



Education Report: Transitions for Partnership Schools Kura Hourua

To:	Hon Chris Hipkins, Minister of Education		
Date:	10 May 2018	Priority:	High
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Messaging seen by Communications team:	Yes		

Purpose of report

This report provides further advice on potential options to allow for the transition of staff from partnership schools kura hourua (charter schools) to newly established State schools. It also responds to your request for advice on alternative constitutions and whether the amendment in the Education Amendment Bill is still useful.

Summary

1. Legislation has been introduced (the Education Amendment Bill 2018) to remove the charter school model.
2. Separately, sponsors have made applications for the establishment of new State schools. This has the potential to enable the establishment of a new school to begin operating after a charter school contract is terminated. We are working on the basis of those schools approved for establishment being operational for the beginning of the 2019 school year.
3. During discussions, sponsors raised a number of issues with the applicable State models (METIS 1108506). These included: issues with the transition of staff, associated resourcing, and the protection of their current charter school's special character. This report proposes options for you to respond to those issues. You are scheduled to take a paper to Cabinet by the end of May with your proposed approach to transition options around these particular issues.
4. You have also asked for advice on whether the amendment to allow you to agree an alternative constitution as part of the process of school establishment is still required.

Transition of staff and resourcing

5. The State Sector Act 1988 covers all State schools and provides that all positions in the education sector must be advertised in a manner sufficient to enable suitably qualified persons to apply. Without exempting legislation staff at former charter schools may miss out on positions at the new school.
6. There are existing precedents for transitioning staff into the state sector. We consider that a trust to a Crown entity option is the most applicable.
7. Under the *trust to a Crown entity option*, staff would be offered preferential rights to apply for the available jobs in the new school. Staff will be able to express interest in roles rather than going through a competitive process. Where staff accept a role they would not get redundancy. An amendment to the Education Act 1989 and consequential changes to the Employment Relations Act 2000 and the State Sector Act 1988 will be required. We recommend that all employees are covered by the same provisions, including caretakers and cleaners.
8. Those that do not apply or are not offered jobs would be entitled to redundancy. Liability for any redundancies from charter schools rests with sponsors if the employment agreement provides for it.
9. The newly established schools will have a period of adjustment to the new schooling model. For example, staff salary levels may require re-alignment and some roles may be unfunded under the State model (eg Chief Executive Officers). Costs may be different for each school depending on their business model and how quickly they can adapt. We recommend transitional grants calculated on a case-by-case basis for each school, based on actual costs and limited to six months only, as schools should not be incentivised to retain the charter school features any longer than necessary.
10. We estimate the total cost of the transitional grant for the six months of 2019 for all 11 schools would be approximately \$1.5m. This amount has been factored into the [REDACTED] million In-Principle Transfer you are seeking agreement to.
11. The option of cashing-up schools' staffing entitlements is not recommended. It would reduce the staffing entitlement that would be available for employing teachers. None of the charter schools are likely to be interested in an option that involves a reduction in the number of teachers.

s 9(2)(f)(iv) OIA

Alternative constitutions

12. The alternative constitution amendment to the Education Act currently proposed in the Education Amendment Bill will allow you to approve an alternative constitution for the board of trustees as part of the process of establishment, rather than requiring a two-step process. Because this Bill has not yet been enacted, charter schools currently applying to become State schools have to agree to an establishment board of trustees (EBOT), which can be made up of five Ministerial appointees, the Principal of the new school when appointed, and four co-opted board members, and then seek an alternative constitution. For those sponsors who are comfortable with this model, the amendment in the Bill will not be needed. We do not yet know whether this will meet all sponsor's needs. While the sponsors understand that it is possible for the Minister to appoint all five members from the sponsors Trust or organisation, some consider there is not enough certainty that this will occur. We understand some sponsors have made a submission to the Select Committee in support of this provision.

13. The amendment in the Bill will likely be useful for other schools applying to open in the future. Māori-medium designated character schools have also previously looked for such provisions.

