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The third sector and government in Australia: Not-for-profit reform under Labor, 2007–13

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The emergence of ‘compacts’ between government and the ‘third’ or ‘not-for-profit’ sector is intimately linked to the comprehensive transformation of the welfare state. The first compacts in the United Kingdom in 1998 spawned similar policy instruments in other jurisdictions, including Australia. In 2006 the Labor opposition led by Kevin Rudd undertook to repair a ‘broken’ relationship between the federal government and the not-for-profit sector. The National Compact, launched in March 2010, was an initial step in a bumpy policy journey. Prime Minister Rudd was replaced in June 2010 by Julia Gillard, who portrayed the National Compact as the ‘foundation stone’ of a broader reform agenda. Although dogged by political instability, Gillard pursued ground-breaking reforms in the not-for-profit policy space. These reforms are now threatened with repeal by the Coalition government elected in 2013. This paper attempts to explain why Labor’s reform agenda appears set to unravel.

Keywords: third sector; not-for-profit; policy regimes; compacts; charity regulation; Australian politics

Introduction

The emergence of formal policy frameworks for the purpose of normalising and regularising cross-sector relations is intimately linked with the transformation of the welfare state. It is particularly associated with ‘liberal’ welfare regimes in the United Kingdom, Canada, Australia and the United States (Phillips and Smith 2014; Smith 2012). Phillips and Smith (2014) contend that, following a decade of policy convergence during which a number of countries followed the lead of the United Kingdom where Blair’s ‘New Labour’ introduced the world’s first ‘compacts’ between government and the ‘Third Sector’, the sector has endured considerable ‘policy churn’. The global financial crisis has accelerated and exacerbated this policy churn since 2008. This, they suggest, portends a period of policy divergence in which overarching policy frameworks are increasingly weak and divisive (Phillips and Smith 2014: 1158).

Australian state and territory governments were early adopters of the Blairite policy prescription for reforming the relationship between the state and the not-for-

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profit (NFP) sector. The Australian Capital Territory announced the first compact outside the UK in 2001, and the federal government followed suit in 2010. The National Compact was intended to be the foundation for a broader reform agenda. However, Phillips and Smith have since observed, ‘partisan politics and pockets of resistance to public reporting’ have forced a significant policy ‘U-turn’ in Australia’s not-for-profit policy space (2014: 1156). This paper examines the origins of Labor’s NFP reform agenda and explores the events and circumstances that have contributed to the present uncertainty about the status of those reforms.

Labor’s reform promise

In late 2006 Kevin Rudd challenged for, and won the leadership of the federal Labor opposition. Under Rudd’s leadership the Australian Labor Party (ALP) articulated social policy settings focussed on ‘social inclusion’ and embracing more collaborative relationships between government and non-state actors (Gillard and Wong 2007). Rudd consciously portrayed himself as an exponent of a Blairite ‘third way’, which was offered as the antidote to what he labelled as the neoliberal ‘brutopia’ of the Howard Coalition government (Rudd 2006). Labor promised to ‘repair’ the relationship between the Commonwealth government and the NFP sector, a relationship it claimed Howard’s ‘market fundamentalism’ had severely strained (Rudd 2006; 2009).

Labor undertook to consult with the sector about the development of a ‘compact’, a formal policy framework intended to establish new rules of engagement between government and the NFP sector. The result was the National Compact, launched in March 2010. Rudd hailed the compact as an expression of his government’s desire ‘to embrace new ways of governing’ (PMC 2010b). Rudd said that the compact would set the framework for ‘an era of collaboration that will fundamentally strengthen and improve the way we work together, that will strengthen civil society and that will help the organisations which help many of the most needy and disadvantaged people in Australia’ (Rudd 2010).

Three months later Rudd was deposed by his deputy, Julia Gillard, who said that ‘a good government was losing its way’. Gillard’s term was also marred by political misjudgement and ongoing leadership speculation, but her government pressed on with substantive reforms in the NFP policy space. These included the creation of an Office for the Not-for-profit Sector, located in the Department of the Prime Minister and Cabinet; a statutory definition of charity; statutory protection for the right of NFP organisations to engage in advocacy and the creation of a national charity regulator (Gillard 2010).

