



## Briefing Note: Overview of the Termination of All Charter School Contracts

<b>To:</b>	Hon Chris Hipkins, Minister of Education		
<b>Date:</b>	18 April 2019	<b>Priority:</b>	Medium
<b>Security Level:</b>	In Confidence	<b>METIS No:</b>	1182544
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<b>Messaging seen by Communications team:</b>	Yes	<b>Round Robin:</b>	No

### Purpose of Report

The purpose of this paper is for you to:

- Note** that as of December 2018, all 17 partnership school kura hourua (charter school) contracts are now terminated.
- Note** that our expected overall net costs (payments from the Crown less payments to the Crown) from removing all the charter school contracts is \$4.3 million (excl GST). The committed costs of removing 16 contracts by Termination for Minister's Convenience was previously estimated as being up to around \$16 million.
- Agree** that this Briefing Note will be released publicly in a final charter schools' information release, including all related advice, Cabinet papers, minutes and reports relating to the process to terminate contracts (subject to further consideration where specific information should be withheld).

**Agree / Disagree**

### Summary

- In line with the Government's policy commitments including in the lead up to its election in 2017, the charter schools model has been removed from the education system in favour of supporting a high quality and comprehensive state education system.
- In 2018, amendments to the Education Act were passed and discussions with contract holders (sponsors) of charter schools were concluded in December 2018. All 17 charter school contracts are now terminated (as at December 2018). New state schools were established, with all now open and one further school to open in 2020.
- The Ministry engaged with sponsors in good faith and on a without prejudice basis to reach agreement on ending the contracts (contract termination). In reaching

termination agreements, the Ministry has guided the process to ensure they were evidence-based, fair and justifiable.

- While a case-by-case approach was employed, there was a focus on achieving consistency across the separate confidential negotiations, where possible.
- The resulting termination agreements are therefore specific to the unique circumstances that applied to each sponsor. Most, but not all, termination agreements included terms for the Crown to make a termination payment to the sponsor, as was envisaged by the contracts in a scenario where the Crown sought termination. However, some of the termination agreements included the return of funds to the Crown.
- Where the Crown made termination payments to sponsors, the quantum of payments included consideration of the sponsors' likely committed costs, the remaining lifecycle of their contract, the size and type of the school (larger/secondary schools: higher costs), sponsors' disengagement costs and other costs; together with assessment of any opportunities for Crown cost-reductions where termination costs could be avoided through parallel but separate actions of the Ministry to support the establishment of new state schools. Costs could only be counted once – either as a termination cost or as part of the new school establishment process.
- Projected operational payments to 16 charter schools in 2019 were \$30 million, with payments from 2019 to 2024 amounting to \$110 million (presuming that no contracts that expired over that six year period would have been renewed). As the schools are now part of the state model, no savings are expected to be generated.
- Under the charter school contracts, the Crown was legally liable to pay sponsors' committed costs up to a cap of \$1 million per school. Removing 16 contracts by Termination for Minister's Convenience could have cost up to \$16 million (METIS 1096725).
- The Crown's net termination costs (payments from the Crown to sponsors less payments to the Crown from sponsors) was \$4.3 million (excl GST). The termination costs would have been significantly higher if charter schools had opted to close, as property costs would have been borne by (and generated higher committed costs for) sponsors.
- Independent probity was in place to support the termination process, on top of the Ministry's own internal controls.
- A February 2018 complaint to the Office of the Auditor General concerning the way the Government was managing its contract negotiations with charter schools and the possible transition of schools to other schooling models resulted in no investigation.
- A July 2018 Treaty of Waitangi claim was lodged and in October 2018 urgency was sought to hear it. On 1 April 2019 the Waitangi Tribunal declined the application for urgency. We have prepared separate advice for you on the recent decision (METIS 1184375).
- A confidential dispute process with the sponsor Ngā Parirau Mātauranga Charitable Trust was settled in 2018. Satisfactory terms were agreed including a confidential payment that was made to the Crown. The Trust retained the farm property where the charter school formerly operated to be applied to its charitable purpose.
- We have considered the public interest in the process to remove charter schools and recommend that this Briefing Note is publicly released in a final charter schools' information release, including all related advice and reports relating to the process to

terminate contracts (subject to further consideration where specific information should be withheld).

- The release of the individual termination related agreements, including termination amounts, is not recommended as to do so would be likely to breach confidentiality and legal advice cannot be released without approval from the Attorney-General. On balance releasing such information would not be outweighed by the public interest in their release. This can be reconsidered if any specific requests are made for termination related agreements or negotiations information.



Ellen MacGregor-Reid  
**Deputy Secretary**  
Early Learning and Student Achievement

18/04/2019



Hon Chris Hipkins  
**Minister of Education**

3/5/19

## Purpose

1. In line with the Government's policy commitments including in the lead up to its election in 2017, the partnership school kura hourua (charter school) model has been removed from the education system in favour of supporting a high quality and comprehensive state education system. This report provides an overview of the termination process that is mostly concluded, and is therefore ready to be proactively released.