Protection of Special Character

14. He Puna Marama Charitable Trust is concerned about the loss of control of its character that would be associated with establishment of a State school in place of a charter school. The Trust's solution to this was to make the Trust itself the legal entity for the school. They understand this will not happen. There are two options for managing the substantive concerns the Trust has raised: an alternative constitution that enables He Puna Marama Trust to appoint the Board of Trustees and any subsequent vacancies (this option is possible under existing legislation); or to amend the Education Act 1989 to allow the Minister of Education to name a body that has a special affiliation or responsibility for the designated character.
15. We recommend that the alternative constitution be used and that no further change to the Education Act 1989 is progressed.

Recommended Actions

The Ministry of Education recommends you:

- a. **note** that sponsors of partnership schools kura hourua (charter schools) have raised a number of issues with the potential establishment of State schools to replace their charter schools including: the transition of staff, associated resourcing, and the protection of their current charter school's special character

Noted

Transition of Staff

- b. **note** that we have considered three options for the transition of staff from charter schools to newly established designated character or integrated State schools: State school-to-State school; private school-to-State integrated school; and trust-to-Crown entity

Noted

- c. **agree** that the trust-to-Crown entity precedent should be applied for charter school staff transitions, as follows:

- i. current employees at the charter school will have preferential rights to apply for positions in the new State school

Agree / Disagree

- ii. an employee of a charter school would not get redundancy if the employee is offered an equivalent position in the new designated character or integrated school and accepts employment

Agree / Disagree

- iii. charter school employees who choose not to apply or are not offered new positions in the new State school will retain their rights to redundancy from the charter school sponsor if their employment agreement provides for it

Agree / Disagree

- iv. all charter school employees should be covered by the provisions under the proposed amendments to the Education Act 1989, including caretakers and cleaners

Agree / Disagree

- v. the transition provisions will be triggered by the Gazette Notice for establishing a new replacement State school as a named school that had a contract with the Minister under section 158D)

Agree / Disagree

- d. **agree** to seek Cabinet agreement to amend the Education Act 1989 to give effect to the decisions in recommendation c above

Agree / Disagree

Transition Grant

- e. **agree** to provide a one-off transition grant to State schools established in place of a former charter school, limited to the following components:

- i. a portion of teacher salaries that are higher than the relevant collective scales would allow
- ii. a contribution to the cost of employing CEOs

Agree / Disagree

- f. **agree** to limit the period of the transitional grant to six months

Agree / Disagree

- g. **agree** to only provide transition grant amounts to contribute to the employment of Chief Executive Officers to those schools who actually employ a Chief Executive Officer, and to only provide one transitional payment where two schools employ the same Chief Executive Officer

Agree / Disagree

- h. **note** the \$1.5m for the transition grant have been built into the [REDACTED] In Principle Transfer you are seeking agreement to

s 9(2)(f)(iv) OIA

Noted

- i. **agree** not to pursue changes to the School Staffing Order for State schools replacing charter schools

Agree / Disagree

Governance and Alternative Constitutions

- j. **note** that an establishment board or trustees can include five Ministerial appointees and up to four co-opted appointees

Noted

- k. **note** that requests from the establishment board of trustees usually are made when the school is ready to move to a substantive board. Usually this process takes 9-12 months and the request includes input from the parents

Noted

- l. **note** that the Education Amendment Bill will allow you to approve an alternative constitution for the board of trustees as part of the process of establishment rather than requiring a two-step process

Noted

- m. **note** that the amendment in the Education Amendment Bill related to alternative constitutions for Establishment Boards will not be useful for the transfer of all charter schools back into the State system due to timing issues between school establishment and the Bill being enacted

Noted

- n. **note** the need for the amendment will not be known until the applications for the new State schools that replace charter schools have been processed

Noted

- o. **agree** to proceed with the Amendment because it is not yet known whether the sponsors will prefer and require the Amendment Bill's alternative constitution process

Agree / Disagree

- p. **agree** not to seek amendment to the Education Act 1989 to allow the Minister of Education to name a body that has a special affiliation or responsibility for the designated character as one that must be consulted before the character of a State school can be amended, because sufficient designated character protection already exists

Agree / Disagree

- q. **note** that you can provide for He Puna Marama to have an alternative constitution that allows the trust to appoint the Board of Trustees and any subsequent vacancies under existing legislation

Noted

Next steps

- r. **agree** that the changes to the Education Act required for the transition of staff be progressed through the Departmental Report on the Education Amendment Bill to the Education and Workforce Committee

Agree / Disagree

- s. **note** that, because of scope issues, an amendment to require consultation on any change to the designated character would need to be progressed through a Supplementary Order Paper

Noted

- t. **agree** that a Cabinet paper be prepared to action the agreed recommendations in this paper

Agree / Disagree

Discuss

- u. **agree** that this Education Report is not proactively released at this time because decisions on the Departmental Report need to be considered by Cabinet.