The Coalition government led by Tony Abbott, elected in September 2013, promised to repeal a number of Labor’s signature policies. Already the National Compact has been put aside and the Office of the Not-for-profit Sector disbanded. In addition, legislation has been introduced to abolish the new national regulator, the Australian Charities and Not-for-profits Commission (ACNC), and a repeal of the statutory definition of charity has been mooted (see Murray 2014).

Reform in need of a ‘partner’

Any bilateral relationship requires an interlocutor or partner – in this case a non-government, not-for-profit or ‘third’ sector. It has been argued by 6 and Leat (1997) that

the notion of ‘third sector’ as an entity grew out of policy discourses of the 1970s and 1980s. Kendall (2000: 555) contends that the ‘invention’ or ‘discovery’ of a third sector as a ‘distinct’ and ‘meaningful’ entity was essential to the discourse of cross-sector engagement, while Carmel and Harlock (2008) suggest that for government the third sector represented a ‘governable terrain’ – a site for policymaking and control. Laforest (2014: 1176) suggests that, in a number of countries (including Australia), ‘the nonprofit sector, as a sector, has incontestably positioned itself as a new social agent on the policy scene’. She also acknowledges, however, the existence of multiple and competing interests that need to be negotiated and debated (Laforest 2014: 1177).

The Labor opposition readily adopted the Blairite notion of a coherent ‘third sector’, and in government supported establishment of a new intermediary body as a single entry point for discussions with the sector. It is possible, however, that the Labor government underestimated the difficulty of balancing the diverse and complex interests that co-exist in the sector. The reality is that terms such as ‘not-for-profit sector’ or ‘third sector’ mask the variegation and fragmentation of a space that is more akin to what Kendall refers to as ‘balkanised fields of interests’ (2000: 545). It is segmented by size (Dalton and Butcher 2014); comprised ‘insiders’ and ‘outsiders’ (Casey 2004); compromised by competitive pressures (Butcher and Freyens 2011); and not always accepting of the need for public accountability (Shergold 2008: 7).

State–NFP sector relations in Australia

From the 1970s through to the mid-1990s, Australian NFP organisations operated alongside the public sector in what Muetzeffeldt (1998) describes as ‘a loose and uneasy partnership’. Non-state service providers filled the ‘eligibility gaps’ that sometimes existed between programs and levels of government and provided a degree of choice in the mode of service delivery that could not be accommodated within the public system. In recognition of their complementary role, governments made contributory grants to NFP organisations. Apart from basic requirements to acquit expenditure, such grants imposed few conditions.

From the early 1990s contributory grants progressively gave way to ‘conditional’ funding under which the funding agency might stipulate the services to be provided, the service model to be used, target groups, inputs, performance indicators and reporting requirements. Thus the notion of the NFP sector as a key player in a mixed economy of social welfare was established and the foundation laid for externalising service delivery (see Considine 1999). The Howard Coalition government (1996–2007) enthusiastically embraced a suite of managerial and market reforms aimed at making government more efficient, effective, accountable and business-like, which in turn served to re-shape relations between the state and the NFP sector (Baulderstone and Earles 2009).

The Howard government generally applauded the societal contributions of churches, community groups, social clubs, philanthropic organisations and charities, but Lyons (2003a: 8) describes its relations with the NFP sector as ‘a pattern of indifference interwoven with ignorance and occasional flashes of hostility’. Furthermore, the government appeared to assume that market forces alone would be sufficient to ensure sector capacity and was loath to pursue much-needed regulatory reform in this policy space (Lyons 2003b; Murray 2014). This is the backdrop against which

the ALP in 2007, under Rudd's leadership, set out to right the alleged wrongs of the Howard government by establishing new terms of engagement with Australia's NFP sector (Gillard and Wong 2007).

Framing Labor's reform narrative

Under Howard, the NFP sector had become disenchanted with the nature of its engagement with government. Amongst the shared concerns the NFP sector frequently cited were: a lack of trust and mutual respect; failure to consult the sector in the formulation of policy or the design and implementation of services; burdensome and corrosive contracting and compliance regimes; pricing models that failed to reflect the true cost of delivering services; uncertainty associated with short-term contracting; and formal restrictions on systemic advocacy (PMC 2010a; Productivity Commission 2010: 309–10).

