

# Submission to the Government Administration Committee

## Charities Amendment Bill (2016)

This submission is from Platform Trust, Level 3, 181 Thorndon Quay, Wellington.

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### Background Information

Platform Trust is a national network of non-government community organisations (NGOs) that provide a wide range of mental health and addiction support services across New Zealand, most of which are charities. In 2012/2013 over 50,000 New Zealanders accessed support from NGO services.

Platform is a registered charitable organisation and is well connected with the wider NGO sector including through various network groups such as Hui E! and the Ministry of Health's NGO Council nationally, and ComVoices locally in Wellington.

### Summary

Platform agrees with the decision to address the amendments proposed for the Charities Amendment Bill (2016) separately to the other changes submitted within the Statutes Amendment Bill. The amendments will result in significant change and require consultation with the sector. As evidenced by the 753 submissions received by the Social Services Select Committee on the original Bill, the sector has real value to offer in the shaping of this legislation.

Platform does not consider that the changes are 'relatively routine matters'<sup>1</sup> or 'minor technical amendments'<sup>2</sup>. Platform is deeply concerned about the effect in real terms that the proposed amendments will certainly have on charity organisations in New Zealand.

Platform is concerned that charities' right to appeal decisions are under threat and believes that this is contrary to the intent of the original Bill. Platform believes that removal of, or even adjustment of, charities' rights to appeal decisions through legal channels is premature and notes that there have already been high profile legal cases brought by charitable organisations against the Charities Commission and Charities Registration Board, in which appeals against these decisions have been successful in the Supreme Court and High Court respectively.

Further, Platform believes that given the very new status of the Act, any functional changes are premature, especially as the motivation for these amendments is at times communicated as being to relieve the '*administrative burden for the chief executive*'<sup>3</sup>. Platform believes it is right that a senior public official participates in overseeing such a large and important sector that serves New Zealanders and is heavily utilised by the

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<sup>1</sup> Charities News Alert, 7 July 2016, Charities Services, Department of Internal Affairs.

<sup>2</sup> Charities News Alert, 7 July 2016, Charities Services, Department of Internal Affairs.

<sup>3</sup> Statutes Amendment Bill, Government Bill 71-1, Explanatory note, Part 3

Government. The Department of Internal Affairs (DIA) is tasked with helping New Zealand to build strong communities and Platform argues that charities are the cornerstones of the communities they work in. As contributors of 2.7% to New Zealand's GDP<sup>4</sup> and employing more full time employees than the construction or agriculture industries, the not for profit sector should be respected as key contributors to our economy.

Platform considers that a review of the Charities Act as a whole, as was originally intended, would be more beneficial and timely to properly assess how well the Act is functioning to support this sector to conduct its business.

### **Concern about the Charities Amendment Bill (2016)**

- Platform believes that some of the proposed changes will result in unreasonable and unnecessary expectations being placed on charity organisations which have varied capacity to respond to these requirements. Charity organisations often operate with very small workforces, some staffed solely or mainly by volunteers (90% of non-profits rely on volunteers to maintain their operations<sup>5</sup>), and on increasingly lean budgets<sup>6</sup>. This means that responding to several of the new requirements resulting from proposed changes (for example providing information or evidence within new stricter timeframes) could interrupt, and potentially threaten, charities' ability to conduct normal business. For instance, Clause 12 treats charities' applications as withdrawn if information is not provided within 20 days. This is an unnecessary and, Platform believes, unwarranted change.
- Platform is most concerned about the proposed changes to Clause 13, section 61 in the Amendment Bill. Platform believes that the proposed changes would affect a large amount of charities' dealings with the DIA and the Charities Board and that this change is not consistent with the original Bill's intention. The Select Committee report stated that '*charities should not be limited to appealing decisions relating to registration and that it should be possible to appeal **all decisions of the Commission that adversely impact** on a particular entity<sup>7</sup>*' [emphasis added]. As the proposed amendments currently stand, it appears that charities will only be able to appeal decisions made by the Board. Given the historical right of charities to challenge decisions by the Charities Commission, the removal of this right upon the disestablishment of the Commission and transfer of the Commission's role to the DIA and the Charities Board is counter to the intent of the Act.