Agree / Disagree



Ellen MacGregor-Reid
Deputy Secretary
Early Learning and Student Achievement

10/5/18



Katrina Casey
Deputy Secretary
Sector Enablement and Support

10/5/18



Hon Chris Hipkins
Minister of Education

13/5/18

Background

1. Legislation has been introduced (the Education Amendment Bill 2018) to remove the partnership school kura hourua (charter school) model.
2. Contract termination discussions with charter schools have concluded for three charter school contracts. Discussions are ongoing for the remaining sponsors (11 open schools and two that are scheduled to open in 2019). Separately, sponsors have made applications for the establishment of new State schools.
3. Sponsors raised a number of issues with the applicable State models during discussions about moving into the State system. These included: issues with the transition of staff and associated resourcing, and the protection of their current charter school's special character (METIS 1108506). This report proposes options to respond to these issues. Many other issues have already been resolved by explaining the considerable flexibilities in the State models.
4. In your response to the Education Report "Transition of Partnership Schools | Kura Hourua into the State System – Further Advice" (METIS 1108506) you indicated that you wished to receive further advice on legislation that would facilitate the transition for staff of the charter school to any newly established school or schools. You also agreed that a one-off 12 month transitional grant be investigated and that changes to the staffing order, to enable greater funding flexibility for new schools, be progressed.
5. The Education Amendment Bill contains changes that will allow you to approve an alternative constitution for the board of trustees as part of the process of establishment. The Bill is currently before the Education and Workforce Committee.
6. On 9 April 2018 Cabinet agreed that a solution to the issue raised by He Puna Marama Trust in relation to the Maori Battalion will be explored further, and that sponsors can be informed [CAB-18-MIN-0157]. The issue raised was how best to ensure the kaupapa of the school could be protected over time.

Transition of Staff and Resourcing

Background

7. It is common to have legislative provisions that give priority of appointment in the new organisation to affected staff and to regulate entitlement to redundancy when staff move between state sector organisations, or from the private sector to the state sector. Such provisions are based on the rationale that staff should not be able to receive a double benefit – a priority right to a new job and compensation for the loss of their former job. This is especially the case when the State is providing both for the redundancy and the new position.
8. Providing transition provisions for staff to move from a charter school to a newly established school involves the interrelationship of provisions in the state Sector Act 1988, the Education Act 1989 and the Employment Relations Act 2000.
9. The State Sector Act 1988 covers all State schools and provides that all positions in the education sector must be advertised in a manner sufficient to enable

suitably qualified persons to apply. The person best suited for the position must be appointed. Without exempting legislation these provisions mean that staff at former charter schools may miss out on positions at the new school.

Current rights for charter school staff

10. Charter school staff are covered by the provisions of the Employment Relations Act 2000. Part 6A of the Act deals with continuity of employment if an employees' work is affected by restructuring. The Act states that "restructuring" can include "transferring an employer's business to another person". The change from a charter school to a State school could be considered a "restructuring".
11. Every employment agreement must contain an employee protection provision (Part 6A Employment Relations Act 2000). This provision will apply to all charter school staff except caretakers and cleaners (including caretaking and cleaning contractors) who have special protections under the Employment Relations Act (ERA).
12. The purpose of the employee protection provision is to provide protection for the employment of employees affected by a restructuring. It must include:
 - a. a process that the employer must follow in negotiating with a new employer about the restructuring to the extent that it relates to affected employees;
 - b. the matters relating to the affected employees' employment that the employer will negotiate with the new employer, including whether the affected employees will transfer to the new employer on the same terms and conditions of employment;
 - c. the process to be followed at the time of the restructuring to determine what entitlements, if any, are available for employees who do not transfer to the new employer.
13. If a transfer is offered, an affected employee may choose whether to transfer to the new employer (section 69OK ERA).