Federal Labor was alive to the disaffection in the NFP sector. In November 2006, the Leader of the Opposition, Kim Beazley, invited NFP sector leaders to Parliament House for a forum to coincide with the launch of Labor's 'Strong Communities Partnership' policy statement. The statement set out commitments about consultation on policy, sustainable funding, capacity building, consistency in the sector's dealings with government, recognition of sector diversity and an acknowledgment of its advocacy role (Staples 2008: 279). Less than a fortnight later Beazley was replaced in a leadership challenge by Kevin Rudd who, nevertheless, appropriated Beazley's core commitments in a re-branded policy. Rudd denounced the 'ruthless economic utilitarianism' of 'unrestrained market capitalism' and called upon Labor to 'reclaim the centre of Australian politics' (Rudd 2006: 46–50). Labor would, if elected, 'form fresh political alliances with other groupings alienated by this new form of market fundamentalism, which is blind and indifferent to its social consequences' (Rudd 2006: 50).

In January 2007 Rudd asked NSW Senator Ursula Stephens to distil the recommendations arising from the Strong Communities Partnership forum and map out a strategy to establish the foundations for cooperation and trust between a future Labor government and the sector. The Shadow Minister for Social Inclusion, Julia Gillard, subsequently outlined the broad dimensions of that strategy in a speech to the Sydney Institute (Gillard 2007: 103). Gillard built upon Beazley's earlier overtures by undertaking to 'form new partnerships with the community sector' (2007: 111). She affirmed that Labor wanted to 'modernise' policy thinking in this space by acknowledging the NFP sector as an important driver in the social economy, and by committing to a model of governance that exhibited both vertical and horizontal integration (Gillard 2007: 111).

In the lead-up to the 2007 general election Labor pledged to take a 'whole of government approach' in which 'partnerships with state and local governments, the not for profit and private sectors' would be the *modus operandi* of government (Gillard and Wong 2007: 6). Labor accepted that growth in government contracting had exerted capacity pressures on NFP service providers and acknowledged the necessity of 'rebuilding trust and reciprocity' (Gillard and Wong 2007: 11). Claiming a 'breakdown of the relationship between the community sector and government', Labor criticised the Howard government for attacking 'the right and capacity of community sector organisations to advocate' and for rejecting 'their contribution or role in public policy development or debate' (Gillard and Wong 2007: 11).

Labor promised to remove restrictive clauses in funding agreements that constrained the sector's advocacy role; to establish 'a truly independent and effective voice for the community sector' and to ask the Productivity Commission to undertake a study of 'the contribution of third-sector organisations to our economy' (Gillard and Wong 2007: 11). Labor also offered to consult the sector about whether 'a compact, such as those that operate in Canada and the UK, could or should be developed in Australia, and what might be included in such a partnership' (Gillard and Wong 2007: 11).

A number of political commentators attributed Rudd's approach to social policy as a conscious policy borrowing from the UK Blair government's 'Third-Way' policy discourse (West 2008). By 2006, however, the transfer of so-called New Labour policy thinking had already occurred via state and territory Labor governments where Blairite policy solutions had been road-tested, including compacts, albeit with varying results (Butcher 2011; 2012; Butcher, Casey, and Dalton 2012). Stephens, who Rudd would task to drive policy in this area, acknowledged the influence on federal Labor of policy thinking emanating from New South Wales and Victoria:

You had a lot of work going on in the Bracks [Labor] government around the relationship with the sector and repositioning the sector ... I would have said in the 90s under [Premier] Carr, in New South Wales was leading the thinking around service delivery, and then in the 2000s it then went to Victoria and the 'head space' was Victoria. We're a pretty small country and we don't have ... that big a 'brains trust' really. Once it was indicated that there was a willingness, and an interest, and an appetite [for] moving to this more collaborative approach, those people who'd been interested – and frustrated – for a while, surfaced. (Personal communication, 29 September 2011)

Stephens was not alone in her assessment. Gillard credited social inclusion policy frameworks operating in South Australia and Victoria with providing the 'direction and drive' needed to shape a progressive policy discourse (Gillard 2007: 108). It should also be noted that Labor's value proposition for policy reform was not crafted in an evidentiary vacuum. A vast grey literature in the form of official inquiries, studies and working papers bolstered the case for reform. In the federal sphere alone several inquiries between 1995 and 2006 identified the need for legislative and regulatory reform (Board of Taxation 2003; Charities Definition Inquiry 2001; Industry Commission 1995; Productivity Commission 2003). To these might be added audit and parliamentary reports addressing issues associated with contracted service provision by state governments (Auditor General, Western Australia 2000; PAEC 2002; QAO 2007; VAGO 2010) as well as studies produced by 'think tanks' and university-affiliated research centres (Edgar 2008; Maddison, Denniss, and Hamilton 2004; Melville 2003; Sidoti et al. 2009).

