

20 December 2011

Education Report: Initial Discussion on Charter Schools

Executive summary

You are to meet with the Minister of Finance on Wednesday 21 December 2011 for which a briefing has been prepared [Metis 636484 refers]. One of the items on the agenda is charter schools. This briefing provides you with more detail on the following areas:

- the policy rationale for charter schools
- possible additional flexibilities to be given to charter schools
- the outcomes required and how they could be measured
- the legal form a charter school could take
- the role of the Implementation Group
- resourcing of charter schools
- the timetable for implementation
- communication and engagement.

This briefing also provides a basis for an initial discussion with senior Ministry officials on charter schools policy.

Recommendations

We recommend that you

- a. **note** that this report summarises our understanding of the charter school proposals, drawing on the Agreement between National and ACT
- b. **agree** to meet with senior officials to discuss charter schools to provide guidance for early work by the Ministry of Education on charter schools

AGREE / DISAGREE

- c. **note** that new legislation will be required to allow charter schools to take full advantage of the flexibilities that the Agreement envisages
- d. **note** that we will provide you with a further briefing in January on the areas for which policy will need to be developed in order to draft the legislation
- e. **indicate** whether the Ministry should prepare advice on the skill sets that may be needed on the implementation group and possible candidates for the group.

YES / NO

Frances Kelly

Frances Kelly
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NOTED / APPROVED

Hekia Parata
Hon Hekia Parata
Minister of Education

2012.11

Education Report: Initial Discussion on Charter Schools

Purpose of report

1. On Wednesday 21 December 2011, you are to meet with Hon Bill English. One of the items on the agenda is charter schools. This briefing provides you with more detail on that topic than is contained in the briefing for the meeting. It will also support our initial discussions with you on charter schools. These discussions will provide an opportunity for you to steer the Ministry's early work.
2. The Ministry will prepare you further advice on the areas outlined in this report and on other aspects of this policy as you request. Our initial aim is to understand your current thinking and what steps you wish to take first.

Background

3. The Confidence and Supply Agreement ('the Agreement') between National and ACT contains a commitment to implement charter schools "whereby school charters can be allocated in areas where educational underachievement is most entrenched."

Policy rationale for charter schools

4. The Agreement starts from the position that too many young New Zealanders are not achieving their potential in education and are leaving ill-equipped for the workforce, particularly in disadvantaged communities. Charter schools are a targeted response to this problem, drawing on lessons from the United States and other international contexts including Sweden and England.
5. The Agreement also describes the charter school proposals and the key features of charter schools. Our analysis identifies four features that would set them apart from state and state integrated schools, these are:
 - a. *Greater flexibility* than state schools over aspects of governance and management, including staffing, approaches to teaching and learning, curriculum and qualifications
 - b. *A clear and ambitious mission* that distinguishes the charter school from surrounding state and state integrated schools
 - c. *A sponsor* that is responsible for ensuring the charter school meets learner achievement goals
 - d. *Accountability for outcomes* as a strong focus, with a 'tight-loose-tight' model.
6. The intervention logic is that charter schools with strong leadership and vision will be held to account to use the additional freedoms to raise achievement by better meeting the needs of learners in disadvantaged areas, particularly groups who

are underserved in the state system. Currently these are Māori, Pasifika, and learners with special education needs. To better serve the needs of these students, charter schools will need a strong focus on fostering their identities, languages and cultures.

Parameters for charter schools proposals

7. The Agreement leaves open a number of parameters for charter schools. Our interpretation is that charter schools could be established to provide English-medium, bi-lingual or Māori-medium education and along the lines of any existing type of school (primary, secondary, special, etc).
8. It would assist the Ministry to have an early steer on whether charter schools will be allowed to extend their offer from Years 1 to 13 of schooling to also include early childhood or tertiary provision. If so, the Ministry will begin exploring how the settings for the three sectors could be aligned for charter schools.

What additional flexibilities should charter schools be given?