Existing precedents

14. We have considered three precedents for transferring staff: **State school to State school, private school to State integrated school, trust to Crown entity**. None of the precedents are a perfect match to the charter school situation. The **trust to a Crown entity** precedent is the most applicable.
15. We recommend that only one charter school staff transition option is adopted, irrespective of whether the application is for a State integrated school or a designated character school. This would ensure equity between charter school staff that transition and minimise unnecessary complexity.

State school-to-State school precedent

16. When State schools merge or close an employee loses entitlement to redundancy if they are offered an equivalent position in a continuing or replacement school and refuse it (section 77HA of the State Sector Act 1988). Under this precedent it is not possible for the staff member to refuse the offer of

an equivalent position and to receive redundancy. This prevents staff from receiving a double benefit.

17. This option is not proposed for teachers in charter schools as they are moving from the private sector to the state sector and may prefer not to become part of the state sector. It is therefore fair that they should be able to exercise that preference and receive redundancy payment under their employment agreement with the sponsor if applicable.

Private-to-State integrated precedent

18. When a private school is accepted for integration, and becomes a State integrated school, priority of appointment is given to the staff of the private school. All the teaching staff can choose to be employed by the new board of trustees. On the integration of a school, all the positions under the staffing structure determined by the board of trustees must be advertised within 60 days. The persons eligible for those positions at the time of integration (i.e. the staff who have transferred from the private school) have absolute right of appointment should they wish to apply. If they do not apply they are entitled to redundancy under their private school agreement.
19. This option would be likely to lead to higher staffing costs for the Crown. More staff may be employed by the new school than the standard staffing entitlement provides for, leading to higher overall funding levels for transitioned charter schools as compared to similar State schools. For example, if a charter school has six eligible teaching staff and the new State school has only five Full Time Teaching Equivalents (FTTE) positions, if all six apply they must all be given jobs. The additional cost of the supernumerary teacher is paid by the Crown.
20. Non-teaching staff may be appointed to positions that have a parallel in State schools, but they do not get the same right of automatic appointment as teaching staff.
21. A teacher who is appointed must be paid the same salary that a teacher with comparable service and qualifications would be paid in a comparable teaching position in any State school. Teachers who are overpaid at integration have their current salary protected but will not receive increments or increases until their salary is commensurate with what it would otherwise have been in the State system.
22. We consider that the private-to-State integrated precedent is too generous for use in charter school staffing transitions.

Trust-to-Crown entity precedent

23. A new Crown entity (Education New Zealand) was established in 2011. It replaced a trust and some functions that had been within the Ministry of Education. The Education Act 1989 was amended for the transfer of employees from both organisations. For employees of the trust, (private to State sector) the Act provided that an employee would not get redundancy if the employee was offered and accepted an equivalent position in the new organisation. An "equivalent position" was defined in the legislation.
24. An "equivalent position" in the charter schools context would be paid the same salary that a teacher with comparable service and qualifications would be paid in

- a comparable teaching position in any State school. This may mean that some teachers currently employed in charter schools will face pay decreases and some pay increases.
25. Under the *trust to a Crown entity precedent*, staff would be offered preferential rights to apply for the available "equivalent positions" in the new school. Staff will be able to express interest in roles rather than going through a competitive process.
 26. Those that do not apply or do not win jobs will be entitled to redundancy. The redundancies are a liability for the charter school sponsors.
 27. It would be possible for the Crown to take into account a situation where a sponsor could not afford to meet its costs after committed costs have been factored in, for example if redundancy costs were more than it could meet during mutual termination discussions – if sponsors are prepared to be a party to these.
 28. If we are unable to agree mutual termination with a Sponsor and the contract terminates for Minister's convenience then the Crown is not responsible for meeting redundancy costs.
 29. We recommend this *trust to a Crown entity precedent* for use in charter school staffing transitions. This would require an amendment to the Education Act 1989. We recommend including that employees that accept jobs in the new school would waive their rights to redundancy from their employer (the charter school sponsor). We recommend extending the coverage of these preferential rights to also include charter school caretakers and cleaners.