Reform beginnings under Rudd

Following Labor's victory at the 2007 election, Rudd appointed Stephens to the post of Parliamentary Secretary for Social Inclusion and the Voluntary Sector. It would be her task to oversee engagement with the NFP sector on priorities for reform. Stephens confirmed Labor's commitment to, 'building (and in some cases re-building) trust, strong relationships and partnerships', adding, 'We want to be partners in this

journey, not contract managers' (Stephens 2008). One of the government's first acts in this policy space was the commencement of nation-wide consultations on the form and content of a compact, facilitated by the Australian Council of Social Service.

According to Stephens, issues associated with marketisation, procurement practices and prescriptive contract management regimes provided 'the lightning rods for a whole lot of dissatisfaction in the sector' (Personal communication, 29 September 2011). In her view the consultation process represented an opportunity to build a more 'mature' relationship: one that would allow government and the sector to 'actually talk like big boys and girls about some of the hard stuff' (Personal communication, 29 September 2011).

Stephens observed that the Labor government intended to engage with a sector that had been disempowered for a decade and acknowledged the challenge of changing learned behaviours that stood in the way of working constructively with the sector: 'In fact, you have to teach people that advocacy is not saying "no" ... how do you change the sector's mindset about how to work with government, because they've been working against government for so long?' (Personal communication, 29 September 2011). Stephens was a passionate advocate for and driving force behind the compact. Her overtures to the NFP sector were described as a refreshing change from 'Howard government ministers just barking at the sector':

She spoke with respect, she spoke with acknowledgement of all the hard work that people do. You know, there'd been some pretty hard years there, where you had to sit in meetings and just get barked at by people who are just rude and obnoxious, and there was more than one of those Howard government ministers that was just rude and disrespectful and obnoxious. (Personal communication, senior NFP leader, 15 April 2011)

The NFP sector supported reform, but some observers harboured reservations about Labor's motives. Staples, for example, pointed to the 'neoliberal' underpinnings of Labor's policy: a policy in which 'the worth of the sector is measured in relation to its economic productivity, rather than its democratic/social value' (Staples 2008: 281). In part this reflected a degree of unease about the inherent contradictions between the sector's expressive/affiliative roles and its economic/service provider roles. The contract culture that served to regulate relations between government and those parts of the sector on which it relied to deliver programs and services accentuated this unease.

A National Compact

The launch of the National Compact in March 2010 closely followed the release in February the same year of the final report of the Productivity Commission's study (2010). Begun in March 2009 and led by Commissioner Robert Fitzgerald – himself a respected figure in the NFP sector – the study exerted a major influence on the eventual form and content of the Labor government's NFP reform agenda.

The Commission recommended reforms necessary to reduce the 'uncertainty and tension that characterises the underlying relationship between governments and [not-for-profits]' and noted that government would need to drive a cultural change agenda to address the legacy of 'attitudes, norms and values' that 'are corrosive to the underlying relationship between government and NFPs' (Productivity Commission 2010:

378). It was also suggested that the sector needed to re-think commonly held views that government should ‘get out of the way’ and allow NFP organisations to pursue their own formulations of community interest without regard to taxpayer’s expectations of accountability for the expenditure of public funds (Productivity Commission 2010: 384–85). The report and its findings provided the evidentiary basis for further policy development and, in some respects had begun to eclipse the National Compact even before its launch. One NFP policy actor recalled of early compact discussions:

Our writing instruction ... was ‘just make sure that the [Productivity Commission] inquiry report gets implemented, we don’t really care about the rest of the wording, and no we don’t want to give feedback on this draft [or] that draft’, because it felt like ‘fine words’ and there was a bit of cynicism as to where it was all going. (Personal communication, senior NFP leader, 15 April 2011)

Fitzgerald himself observed that the compact was a sign of good faith with the sector, but he had reservations about its utility:

It’s a framework document – that’s what compacts are, they set up a set of principles. At best they are a guiding framework for the way in which governments should engage, but the really substantive issues are the issues that [the Productivity Commission] and others have addressed in multiple reports. (Personal communication, 11 May 2011)

Consolidating reform under Gillard

On 24 June 2010 – barely three months after the launch of the National Compact – Gillard replaced Rudd as prime minister in a sudden and dramatic leadership challenge. The circumstances of Rudd’s removal brought into question the legitimacy of Gillard’s prime ministership and, in the hopes of securing a mandate for her government, Gillard called a general election for 21 August 2010. The election resulted in a hung Parliament and, after 17 days of tense negotiations with the cross-benches, Gillard formed a minority government.

