation was able to attract philanthropic support, this did not necessarily allow it to do better work. The interviewee stated that:

*If you choose to take money from philanthropic trusts, it takes energy away from your core work. Managing those relationships results in stress and overwork .... You are theoretically freer to criticise government, but that is not where your energy ends up being directed.*

Organisations may therefore have little choice but to engage with government when seeking funding and, under these circumstances, a strong and effective compact may be the best way to manage the relationship. Although they will have some dependence on government, a solid set of guidelines will help to define the relationship, thereby allowing the NGO more independence than it might otherwise have.

### **6.3 Difficulties with compacts**

#### *They may be only short-term*

One difficulty with the assumption that compacts are effective strategies for supporting advocacy NGOs lies in the idea that they are permanent. The championing of compacts by centre-left governments, such as the UK’s Labour Party and the NSW Labor Party, may mean that compacts become, in practice, agreements made only with particular political parties. The Canadian Accord is a case in point.

Introduced in December 2001 by Canada's Liberal Government (a centre-left party), the *Accord Between the Government of Canada and the Voluntary Sector* was intended to provide a 'blueprint for a strong and vibrant relationship between the voluntary sector and the Government of Canada' (Government of Canada 2001, p. 4). It has since 'all been abandoned' (Casey *et al* 2008a, p. 37) as one of the many initiatives 'being unpicked by a Howard Government-inspired counter-revolution in social policy' (Gillard 2007, p. 5; Staples 2007, p. 11). Indeed, a change in party is not required to undermine the worth of a compact, as discussed earlier, NSW Premier Morris Iemma has moved on from the *Working Together* agreement. Both of these examples reveal a genuine problem with compacts, namely, an agreement made with one government, may be of little worth when there is a change in government (Staples 2007, p. 12-13).

It is probable that the good relations currently existing between the Rudd Government and NGOs will at some point come to an end. Many within the sector realise this. Michael Raper, head of the National Welfare Rights Network, has described the relationship between his organisation and the Rudd Government as 'a different culture. They respect the people we are working with. Even I am surprised at how genuine it is'. However, he is also aware that, 'We've had difficult relationships with ALP governments in the past. They assume we are friends and expect us to support everything they do' (Horin 2008, p. 30). Former head of ACOSS, Julian Disney, has also advised the sector to 'take a cold shower' (Horin 2008, p. 30), and that may be good advice. Even in the unlikely event that advocacy NGOs do continue to experience a positive working relationship with the Rudd Government, at some future point there will be a change in government. Just as occurred under John Howard, it is conceivable that a future government will attempt to undermine the legitimacy of NGO activity. Whether or not a compact is strong enough to ensure that it is not able to do so will remain unknown until that time.

#### *They do not always work*

For a compact to be effective, stakeholders need to be aware of its details. This has been a key difficulty in the implementation of the English Compact, particularly for small NGOs and especially for Black and Minority Ethnic organisations. It is also likely to be a problem in the implementation of a compact in Australia.

One interview participant, who had played a role in the creation of the NSW *Working Together* agreement, contributed an insight into this predicament. The interviewee blamed its ineffectiveness (in part) on the failure of both the NGO sector and the government to understand the agreement, and foresaw similar problems at the national level. For a compact to be effective, the participant argued:

*... it would require money to educate the public servants and to educate all the NGOs. Enter into a compact and there are literally thousands of NGOs needing education, and a decent education program costs a lot of money.*

Enabling relevant stakeholders to understand fully the implications of a compact will require considerable effort and resources, but these cannot be guaranteed. Advocacy NGOs must therefore be reasonably convinced that any compact they enter into will be adequately resourced and able to fund awareness training for the sector. Moreover, they must create structures to ensure that this awareness remains 'alive' in

their own organisations in spite of staff turnover, an ongoing problem for the sector. In situations where organisations are not certain that these conditions can be met, their energy is better directed elsewhere.

*The reinforcement of existing policy structures.*

In part because the Blair Government championed them, compacts have often been associated with ‘third way’ politics, which attempts to walk a centrist path between the extremes of economic rationalism and socialism. For its advocates, this has meant a reliance on market-based arrangements in service provision and other neo-liberal economic reforms such as privatisation, while trying to ensure that principles of social justice are not forgotten. Interestingly, some of the major problems associated with compacts are similar to those expressed with regard to third way politics. Specifically, compacts do little to challenge the status quo.

Compacts are agreements made with governments that have already wound back the state’s responsibility for service provision. Compacts therefore crystallise some of the most controversial reforms, even as they (potentially) make it easier for NGOs to deliver these services. Organisations that would once have been appalled at a government contracting out essential services (and may still be), now find themselves competing for funding to deliver these same services. These ‘insider’ strategies can hence end up legitimating illegitimate policies and/or institutions. One interview participant was very aware of this dilemma, giving an example from the aged care sector.