Caretakers and cleaners (including contractors)

30. Special provisions for caretakers and cleaners (including any contractor) are set out in the Employment Relations Act 2000. Where those provisions apply, they give employees:
 - a. a right to transfer to a new employer on the same terms and conditions;
 - b. a right to the provision of certain information about the potential new employer and the position before they elect to transfer;
 - c. a right to negotiate with their existing employer for alternative arrangements before they elect to transfer;
 - d. no right to redundancy if they elect to transfer;
 - e. a right to have their employment treated as continuous.
31. We recommend that all employees are covered by the same provisions under the proposed amendments to the Education Act 1989, including caretakers and cleaners. There is not much difference between the proposals above and the rights given under the Employment Relations Act 2000. It will be cleaner and less confusing if all employees transfer under the provisions, especially since there is a possibility that this situation may not meet the definition of a restructuring under the Employment Relations Act 2000.

Triggering the transition process

32. There will need to be definitions and restrictions around how and when eligibility arises. Eligible staff will be identified as those employed by a sponsor at a specified charter school and moving to a State school established in place of the closing charter school.
33. Eligibility to use the transition provisions can be triggered if the Minister gazettes any new State school as a replacement school for a school that had a contract with the Minister under section 158D. In practice this could be done by adding wording to the establishment Gazette notice for the new State school under section 146.

Transitional Resourcing Arrangements

34. You agreed not to pursue any permanent changes to enable fully cashed-up funding for former charter schools, and instead agreed to consider options for one-off transitional funding and temporary flexibility in staffing [METIS 1108506 refers].

One-off transitional grant

Purpose

35. Charter schools will likely face a number of staff costs in the transition into the State system that will not be met through other Crown funding. These costs will be different for each school depending on their business model and how quickly they can adapt. This means that the transitional grant is likely best calculated on a case-by-case basis for each school based on their actual costs.
36. The purpose of a one-off transitional grant would be to meet these costs on a temporary basis to help State schools to smooth the transition. This would allow them time to change their school's staffing structure. Schools that choose to have these costs beyond the transitional period would need to find ways to meet these costs themselves.
37. We recommend you make a grant available that is time-limited to six months only, as schools should not be incentivised to retain the charter school features any longer than necessary. A six month limit is akin to the Crown making up to a 50% contribution to additional costs if they were sustained for a full school year. The new State schools may choose to continue to retain unfunded features. If they do they will need to find alternative ways to fund those costs, as current State schools are expected to do.

Maximum possible cost across all schools

38. The cost to provide a transitional grant to assist schools with the costs of teacher salaries paid above the collective agreement scales and the cost of employing a CEO have been estimated. In this scenario, schools would be expected to pay for other costs (e.g. additional teachers above entitlement and support staff) using their operational grant.

39. The maximum estimated cost of a transitional grant to be paid for the first six months of 2019 for all 11 schools is shown in Table 1 and the value per school is shown in Table 2.
40. This calculation comes with the important caveat that the costs have deliberately been estimated at the high end and are based largely on assumptions:
- We have partial information on 2018 staffing levels or teacher salaries from some sponsors. We only know actual numbers of teaching staff in Q3 of the 2017 school year (but not their Full Time Teacher Equivalents or FTTes) and whether they are known to employ a CEO. However we do not know what they pay their CEO.
 - We do know what their staffing entitlement and operational grant would have been in 2018 had they been State schools.
 - We have assumed that roll growth experienced from 2017 to 2018 will continue at the same rate into 2019 and that schools will increase staffing levels in line with this growth. This is a reasonable assumption, but not completely accurate because resourcing does not increase linearly with growth.
 - We have used the current top of the scale salaries for each relevant collective (\$75,949 for primary and \$78,000 for secondary and composite).