Gillard had gone to the 2010 election with a roadmap for ongoing NFP reform. A re-elected Gillard government would: establish a Not-for-Profit Sector Reform Council to provide a conduit between the sector and government; set up an Office of the Not-for-Profit Sector within the Prime Minister’s department, ‘to drive and coordinate the policy reform agenda’; commission a scoping study for a national ‘one-stop-shop’ regulator for the not-for-profit sector; continue to work through the Council of Australian Governments to implement a National Chart of Accounts ‘to improve consistency in financial reporting’ and to harmonise fundraising legislation across states and territories; and cut ‘red-tape’ by streamlining tendering and contracting processes (Gillard 2010).

The government continued to portray the National Compact as the ‘foundation for action to improve working relationships, strengthen sector viability, and develop and deliver better policy and programs’ (PMC 2011). Gillard had declared that hers would be a government of ‘decision and delivery’ (cited in Curtis 2010), but continuing political turbulence led to widespread speculation that the minority government was on

borrowed time. The following statement by the chair of the Not-for-Profit Sector Reform Council, Linda Lavarch, captured this impression:

This is a once in a generation opportunity to join with a government that is passionate about reforming the sector for the positive benefit of the sector and the Australian community as a whole, but may have limited time to do it. So, like holding onto mum's skirt if she's in a hurry, we've just gotta keep up. We may not come this way again. (Personal communication, 13 September 2011)

Political instability and NFP sector reform

Following the 2010 election Stephens – a Rudd loyalist – was stripped of her Parliamentary Secretary role. Credited with leading consultations with the sector ‘at a time where some big thinking about the sector was needed’, and praised as an architect of the NFP sector reform agenda, her sudden demotion came as a shock to many in the sector (Woodward 2010).

Gillard had herself held the social inclusion portfolio in the Rudd government but passed the baton to senior Labor stalwart, Simon Crean, shortly after the leadership coup. In her second ministry, Gillard awarded social inclusion, along with the human services portfolio, to former Minister for Housing and Minister for the Status of Women, Tanya Plibersek, thereby removing social inclusion to the outer ministry. In this role, Plibersek also inherited responsibility for overseeing the implementation of the National Compact.

At the same time, Bill Shorten (previously the Parliamentary Secretary for Disabilities and Children's Services) was appointed Assistant Treasurer (also in the outer ministry), in which capacity he had responsibility for important structural elements of the NFP reform agenda. Both Plibersek and Shorten were well regarded in the sector by virtue of their previous ministerial roles in relation to homelessness (Plibersek) and disability (Shorten). Stephens was later brought in from the cold as a ‘specialist adviser’ to assist Shorten with consultations on a statutory definition of charity (Shorten and Plibersek 2011).

Against the backdrop of a revolving door of portfolio changes, the government invited comment on a series of discussion papers prepared by the Treasury on various aspects of the regulatory architecture. This sudden flood of papers contributed to a perception in the NFP sector that the Treasury had captured the reform agenda. This raised fears that henceforth reforms would narrowly focus on compliance and revenue protection (Murray 2014). Shorten, sensing this unease, offered the following assurances:

further big reform in the not-for-profit space is long overdue because too many reforms have previously been considered a low priority or been put into the too hard basket ... [T]he sector has lacked some unity in purpose and voice, and the reform agenda has lacked necessary leadership. But I'm standing here now to say that this government is ambitious to be the champion the sector has [been] patiently waiting for. (Shorten 2011, n.p.)

Changes to administrative orders in December 2011 resulted in a further reallocation of ministerial responsibility for social inclusion to the Mental Health and Aged

Care portfolio held by Mark Butler, who was also elevated to cabinet. A new Assistant Treasurer, Senator Mark Arbib, became responsible for matters pertaining to the taxation and regulation of the NFP sector (although he would resign amid further leadership controversy just over a year later). Parliamentary Secretary to the Treasurer, David Bradbury, took the running on the harmonisation of charitable fundraising legislation (Treasury 2012).