9. The additional flexibilities available to charter schools will allow them to distinguish themselves from other state schools. These will generally be freedom from constraints such as some regulatory requirements, which will give charter schools the freedom to teach in ways that most effectively meet the needs of students and to be innovative. Providing charter schools with substantive additional flexibilities will require legislative changes, which are discussed below.
10. We have identified five broad areas where you may want to give charter schools more flexibility than state schools:
 - a. The *employment of staff* – who is permitted to teach and the terms of employment
 - b. The *control over resource decisions* - both property/capital and revenue spending (operations grant and funding for staffing)
 - c. The length and structure of the *school day and year*
 - d. The *curriculum and qualifications* that the charter school uses
 - e. The *governance and leadership* arrangements, including the role of the sponsor and the potential for 'chains' of charter schools
11. These freedoms can be established through the legislative and policy framework for charter schools. Charter schools will need to be outside the existing teacher collective agreements if they are to have greater freedom over staffing and employment. The charter will provide the mechanism for locking in a set of minimum requirements and a strong accountability for outcomes.
12. There are options for how to offer these flexibilities. You could maximise the flexibilities for all charter schools; alternatively there could be a process of negotiation with each sponsor to identify and agree the specific flexibilities they will require for their approach to education.

13. We will seek your views on the flexibilities for charter schools early in 2012.

What outcomes will be required and how will they be measured?

14. The Agreement envisages that the charter will set out agreed learner achievement goals as well as financial and operational standards. A charter school will have increased flexibility compared to other schools in how it achieves these outcomes but will be required to meet exacting accountability arrangements.
15. Developing outcome measures robust enough to be measurable and appropriate for each individual school will be a real challenge. The education system to date has tended to measure inputs and outputs rather than outcomes.

Learner achievement

16. Academic measures in the secondary sector could include such performance in NCEA, International Baccalaureate or Cambridge International Examinations. Primary schools could use National Standards or tools such as the Progressive Achievement Tests (PAT) or aSTTle¹. Charter schools could be measured against results in similar state schools or they could set improvement rates for individual learners that could be aggregated to measure the 'value add' that the school was providing.
17. Good schools provide more than purely academic results. Employers are increasingly seeking attributes in employees such as the ability to work with others, the ability to contribute to team work, and the ability to think creatively and critically. These outcomes are more difficult to measure.
18. Learner engagement is an intermediate outcome that leads to increased achievement. Proxy measures such as truancy rates, suspensions and expulsions and survey tools to measure bullying are also possible outcome measures.

Financial and operational standards

19. A charter school, whether for-profit or not-for-profit, will be expected to run as a reasonable business proposition. Financial outcomes need not be complex but should be designed to have clear early warning signals of deteriorating financial performance.
20. Operational outcomes would probably focus on measures of good governance and management/leadership.

Minimum requirements

21. The Crown may also seek some minimum outcomes around those priorities that the special character does not address. For instance, if the school is faith-based in a low socio-economic area, there may also be required outcomes for the

¹ Assessment Tools for Teaching and Learning

achievement of Māori and Pasifika learners. There may need to be consideration of minimum property requirements beyond those contained in health and safety and building legislation.

22. One area for special consideration will be risk management. In a contractual relationship, the usual sanction for non-performance is ending the contract. Where the education of learners is concerned, this is a difficult and serious thing to do. It may also be unacceptable to wait until a situation is bad enough to justify ending the contract if the outcome measures are poorly drawn, or reporting is at too long an interval. If the education or welfare of learners is at risk, or if the school is failing financially, interim interventions may also be needed.

What legal form should a charter school take?