Table 1 – Estimated total possible cost of transitional grants for six months

Component	Reasoning	Basis of Calculation	Estimated maximum cost for six months (\$)
Cost of teacher salaries above the collective agreement scale	Assumes we meet the full cost of teachers hired from staffing entitlement paid above top of the relevant scale for up to 10% above this salary.	2017 actual staff numbers, no FTTE information or salaries known	595,118
Cost of a CEO	Assumes we meet the full cost of employing a CEO salary and that the cost of a CEO salary is \$200,000 annually	Schools employing CEO, no FTTE information or salaries known	900,000
TOTAL FOR SIX MONTHS			1,495,118

Table 2 – Estimated total possible cost of transitional grant per school for six months

School	Transition grant (est)			Estimate of operational grant for 2019 full year (\$)	Estimated transition grant as % of 2019 operational grant
	Estimating cost of paying teaching staff above scale	Estimated cost of paying a CEO	Total (\$)		
Rise Up Academy	24,039	100,000**	124,039	304,601	12%
South Auckland Middle School	46,293	100,000	146,293	518,165	28%
Te Kura Hourua o Whangarei Terenga Parao	78,680	100,000	178,680	658,279	27%
Vanguard Military School	77,077	100,000	177,077	613,584	29%

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Te Kapehu Whetu – Teina	30,753	100,000	130,753	323,558	40%
Te Kura Maori o Waatea	30,334	-	30,334	288,289	11%
Middle School West Auckland	67,073	100,000	167,073	630,999	26%
Pacific Advance Secondary School	89,366	-	89,366	639,818	14%
Te Aratika Academy	55,427	100,000	155,427	618,055	25%
Te Kopuku High	63,081	100,000**	163,081	776,111	9%
Te Rangihakahaka Centre for Science and Tech*	32,995	100,000	132,995	254,776	52%

*This school opened in 2018, so we do not have actual staffing levels.

**A CEO may also be employed at these schools.

Providing the transitional grant on a case-by-case basis

41. The above costs have intentionally been estimated at the high end. We have allowed for this level of transition grant costs in the overall financial costs of transition that we have provided to you. Certain schools will be started on notional rolls and this will go some way towards mitigating their transitional costs.
42. Providing the transitional grant on a case-by-case basis would best reflect the actual costs faced by each school. This would need to be done with certain restrictions in mind:

CEOs

43. Some charter schools have the same CEO: for instance, the two schools run by the Villa Education Trust have the same CEO, as do the two schools run by He Puna Marama Charitable Trust. This means that there is a risk of double-funding if two former charter schools receive transitional funding in respect of the same individual.

Temporary flexibility in staffing

44. We do not recommend the option of cashing-up schools' staffing entitlements. While it could give schools flexibility to use staffing resources in other ways, including by employing CEOs and/or non-registered teachers in non-teaching positions, it would reduce the staffing entitlement funding available for employing teachers. None of the charter schools are likely to be interested in an option that involves a reduction in the number of teachers.
45. We recommend not pursuing any changes to the School Staffing Order further, because all the flexibility that can be gained through a temporary change to the School Staffing Order can also be gained through a transitional grant.

Governance and alternative constitutions

46. You have asked for advice as to whether the Amendment in the Education Amendment Bill currently before the Education and Workforce Committee is still needed.

47. During discussions about the future charter school sponsors have been seeking increased certainty about the membership of boards of trustees over time.
48. An establishment Board of trustees (EBOT) can include five Ministerial appointees, the Principal of the new school when appointed, and up to four board co-opted trustees. Typically requests for an alternative constitution are made by the EBOT, although you may approve an alternative substantive constitution on your own motion while an EBOT is in place. Requests from the EBOT are usually made when the school is ready to move to a substantive board. Usually this process takes 9-12 months and the request includes input from the parents.
49. The changes contained in the Education Amendment Bill allow you to approve an alternative constitution for the board of trustees as part of the process of establishment. In other words, rather than requiring a two-step process of firstly establishing an EBOT and then an alternative substantive constitution. The amendment allows for an alternative substantive constitution from establishment. The usual process delay of 9-12 months, we assumed, would be a concern for sponsors. The amendment will remove this risk.
50. In addition, the amendment is intended to remove the risk of a sponsor not being comfortable with limiting the EBOT to only five people appointed by the Minister and four others co-opted by the Board, (i.e. where a Trust is made up of more than nine people). The amendment does this by removing the EBOT process and enabling any number of sponsor appointees on the substantive board from establishment, as long as you agree it is in the best interests of the school. This amendment was intended to give the schools greater certainty about the flexibility that would be offered to them under the State system.
51. The timing of the Bill and the new school establishment process have diverged. It is now unlikely it will be enacted before some of the new State schools are established. The timing issue can be managed by you appointing up to five members from a sponsor to an EBOT and allowing them to co-opt another four, should they wish, and then providing for the substantive board to be alternatively constituted quickly. This will be supported by you giving assurances that you will look favourably on their nominations for the EBOT and request for an alternative constitution. This will only work where the Trust is comfortable with limiting the members to the nine originally, albeit only for a short time.
52. The timing issues mean that the amendment in the Bill cannot be used for all State schools established to replace a charter school. While the sponsors understand that it is possible for the Minister to appoint all 5 members from the sponsors Trust or organisation, some consider there is not enough certainty that this will occur. We understand some sponsors have made a submission to the Select Committee in support of this provision.
53. The amendment may be useful for the establishment of new schools into the future. Māori-medium designated character schools have also previously looked for such provisions and this would enable you to have this option should you wish to use it.
54. We recommend proceeding with the Amendment because it is not yet known whether the sponsors will prefer and require the Amendment Bill's alternative constitution process.