In February 2012 a failed leadership challenge by Rudd precipitated yet another portfolio re-shuffle that saw Butler retain the Social Inclusion portfolio and Bradbury appointed Assistant Treasurer. These changes, amplified no doubt by political blunders and lingering resentment about the manner in which Gillard assumed the leadership, contributed to confusion and unease in the NFP sector (for a comprehensive account of the Labor government's travails, see Wanna 2012).

From 'third way' to 'liberal conservatism'?

Taking a cue from Britain's 'New Labour', Australian Labor under both Rudd and Gillard framed its policy approach towards the NFP sector as a major point of difference from the Coalition. In the UK, New Labour's emphasis of on cross-sector engagement gave the Blair government a 'post-Thatcherite edge' (Driver and Martell 1997: 43). Similar observations have been made of the Rudd–Gillard formulation of social inclusion and its 'near identical embrace' of the Blair government's social inclusion agenda (Wilson 2008: 8).

Labor's pursuit of social inclusion and NFP sector reform was founded on two contrasting political narratives. The first was Rudd's framing of a 'third-way' discourse emphasising civil society, joined-up government, cross-sector cooperation and participatory governance – aspirations never fully realised by a government whose decision-making and policy formulation became highly centralised and hierarchical (Marsh, Lewis, and Fawcett 2010: 157). The second was Gillard's emphasis on a 'participatory economy' – an idea she had espoused since her time in opposition and which became a central organising theme of her government.

As Prime Minister, Gillard employed populist messaging directed at 'working families' and offered a prescription of welfare reform and workforce participation to 'break persistent cycles of social and economic exclusion'. Claiming the 'dignity of work' as 'a deep Labor conviction', Gillard (2011) declared: 'The party I lead is – politically, spiritually, even literally – the party of work ... The party of work not welfare, the party of opportunity not exclusion, the party of responsibility not idleness'.

The NFP sector was guarded in its appraisal of the policy emphases inherent in the Gillard government's NFP reform agenda. Although a member of the ALP's Left faction, Gillard was less antagonistic to neoliberalism and market capitalism than was Rudd. Johnson, for example, described Gillard as 'Rudd-lite' and portrayed her government as a 'turn to the right' for Labor (Johnson 2012). Under Gillard 'red-tape reduction' appeared to gain greater salience as a policy priority – although it must be noted that 'red tape' was, and remains, an important issue for the NFP sector (EY 2014). Gillard's apparent retreat from Rudd's communitarian messaging suggested to some that contracting logics would continue to shape the government's relations with the sector.

In many respects these subtle shifts in Labor's policy narrative were an Australian analogue of the shift in (British) Labour ideas away from social democracy towards

‘liberal conservatism’, characterised as an adherence to a ‘conservative prescriptive moral communitarianism’ coupled with a ‘positive celebration of the dynamic market economy’ (Driver and Martell 1997: 43). Bentley (2007) makes similar observations about Britain, arguing that Blair and Brown decisively shifted British politics away from the ‘operating framework’ traditionally dominated by the right (personal taxation, economic management and national sovereignty) but nevertheless failed to establish ‘deep, strong institutional underpinnings’ for their new communitarian framework. It was thus vulnerable to fragmentation, loss of coherence, public cynicism, disillusionment and non-participation (Bentley 2007: 111–12), observations that resonate with Australia.

Rudd’s rhetoric reflected the *zeitgeist* of a public weariness with ‘economic fundamentalism’ (Rudd 2006; 2009), but his government’s grasp of the policy implications of an Australian third way was in some respects shallow. Despite having appropriated the Blairite notions of a compact with the NFP sector and social inclusion, the Rudd government failed to institutionally embed and politically *de-contest* its approach to the NFP sector (as had occurred in the UK, see Alcock and Kendall 2011). Indeed, his predilection for ‘big ideas’ (Evans 2010) coupled with a tendency for centralised decision-making (Marsh, Lewis, and Fawcett 2010), a penchant for commissioning formal policy reviews (Eltham 2010; Wanna 2010) and dysfunctional cabinet processes (Swan 2014), meant that his government’s approach to policy implementation lacked rigour and coherency (Aulich and Evans 2010).