*In the 1997 Aged Care Act, the Federal Government restructured the resident classification scale for residential aged care so that some people qualified for residential aged care, but no funding was provided for their personal care ... Only those classified as levels one to seven were funded; those classified as eights were still entitled to residential care, but we were not funded to provide it.*

Because the Australian Government outsourced the delivery of aged care to both non-profits and for-profits, it was able to under-fund the program, something it could not have done so easily had it been providing the services itself. However, because these services were contracted out, the Howard Government expected charities and other non-profits, to ‘pick up the slack’:

*We did pick up the slack ... they got that right (laughs).*

Further, non-profit organisations working in aged care are competing against for-profits, which are much less likely to ‘pick up the slack’. Again, the interviewee recognised this as a problem:

*... for-profit organisations will often prefer residents with an accommodation bond to those that cannot afford to pay a bond ... I don’t believe the for-profits should be involved to the extent they are, but they grew exponentially under Howard.*

When NGOs engage in the delivery of services that were once the responsibility of government, they become partners in the erosion of the welfare state (Smith 2005).

When governments contract out service delivery, they also create a market for commercial organisations and this has resulted in marginalised or high-needs clients, such as ‘concessional residents’, become dependent upon the goodwill of NGOs.

Compacts do nothing to alleviate any of these problems. In fact, they may act as pressure valves, allowing difficulties with government policies to simmer unchecked beneath the surface.

#### *Co-option by government*

Finally, many suggest that working closely with government, as ‘insiders’, is not necessarily the most effective way to influence policy. Theorists such as Staples (2007) and the former director of the Commonwealth Foundation, Colin Ball (2006), have argued that working closely with government is a form of co-option, in which the more activist elements of NGOs are tempered by being brought ‘inside the tent’. The experience of activists is that when spaces are created for civil society input into policy work, this has actually been used by institutions to ‘silence their critics, offering little, if any opportunity for real influence on policies and decisionmaking processes’ (Action Aid 2001, p. 2). According to this ‘outsider’ argument, rather than encouraging dissent, compacts provide convenient and neat channels for it, giving only the impression that government is listening. In this way, compacts act to deflect real criticism because they defuse the voices of those likely to be most critical of government policy.

The ‘outsider’ argument is that change is best achieved through ‘building up strength and cooperation’ (Carbert 2004, p. 1) amongst those external to government. In this way, knowledge remains connected to grassroots organisations and movements, ensuring the independence and long-term legitimacy of organisations.

Many organisations will disagree with the notion that close engagement with government, for example through the receipt of funding, indicates that they have been co-opted by government. One interviewee argued that advocacy work was influenced not by where funding came from but rather by the mind-set of the NGO itself, stating;

*For advocacy organisations, the level of funding you receive is less important than the organisation’s attitude to its work. If you have an attitude of being scared, then you are no better off.*

While there is no doubt some validity to this point of view, managing public perception is another issue. An interview participant said that their organisation had decided not to accept government funding (in part) because of the possible impact it would have on their reputation as an independent organisation. They stated:

*We are trying to change government decisions. We want fundamental economic and social change. It would be a conflict of interest for us to be taking government money ... We will not rubber stamp and give legitimacy to government policies that are antithetical to our position.*

This is therefore a contentious argument and individual NGOs, working in different fields with different clients and/or concerns, are likely to diverge in their opinions.

## 6.4 Conclusion

This chapter has discussed some of the potential benefits and difficulties associated with compacts. Not everyone agrees that working closely with government is a positive for the NGO sector, arguing instead that the point of NGOs is not to simply do the work of government; it is to *change* the work of government (Sawer 2001, Staples 2007).

However, this assertion does not meet with universal agreement. Others believe that ‘insider’ relationships constitute a better approach for influencing government policy. This debate is important and it is one that NGOs need to have. It is not however, the defining issue where compacts are concerned. As identified in this paper, the most problematic circumstance regarding compacts is that they do not work. They require significant energy to create and to maintain but even where this is done successfully they remain unsound because when governments change, as they must, compacts tend to fall off the agenda.

## 7. Conclusions and implications

The Rudd Government's proposal to consult with NGOs about the development of a national compact indicates that it is serious about improving the relationship with the NGO sector. The new government also appears keen to engage NGOs in policy development rather than continuing the Howard Government's 'silencing dissent' approach. Deputy Prime Minister Julia Gillard has stated that it is important that NGOs 'aren't constrained from entering the public debate' (Franklin and Lunn 2008). Further, the removal of 'gag clauses' from contracts with NGO service providers indicates the government's willingness to engage NGO advocacy.

Comments and policy amendments such as these have created genuine excitement within the NGO sector concerning the progress of its relationship with the Rudd Government. Those interviewed for this paper stated that changes in government attitudes to NGOs have already occurred. One interviewee said:

*There has been a massive change in the quality of the relationship between the government and NGOs.*

Another interviewee thought that the concerns of many NGOs, such as the welfare of marginalised members of the community, are more likely to be on a Labor (as opposed to a Coalition) Government's agenda:

*The Federal Government is open to engaging with gays and lesbians ... they let us through the door.*

The suggestion by the Australian Government that it enter into a national compact with NGOs is a strong sign that it wishes to engage these groups. However, this does not imply that compacts are good for NGOs, whatever the government's intentions. While compacts may offer some important benefits, they do not supply long-term solutions to the problems inherent in the relationship between government and NGOs. The election of a less friendly government can bring an end to the compact and this impermanence can cause difficulties for NGOs. If organisations fail to direct their energies towards galvanising public support for their role in policy development, choosing instead to put effort into the creation of a compact, its removal is likely to leave them in a weak advocacy position.