He Puna Marama Trust

55. The He Puna Marama Trust (the Trust) is concerned about the loss of control of the character that would be associated with establishment of a State school in place of its charter school. The kaupapa of its charter school recognises the sacrifices made by the men of the 28th Māori Battalion. The school does this every day by paying tribute to them in every karakia, mihi, pōwhiri and whakatau. They have built it into their planning and into their curriculum. Cabinet agreed that a solution to the Trust's concern be explored further. [CAB-18-MIN0157]
56. The He Puna Marama Trust wants to ensure that the board of trustees of the new State school will maintain the philosophy of the existing charter school in perpetuity. The Trust's solution to this was to make the Trust itself the legal entity for the school. They understand this will not happen. Other charter school sponsors have similar concerns. They are seeking increased certainty about the board's make up over time.
57. Following the establishment board phase, certainty for He Puna Marama can be provided by allowing the alternative constitution for the board of trustees to provide that the Trust appoints the board (and all subsequent vacancies) if you have reasonable cause to believe that this is in the best interests of the school. Current legislation enables this through the Gazette notice establishing the alternative constitution. He Puna Marama's needs (for perpetual right of appointments) can therefore be met under existing law, as long as the trust are happy with the EBOT.
58. Another way to protect the kaupapa would be to seek to amend the Education Act 1989 to allow the Minister of Education to name a body that has a special affiliation or responsibility for the designated character. This would be a general provision that could be used by any designated character school.

Next Steps

59. The legislation changes required could be included in the Education Amendment Bill currently before the Education and Workforce Committee. This Bill is dealing with the repeal of the legislation for charter schools.
60. In order to manage issues around scope, the amendment on staff transfers would be made to the Education Act with consequential amendments to the State Sector Act 1988 and the Employment Relations Act 2000 if required.
61. Options for the timing of the legislative change include:
 - a. introducing a Supplementary Order Paper either at the Select Committee stages or at the Committee of the Whole House;
 - b. authorising the Ministry to propose the amendments through the Departmental Report.
62. The transitional issues are important to the establishment of the new schools and early certainty will make this process easier. We recommend that the most efficient and earliest option is through the Departmental Report. This will allow time for Cabinet approval and drafting to take place. A Supplementary Order

Paper at the Select Committee stages could result in the Committee reopening submissions.

63. An amendment to the designated character schools provisions would not be able to be made through the Departmental Report as the Bill does not contain any changes to the relevant sections of the Education Act. This would require a Supplementary Order paper, possibly when the Bill reaches the Committee of the Whole House.
64. We recommend that this Education Report is not released at this time. This is because the Education Amendment Bill is currently before the Select Committee.

Annexes

Annex 1 – Costing parameters for the transition grant

Annex 1 – Costing parameters for the transition grant

1. The cost to provide a transitional grant to assist schools with the costs of teacher salaries paid above the collective agreement scales and the cost of employing a CEO have been estimated. Schools are expected to pay for other costs (e.g. additional teachers above entitlement and support staff) using their operational grant, as other schools do.
2. The maximum estimated cost of a transitional grant to be paid for the first six months of 2019 for all 11 schools is shown in Table 1 and the estimated value per school is shown in Table 2.