Rudd’s evocations of a new era of multilateral governance through *soft* regulation (in the form of the National Compact) – unrealised though it was – gave way under Gillard to a more workman-like focus on *hard* regulation. Under Gillard, Treasury did much of the heavy-lifting (in policy terms) under a series of Assistant Treasurers, albeit within a cross-portfolio framework and with oversight from the Not-for-profit Reform Council and the Office for the Not-for-profit Sector in the Prime Minister’s Department (both established by Gillard).

The Gillard government’s reforms represented a coherent response to the legislative and regulatory neglect that had long plagued the NFP policy space in Australia (Lyons 2003b). As a policy ‘powerhouse’, Treasury’s involvement brought intellectual rigour to the policy process, but this occurred at the cost of the sector’s confidence in the direction of reform. The wider legacies of the first Rudd government also hindered Gillard: lingering public unease about the manner in which Gillard seized the leadership and intense media scrutiny flowing from a series of policy and implementation failures. In the combative and vitriolic political environment that marked the Gillard minority government, the prospect of obtaining cross-party support even for meritorious policy was probably always doubtful (Kelly 2014).

Closing of the NFP reform window

The Rudd and Gillard Labor governments pursued important – and unprecedented – evidence-based reforms in an NFP policy space long neglected by federal policy-makers. Rudd presided over the introduction of the National Compact – a policy gesture that was perhaps more symbolic than it was impactful – and initiated the Productivity Commission study that provided the evidentiary basis for overdue structural and institutional reform, including amendments to tax regulation, a statutory definition of charity, legislated protections for advocacy and the creation of the ACNC.

It might well be said that Rudd adopted the rhetoric of the Blair government's policy agenda, but not much of the substance. In contrast, the Gillard government did more to give institutional expression to the NFP reform agenda. As with much else the Rudd and Gillard governments attempted, the process of implementation was well-intentioned but flawed (Aulich and Evans 2010).

The political turbulence that compromised the Labor governments came to a head in June 2013 when Rudd wrested the leadership away from Gillard. Labor's standing in the polls revived briefly, but the Coalition handily won the general election held in September 2013. Once in office, the Coalition wasted little time in seeking to reverse key NFP sector reforms: the National Compact was set aside; the Office for the Not-for-profit Sector was disbanded; the government sought (and failed) to defer commencement of the Charities Act 2014 which set out for the first time in Australia a statutory definition of charity; and it introduced legislation to abolish the ACNC (Murray 2014).

Politics as usual?

It is tempting to portray the fortunes of NFP policy reform in terms of 'politics as usual', meaning that it is generally assumed that centre-left parties are naturally interventionist, centrist and attracted to regulatory responses to policy problems, while centre-right parties are not. Any such analysis would hold that Labor's NFP reform agenda was a typically 'centre-left' regulatory approach and that the Coalition's pledge to reverse Labor's reforms is a typically 'centre-right' reaction against the regulatory yoke of government. This is certainly how the Coalition has chosen to portray the central difference between it and Labor in this policy space (Andrews 2012).

Is it really that simple, or might there not be more shades of grey than the time-honoured memes of left versus right admit? When Julia Gillard was asked about the importance of gender as a contributing factor in the undermining of her leadership she responded, 'It doesn't explain everything, it doesn't explain nothing, it explains some things' (cited in Eastley 2013). The same might be said about the influence of party politics and ideology on the content of policies concerning the NFP sector.

The core difference between centre-right and centre-left political parties is often crudely framed in Australia (and elsewhere) as a contest between 'small' and 'big' government: between deregulated 'free' markets and excessively regulated markets. The regulatory impulse is often explained in terms of 'market failure' – or in the case of the NFP sector, 'philanthropic insufficiency' – and the corresponding need for consistency, certainty, predictability and confidence. The deregulatory impulse, by contrast, is often explained in terms of 'government failure' and appeals to the values of entrepreneurship, subsidiarity, innovation and social responsibility. In such framings, so-called 'big government' often acquires pejorative overtones.

Neither paradigm, however, explains everything. Labor governments in the 1980s and 1990s did little to regulate the NFP sector despite evidence to suggest that regulation was needed. The Howard government did little to address the regulatory gaps and inconsistencies besetting the sector (apart from an abortive attempt to legislate a definition of charity in 2003), but it used 'soft' regulation – regulation by contract and by funding – to manage its relations with the NFP sector. As for Rudd, he articulated, but manifestly failed to achieve, a communitarian agenda based on

multilateral governance. Gillard, meanwhile, vacated the intellectual ‘high ground’ to focus on structural and legislative reform – mostly with the broad support of the NFP sector.

