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Dear Madam/Sir

Engaging today for a better tomorrow: Code of Best Practice for Engagement with the not-for-profit sector

Catholic Social Services Australia (CSSA) welcomes the Australian government's decision to include an engagement Code as part of the National Compact. CSSA is a Compact Partner and has been actively engaged for many years in consulting with government on the not-for-profit (NFP) reform agenda on behalf of its 64 member agencies.

Thank you for the opportunity to comment on the draft code. We look forward to working with departments on the basis of this Code. We are also committed to fulfilling our commitments as set out in the Code to the best of our ability.

By translating principles into a list of undertakings for both government and the not for profit sector, the Code provides an important reference point for both parties to evaluate the pattern of their engagement over time. In view of the actual pattern and extent of two-way communications, a specific reference should be made to the imbalance in our power relationship. It is better to be clear about this in the document. The reality is that, unlike the sector, government may choose to terminate or not hold consultations on occasions.

We commend the work of Departmental Compact Advocates over the last year and note that, in some cases, their intervention has helped to resolve issues promptly. Our hope is that, with the inevitable turnover of personnel involved, an induction process will be put in place in each department to ensure consistency of such commitment over time.

CSSA's main recommendation is to include reference to annual evaluation process. Such an evaluation would enable both sides to be aware of how well their actions were following through on the "Code Undertakings". After 2-3 years, it would also show how useful the Code was for enabling an effective pattern of consultations.

CSSA also welcomes the acknowledgement that effective consultation needs to start “*early in the policy development process*”. While there will inevitably be some occasions when government must pursue an initiative in a very short time frame, the annual pattern of consultation across a range of relevant policy matters should reflect a commitment to bona fide early-stage engagement. In other words, not a consultation process which is effectively about the implementation of a decision already made, as has tended to be the case in some Commonwealth departments from time to time. As is the case across all sectors and industries, government generally obtains much better policy outcomes where bona fide consultation has developed from an early stage.

CSSA would also note that, with the steady expansion of external service contracting by government, there is an even greater need for policy makers to gather advice from those with knowledge of front line service delivery and innovation than has been the case in previous decades. This particularly helps to avoid faulty assumptions and misunderstandings based on limited data.

CSSA welcomes the significant effort by most Commonwealth agencies over recent years to seek out sector views about proposed policy, regulatory or legislative changes. This has enabled a range of sector leaders to both understand the rationale behind new policies and to help in shaping better policy design. To the extent that this general pattern can become embedded with the Australian Public Service in coming years, an improved pattern of policy outcomes is likely to be achieved, as well as better mutual understanding.

We know that, on occasion, government will need to engage in targeted consultations with a restricted number of organisations. Therefore, we welcome the government’s commitment to be open and transparent about targeted consultations. Departments need to be careful to avoid dividing not-for-profits into ‘insiders’ and ‘outsiders’.

An unfortunate feature of some of the NFP reform consultations has been the over-reliance by one or two departments on requiring multiple confidentiality agreements from sector leaders before they are able to participate in certain discussions. Confidentiality agreements have a legitimate place when applied to specific types of sensitive information. However, they have been overused since early 2011.

The excessive use of these instruments has the effect of corroding the basis of mutual respect and trust which is central to maintaining trust and confidence for both sides in consultation processes. It has also caused unanticipated difficulties for intra-sector consultations linked to policy or regulatory changes, where some participants announce to others that they are unable to discuss a range of matters due to these broad confidentiality agreements. This inadvertently undermines the objective of this Code.

Finally, for this initiative to succeed, actual cultural change needs to occur on both sides. For government this means a combination of strong leadership by senior officials and induction processes to nurture a positive attitude to engagement with the sector. For the sector, it means sustained leadership to ensure dedicated resources are committed for consultative purposes for the whole time frame required.

We urge the Department of Prime Minister and Cabinet and Compact Advocates to continue their efforts to embed a culture of 'best practice engagement' as widely as possible, especially so that mobility of senior staff does not inadvertently lead to a reversion to poor consultative practice.

Please feel free to contact me if you want any additional information or wish to discuss CSSA's comments further.

Yours sincerely

A handwritten signature in blue ink, appearing to read "PO'Callaghan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Paul O'Callaghan
Executive Director