23. We recommend that, in order to take full advantage of the flexibilities that the Agreement envisages, a charter school is established as a body corporate by the sponsor, not as a Crown entity.
24. The Agreement suggests that a charter school could be established under existing sections of the Education Act 1989. No sections of the existing legislation would allow the full range of charter schools envisaged to be established with the flexibility of operation set out in the Agreement.
25. Section 155 is restricted to schools that subscribe to the principles of Te Aho Matua which are a potentially small subset of charter schools. Section 156 is also problematic because it requires a request from a group of parents rather than a sponsor. The constitutional separation of the state and religion means that section 156 would not allow the establishment of a faith-based school. The path into the state system for faith-based schools is through the special arrangements in the Private Schools Conditional Integration Act 1975.
26. Even if a charter school had its own establishment section, it would still be a Crown entity under existing legislation, notably education legislation, the State Sector Act 1988, the Crown Entities Act 2004 and potentially the existing teacher collective agreements.

Body corporate

27. Private schools are usually a form of body corporate (for example, a charitable trust or a company). Creating a new class of private school for charter schools under the Education Act 1989 is also problematic as private schools are required to be registered and the standard for registration is loosely based on the standards for state schools and in some cases are required to be comparable. Teachers in private schools must be registered teachers although they are not subject to the state industrial relations regime.
28. To conclude, there is no viable avenue to establish charter schools under existing legislation. Currently the system has two types of school - state and private. Our advice is to create a third type of school – the charter school. New legislation will be required to (at a minimum):
 - a. mandate the use of public funds for charter schools

- b. ensure that a charter school is not an illegal school under existing legislation
 - c. set up the process for establishing and monitoring a charter school.
29. This will have implications for the legislative programme, since, to have charter schools open in this term of government, legislation would need to be passed in 2012. We recommend that you seek a place on the legislative programme for an Education Amendment Bill with at least priority 3 ("to be passed if possible in the year").

The role of the implementation group

30. The Agreement states that you will establish an implementation group for charter schools, with a private sector chair and private sector, business, iwi and community representatives along with government officials.
31. The role of the implementation group could be defined in a number of ways. The group could focus on developing the policy for charter schools, concentrate on the successful implementation of the charter schools programme, or both of these areas.
32. Appointing the implementation group early in 2012 will help to establish momentum for the charter schools proposals, particularly if the group is to lead the development of policy. We anticipate you will already have identified a number of prospective members of the implementation group. The Ministry could prepare advice on skill sets the group may require and possible candidates for each category of members.
33. The Ministry will begin preparations to support the operation of the implementation group. This will include providing information and briefing, acting as a secretariat and giving effect to the decisions of the group.

Resourcing charter schools

34. A key element for any sponsor thinking about establishing a charter school will be clarity about the amount of funding available both for capital and operating costs.

Capital funding

35. The Agreement states that charter schools may be eligible for capital funding for school property although overseas experience suggests the use of private capital. If schools rent, they may receive equivalent funding to cover rental costs.
36. We will need to work through a range of questions with you, including:
- a. will there be any new money for charter schools or will they need to be established within the existing four-year funding envelope?
 - b. in what circumstances would a charter school be eligible for capital assistance? Would any contribution be required from the sponsor?

- c. can the sponsor incur any level of rent and count on reimbursement from the Crown? If not, how would limits be set?
- d. will charter schools be eligible for property payments such as maintenance funding, and vandalism payments if they rent?