Platform considers that Charities Services' suggestion, communicated in the Charities News Alert distributed on 7 July 2016<sup>8</sup>, that the Office of the Ombudsman is an adequate method of appeal for decisions by the chief executive is against the spirit of the Charities Act and is a clear reduction of the rights charities had under the Charities Commission. The alert acknowledges that the Ombudsman could investigate in the event of a '*matter not covered by the statutory right of appeal*', rights which these amendments seek to revoke. Platform notes that the Office of the Ombudsman is not required to act on any complaint made to it. Additionally, it recommends that any complaint first be made to the agency using its usual complaints process and then to the chief executive, whose decision the complaint

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<sup>4</sup> Statistics New Zealand (2015). *Non-profit institutions satellite account: 2013*. Retrieved from [www.stats.govt.nz](http://www.stats.govt.nz)

<sup>5</sup> Statistics New Zealand (2015). *Non-profit institutions satellite account: 2013*. Retrieved from [www.stats.govt.nz](http://www.stats.govt.nz)

<sup>6</sup> Statistics New Zealand (2015). *Non-profit institutions satellite account: 2013*. Retrieved from [www.stats.govt.nz](http://www.stats.govt.nz)

<sup>7</sup> Charities Bill 2004 108-2 Select Committee report, pp 13-14.

<sup>8</sup> Charities News Alert, 7 July 2016, Charities Services.

would theoretically be against. The Office of the Ombudsman can refuse to investigate the complaint if this has not occurred or for a number of other reasons outlined on its website, including where the complaint is considered trivial.

*'Can the Ombudsman refuse to investigate your complaint?*

*Before making a complaint to the Ombudsman, you should try to resolve it with the agency first. Many agencies have a complaints process. If this is not the case, you should write to the head or Chief Executive of the agency and make your complaint. The Ombudsman may decide not to investigate your complaint unless you have attempted to do this...*

*Also, the Ombudsman may refuse to investigate your complaint if:*

- *there is an adequate alternative remedy reasonably available to you*
- *your complaint is more than 12 months old*
- *your complaint is trivial, vexatious or not made in good faith*
- *you do not have a sufficient personal interest in the complaint.*

*If the Ombudsman decides not to investigate your complaint you'll receive an explanation for that decision.<sup>9</sup>*

This leaves charities with an uncertain avenue for appeal and Platform considers this unacceptable, especially in light of the aforementioned recent appeals history.

## **Conclusion**

The New Zealand Government, through numerous departments, is looking at many of the ways that it contracts with charities. These activities are increasingly occurring in the spirit of partnership with this vital sector in acknowledgement of the role it plays in delivering core services in communities. New Zealand charities, as partners to the Government, should not be forced to respond to increasingly stringent, cumbersome and undermining requirements without cause. Already charitable organisations, some with very limited capacity, are required to spend a large amount of time and resource responding to bureaucratic demands at the expense of delivering services to New Zealanders. As valued partners, charities should not expect to experience the movement of goalposts, resulting in increasing burden for seemingly arbitrary reasons or the casual erosion of their rights to appeal decisions made by government departments.

Platform believes the changes proposed in the Sue Barker Charities Law submission should be applied in full.

Platform considers that the review of the Charities Act, cancelled in 2012, should be undertaken to review the Act's fit for purpose in the New Zealand context. New Zealand needs charities to be strong and vibrant.

Platform supports the submissions made by Sue Barker Charities Law and Hui E!

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<sup>9</sup> Office of the Ombudsman, What we do. Retrieved from <http://www.ombudsman.parliament.nz/what-we-do/investigations/complaints-about-state-sector-agencies>.