Table 1 – Estimated total possible cost of transitional grant per school for six months

School	Transition grant (est)			Estimate of operational grant for 2019 full year (\$)	Estimated transition grant as % of 2019 operational grant
	Estimating cost of paying teaching staff above scale	Estimated cost of paying a CEO	Total (\$)		
Rise Up Academy	24,039	100,000**	124,039	304,601	12%
South Auckland Middle School	46,293	100,000	146,293	518,165	28%
Te Kura Hourua o Whangarei Terenga Parao	78,680	100,000	178,680	658,279	27%
Vanguard Military School	77,077	100,000	177,077	613,584	29%
Te Kapehu Whetu – Teina	30,753	100,000	130,753	323,558	40%
Te Kura Maori o Waatea	30,334	-	30,334	288,289	11%
Middle School West Auckland	67,073	100,000	167,073	630,999	26%
Pacific Advance Secondary School	89,366	-	89,366	639,818	14%
Te Aratika Academy	55,427	100,000	155,427	618,055	25%
Te Kopuku High	63,081	100,000**	163,081	776,111	9%
Te Rangihakahaka Centre for Science and Tech*	32,995	100,000	132,995	254,776	52%

*This school opened in 2018, so we do not have actual staffing levels.

**A CEO may also be employed at these schools.

Table 2 – Estimated total possible cost of transitional grants for six months

Component	Reasoning	Basis of Calculation	Estimated maximum cost for six months (\$)
Cost of teacher salaries above the collective agreement scale	Assumes we meet the full cost of teachers hired from staffing entitlement paid above top of the relevant scale for up to 10% above this salary.	2017 actual staff numbers, no FTTE information or salaries known	595,118
Cost of a CEO	Assumes we meet the full cost of employing a CEO salary and that the cost of a CEO salary is \$200,000 annually	Schools employing CEO, no FTTE information or salaries known	900,000
TOTAL FOR SIX MONTHS			1,495,118

Costing assumptions:

- a. Actual numbers of charter school teaching staff in Q3 of the 2017 school year were used (but not their Full Time Teacher Equivalents or FTTEs).
- b. Costs of a CEO or equivalent have been included where the charter school is known to employ such management roles currently. We have assumed the total salary cost at \$200,000. We do not actually know what they pay their CEO.
- c. For the estimated operational grant for 2019, we assumed that charter school roll growth experienced from 2017 to 2018 will continue at the same rate into 2019 and that schools will increase staffing levels in line with this growth. Actual staffing entitlements is likely to vary as staffing does not increase linearly with roll growth.
- d. We have used the current top of the scale salaries for each relevant collective (\$75,949 for primary and \$78,000 for secondary and composite).

Scaling options

3. The above costs have purposefully been calculated at the high end. Certain schools will be started on notional rolls and this will go a certain way towards mitigating their transitional costs.
4. It may be worth limiting the total transition funding for any one school to a proportion of the operational grant it receives in its first year as a State school. This could help ensure that the schools do not make excessive requests for transitional grant funding to be able to employ more staff in that year.

Providing the transitional grant on a case-by-case basis

5. Providing the transitional grant on a case-by-case basis would best reflect the actual costs faced by each school. This would need to be done with certain restrictions in mind:

Salary differences

6. Any transitional funding to cover the salary differences for teachers paid above the relevant collective agreement scale should take into account the actual salary paid to each individual staff member as of the date of application to become a State school. We have assumed that the teacher salary costs are 10% above the relevant salary step for that individual teacher (*above* the top-of-the-scale).

CEOs

7. Some charter schools may have chosen to pay their CEOs less or forgo hiring a CEO in order to spend the money in other ways (e.g. on more support staff). A transitional funding component that is only paid to schools that have hired a CEO may be viewed as unfair to other schools. A potential solution could be a nominal transitional amount for all charter schools to contribute to transition costs for what they spent their funding on in lieu of a CEO.
8. Some charter schools have the same CEO: for instance, the two schools run by the Villa Education Trust have the same CEO, as do the two schools run by He Puna Marama Charitable Trust. The risk of double-funding or inequity between transitioned charter schools can be mitigated by considering transition grant applications on a case-by-case basis (ie for each new school and each sponsor).