### *Implications for NGOs*

Rather than entering into a compact process, NGOs should instead promote the message that they are vital players in an active, participatory democracy. They will be better served in the longer term if they direct their energies into more sustainable practices such as building community support for their advocacy roles. This message must be broadcast to government, the community, business and within the NGO sector itself (Staples 2007). Recognising the worth of NGO advocacy will require a shift in cultural attitudes, but it is the most effective defence against any future government attempts to undermine and constrain NGOs. NGO energy should therefore be directed towards the promotion of this cultural change rather than towards an often ineffective, and usually short-term, agreement like a compact.

Effecting this change is achievable. The NGO sector is in a position of considerable power because it is a provider of so many essential services to the community. Consider, for example, the refusal of most NGOs to implement aspects of the Howard Government's welfare-to-work program, in which vulnerable individuals were to be stripped of their benefits if they breached job search requirements (Horin 2006). The boycott of this policy by the majority of Job Network Providers impacted considerably on the implementation of the program because significantly fewer welfare recipients had their benefits cut. That is, an unreasonable government policy was challenged and a clear statement regarding the independence of NGOs was made. The collective efforts of NGOs are therefore able to create meaningful change (Harris 2007).

The Howard Government may have managed to stifle some dissent within the NGO sector, and its policies may have tamed certain organisations, but this need not be permitted to occur again. Unfortunately, because they are reliant on the goodwill of the government of the day, compacts cannot guarantee this. Those best placed to ensure that a similar situation does not reoccur are the NGOs themselves.

### *Implications for the Australian Government*

The Australian Government should also play a part in creating a cultural shift towards an appropriate estimation of the value of NGO advocacy. Australian governments have a responsibility to support NGO participation in both public and policy debate; they rely on these organisations to deliver necessary community services and have therefore made them important constituents in policy development. There are numerous ways in which the Australian Government might support NGOs other than through the creation of a compact. These include encouraging philanthropic support for them and increased funding for their infrastructure and advocacy work. The Rudd Government's removal of gag clauses from NGO funding agreements is a step in the right direction but many more steps are needed.

Another suggestion, made by Onyx *et al* (2007), is the development of a public policy fund, examined earlier in this paper. They suggest that financial support is made available from government for an organisation's advocacy work but the money comes from a fund that is separate from the relevant government department. Such a fund would remove some of the constraints on NGO advocacy and the Australian Government should seriously consider implementing the model.

### *Conditions necessary for a compact to be effective*

Although this paper finds that compacts are not necessarily optimal for the NGO sector, there are a number of factors necessary to ensure success should government and the sector agree to one in the future. Such an agreement must be more than a 'great compact document' (Osborne and McLaughlin 2002, p. 58); it must bring with it supporting mechanisms. In particular, it must:

*Be known:* Government officials whose work falls within the ambit of the compact must be aware of its existence and understand its implications (Taylor 2003; Plowden 2003). It is also imperative that both large and small NGOs are involved in the production of a compact and that they are aware of the consequences of the

agreement. If organisations are unaware of how government has agreed to work with them, they cannot be sure that it is observing the terms of the agreement.

*Be monitored:* A check of some sort is required to ensure that the commitments made within the compact are being met. Monitoring a compact may not be a simple undertaking, however, because compacts usually include ‘general principles’ (Plowden 2003, p. 429) that may be difficult to assess. One way the compact could be assessed is through a regular and comprehensive survey of NGOs. In such a survey, NGOs could provide opinions as to whether or not the compact has helped create a more respectful and equal relationship with government.

*Include penalties:* A penalty needs to apply if NGOs or government bodies do not comply with the arrangements made in the compact. This is a difficult requirement because compacts are not legally enforceable with the result that ‘the only sanction for non-compliance by one party is the disapproval of the other’ (Plowden 2003, p. 429). It is important, therefore, that participants are well aware of the obligations within the compact. If they are not, non-compliance will produce no penalty whatsoever.

*Have champions:* Craig *et al* contend that compacts require ‘the right person in the right place, at the right time’. These individuals are necessary to ‘drive the agreement forward and “sell” it’ to both government and the NGO sector (1999, p. 3). There must therefore be people in both the Australian Government and the NGO sector who firmly support the development of a compact for, without them, a compact will not eventuate.

These conditions, at minimum, are necessary for a compact to be effective, but they are not easily met because they require considerable effort and money on the part of both NGOs and government. Nonetheless, if both the Australian Government and NGOs genuinely seek a successful compact, they must ensure that all of these requirements are in place.

### *Conclusion*

Compacts themselves are unable to guarantee the enduring legitimacy of NGO advocacy. Nor can they be relied upon to ensure an effective and respectful long-term relationship between government and NGOs. Neither will occur unless NGO advocacy is widely recognised as taking a rightful and valuable place in public debate. It is towards this recognition that NGOs should strive.

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