Where a governing party sits relative to the left/right divide on the ideological spectrum is not necessarily a reliable predictor of its policy stance towards the NFP sector. This becomes evident when one closely examines the policy experience of state and territory governments. For example, the National Compact (2010) was by no means the first or the last instrument of its kind in Australia. A Liberal ACT government introduced Australia’s first compact in 2001, but successive ACT Labor governments subsequently embraced it (in 2004 and 2012).

Formal instruments for cross-sector cooperation appear, superficially, to be a ‘Labor’ phenomenon: Labor governments in South Australia (2004; 2009), New South Wales (2006), Queensland (2008) and Tasmania (2012) have introduced compacts. The impact of state and territory relationship frameworks have, however, been mixed (Boulderstone 2008; Butcher, Casey, and Dalton 2012; Edgar and Lockie 2010). Labor governments in Western Australia and Victoria did not take this path and instead focused on strategies intended to build sector capability – approaches their Coalition successors substantially continued (Butcher *forthcoming*).

In fact, all state and territory governments – regardless of their political brand – depend on NFP service providers for the delivery of policy and programs (Butcher and Dalton 2014). Centre-left or centre-right, Labor or Coalition, this dependence rather than ideology drives policy. And if ideology seems to hold greater sway at the federal level (as appears to be the case at this time), it is perhaps a function of the Commonwealth being less reliant on NFP organisations to deliver essential human services.

Conclusion

How did the NFP sector go from suddenly having unprecedented levels of policy influence to a situation in which long sought-after policy gains are under existential threat? Four factors are worthy of consideration.

First, it is important to understand that Australia’s NFP sector is commonly portrayed as an economic sector with shared concerns and capable of exercising collective voice, but it is in fact a highly segmented (both vertically and horizontally) and fragmented space in which diverse – sometimes competing – interests continually jockey for position and influence. Labor’s reform agenda enjoyed broad support, but that support was not universal (West 2014). It is also possible that many in the sector believed that the Labor government’s days were ‘numbered’ and were therefore reticent about championing Labor’s policies.

Second, it might also be said that Labor’s approach to agenda-setting and policy-making was founded on an uncritical adoption a Blairite construct of a third sector as a site for policy intervention and control. Intermediary organisations often represent the NFP sector as both diverse *and* as having common interests. Labor’s reform agenda sought, *prima facie*, to address matters of shared concern to the sector.

The internal politics of the NFP sector can, however, be opaque and difficult for policymakers to read reliably. Even the Minister for Social Services in the Abbott government, Kevin Andrews, has likened the task of delineating that demarcating the respective responsibilities of the NFP sector and government to ‘herding cats’ (Andrews 2014). In the public debate that emerged around the Coalition

government's plans to roll-back Labor's reforms, sector leaders pointed out that a minority of dissenting interests have not welcomed the new levels of transparency and accountability that the establishment of the ACNC introduced (*Hansard* 2014: 22; West 2014). This allowed the Abbott government to claim sector support for its plans to abolish the ACNC.

Third, frequent ministerial re-shuffles and changes to administrative orders under the Gillard government contributed to sector unease about the direction and intent of the reform process and possibly contributed to influential actors in the NFP sector withholding endorsement of Labor's reform measures. Moreover, the policy dialogue exhibited a number of failings: a perception that elite interests had 'captured' the policy agenda; scepticism about the legitimacy of some of those invited to participate in formal advisory bodies; and failure to engage with the opposition parties or the cross-bench – a situation the increasingly acrimonious nature of the Parliament no doubt accentuated.

Fourth, the Labor government failed to articulate an overarching policy narrative for NFP sector reform or explain the protracted process of policy development – a situation frequent ministerial baton changes likely exacerbated. Furthermore, apart from the largest NFP organisations, most affected NFPs lacked the internal policy capability or resources to fully engage in formal consultations on multiple, complex discussion papers and exposure drafts of legislation. The result was consultation fatigue and disengagement from the policy process.

These four factors alone suggest the basis of a 'perfect storm', the ultimate *denouement* of which might well be the unravelling of otherwise sensible policy. Thus, the Labor government's apparent conviction about the unassailability of its 'once in a generation' reform agenda appears to have been misjudged.

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