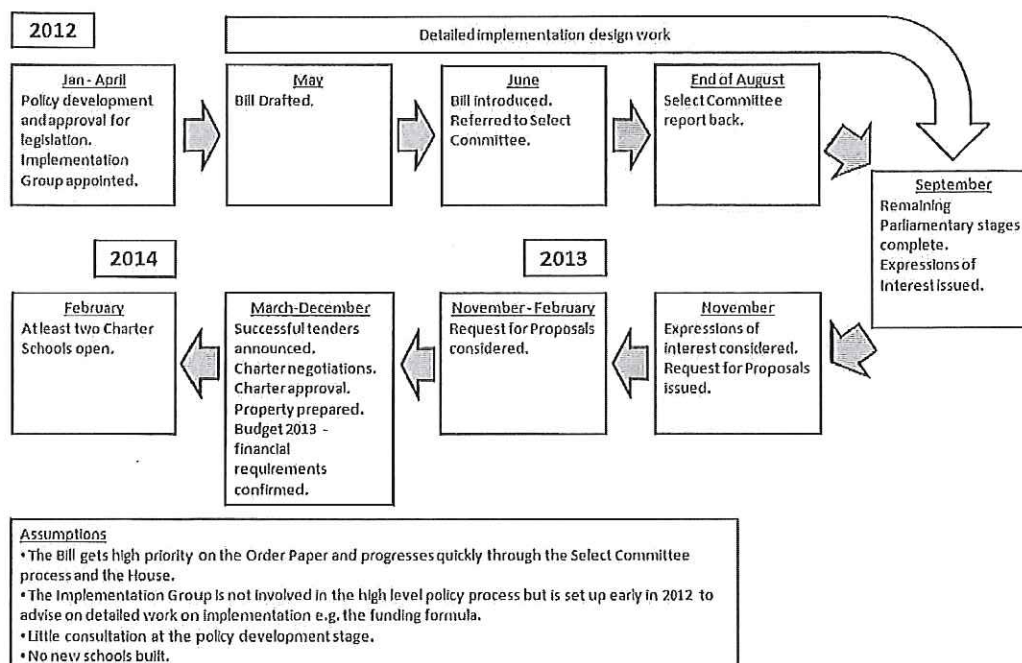
Operating funding

37. The Agreement states that charter schools will be able to raise their own revenues, pay their teachers according to performance and receive operational grant funding that may include funding targeted at disadvantaged groups. Funding will be on a per child basis and tuition fees will not be permitted.
38. Work in this area could include issues such as:
 - a. giving charter schools additional flexibility will almost certainly require that all resourcing should be provided in the form of a cash payment. The Ministry will need to develop a funding formula. Is there value in incorporating an element of 'at risk' funding as an accountability measure?
 - b. if schools have to contribute to their capital costs, are they able to charge the attendance dues as integrated schools do to offset these costs?
 - c. will charter schools get access to resourcing that sits outside the operations grant such as assistance from Group Special Education, transport assistance, laptops for teachers, centrally-funded professional learning and development? Or will there be a cash equivalent?

Implementation

39. The Agreement is clear that charter schools will be introduced during this parliamentary term. This is achievable, including the changes to legislation. The Bill will need to be given sufficient priority in the legislative agenda.

Indicative timetable



40. Implementation in South Auckland and areas of Christchurch provides an opportunity to develop the model for charter schools. The Agreement refers to the model being 'successfully established', as well as fiscal conditions being suitable, before it is extended to other areas. This suggests that the first charter schools should be treated as a pilot, with evaluation processes built in from the start. This would provide valuable information about the impact of these schools on student achievement and ways to improve the model if it is eventually expanded.

Communication and engagement

41. Initial media coverage following publication of the Agreement has shown charter schools will generate significant interest. The New Zealand Education Institute and the Post-Primary Teachers' Association have both publicly signalled their opposition to the proposals.
42. Clear and positive communication with the public and the education sector will be important. The main aims will include explaining the purpose and process, dispelling myths and, in time, communicating the successes of charter schools.
43. We would also recommend developing a more focussed engagement plans for potential sponsors and parents in the communities of South Auckland and Central/Eastern Christchurch.

Next steps

44. We propose sending you further advice in January. This will be guided by our initial discussion with you. Areas that we expect to be the highest priorities for decisions are:
- a. the establishment, membership and terms of reference for the implementation group
 - b. a bid to secure a place on the legislative programme for 2012 (due with the Cabinet office on 24 January 2012)
 - c. the design of the process for granting charters and key aspects of the charter school model, to inform the instructions for drafting legislation
45. You are due to meet the Minister of Finance on Wednesday 21 December and one of the agenda items is charter schools. We suggest you focus the discussion on the policy rationale, implementation and resourcing the proposals. These points are included in the briefing for that meeting.