## Background

2. As at December 2018, all 17 charter school contracts were terminated. New state schools were established earlier in 2018, with all schools now open and one further school to open in 2020 (Tūranga Tangata Rite).
3. Charter schools were established by the previous Government and publicly funded. They were operated by private entities (including by charitable trusts, companies and other entities). The schools were not subject to the same legal requirements as state schools. Flexibilities included the ability to appoint unregistered teachers, choose the type of curriculum they use, to set staff pay and conditions, to determine the hours (and days) of operation, and to choose their own school governance and leadership model without the requirement to have a board of trustees. Charter schools were also not subject to the requirements of the Official Information Act 1982, however the Ministry is subject to it and conducted frequent proactive information releases.
4. Charter schools were monitored against performance standards in their contracts every year. Intense interest in the policy from its inception resulted in the schools being subject to heightened public scrutiny, including in particular the charter school that failed in 2015.
5. A total of 17 charter school contracts were signed between 2013 and 2017, with 10 operating in 2017 and 11 operating in total by 2018 (further details in Annex 1). There are more contracts than there are sponsors as some sponsors had contracts for two schools.

Sponsor entity name		Round	Charter school name	Contract count
1	Ngā Parirau Mātauranga Charitable Trust	1	Te Pūmanawa o te Wairua (terminated in 2016)	1
2	Advance Training Group Ltd/Vanguard Military School Christchurch Ltd	1	Vanguard Military School	2
		5	Vanguard Military School Christchurch (unopen in 2018)	3
3	He Puna Marama Charitable Trust	2	Te Kāpehu Whetū - Teina	4
		1	Te Kura Hourua o Whangarei Terenga Paraoa	5
4	Rise Up Trust	1	The Rise UP Academy	6
5	Villa Education Trust	1	South Auckland Middle School	7
		2	Middle School West Auckland	8
6	Manakau Urban Māori Authority/ Te Whare Wānanga o MUMA Ltd	2	Te Kura Māori o Waatea	9
		5	Waatea High (unopen in 2018)	10
7	The Pacific Peoples Advancement Trust	2	Pacific Advance Secondary School	11



8	Kia Ata Mai Educational Trust	3	Te Kōpuku High	12
9	Trustees of the Te Aratika Charitable Trust	3	Te Aratika Academy	13
10	Te Rangihakahaka Company Limited	4	Te Rangihakahaka Centre for Science and Technology	14
11	Blue Light Ventures Inc	4	Blue Light Senior Boys High School (unopen in 2018)	15
12	City Senior School Limited	5	City Senior School (unopen in 2018)	16
13	Te Runanga o Tūranganui a Kiwa (Charitable Trust)	5	Tūranga Tangata Rite (unopen in 2018)	17

6. In November 2017 there were 16 charter school contracts in place. Initial contract termination discussions commenced with the sponsors of the unopened charter schools. Six charter schools had been contracted by the previous Government prior to the 2017 General Election. Two schools were due to open in 2018 and four more in 2019 (six unopen schools).
7. Exploratory discussions with sponsors of already operating charter schools began in February 2018.
8. The contractual options for ending the charter school contracts included: through expiry of the contract, through Termination for Minister's Convenience or through Termination by Mutual Agreement. Another outcome, Termination for Breach would only have been an option if it were found that there had been material breaches of the charter school contract.
9. Termination for Minister's Convenience under the contracts required a minimum notice period of six months to be given and for the contract to terminate at the end of Term 4 of the school year. If the contracts were to end in 2018, notice was required to have been given by mid-2018. Under Termination for Minister's Convenience, any compensation payments from the Crown would be limited to Committed Costs, as defined within the contract, up to the cap of \$1 million per contract.
10. Projected operational payments to 16 charter schools in 2019 were \$30 million, with payments from 2019 to 2024 amounting to \$110 million (presuming that no contracts that expired over that six year period would have been renewed).
11. Under the contracts, if terminated for Minister's convenience, the Crown was legally liable to pay sponsors' committed costs up to a cap of \$1 million per school. Removing 16 contracts by Termination for Minister's Convenience could have cost up to \$16 million (METIS 1096725).
12. However, as the schools are now part of the state model, no savings are expected to be generated by the contracts ending.

#### **Education Amendment Act 2018**

13. Consistent with Government policy to remove the charter school model from the education system, on 8 February 2018 you introduced to Parliament amendments to remove the charter school establishment provisions from the Education Act 1989. Any existing charter school contracts would remain valid until contracts were terminated or expired. The Bill became law on 24 October 2018.

14. The Education Amendment Act 2018 included provisions to support the establishment of the former charter schools in the state system. These were based on discussions with sponsors to identify possible issues they might have if they sought establishment as state schools. Provisions allowed the Minister to name a body that has a special affiliation with, or responsibility for a designated character school's different character. There were also provisions to smooth staffing transitions including allowing a preferential right for existing staff of a charter school to apply for an equivalent role in a new state school. Limited additional transitional grants were also made available on a case-by-case basis to smooth staffing transitions.

### **Establishment of new state schools**

15. The establishment of new state schools was a separate legal process to the removal of the charter school model and the question of when each charter school contract would end.
16. You considered applications that you establish new state schools in accordance with the Education Act. Twelve applications for the establishment of either designated character schools or state integrated schools were received. After consultation and consideration of the relevant factors for each application, by September 2018 all applications had resulted in you establishing new state schools to open in 2019 or 2020. Details of the applications and outcomes is outlined in Annex 2.
17. As they were established as new state schools the Establishment Boards of Trustees received establishment payments.
18. The Crown also assumed the responsibility and costs of property, continuing existing leasing arrangements, where possible, for the new designated character schools. State integrated school proprietors are responsible for school property but may receive funding if they meet the relevant criteria.

### **Termination overview**

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19. We engaged with sponsors in good faith and on a without prejudice basis to reach agreement on ending the contracts (contract termination). In reaching termination agreements, we guided the process to ensure the results were evidence-based, fair and justifiable. A case-by-case approach was employed, with a focus on achieving consistency across the separate confidential negotiations, where possible (METIS 1166067 refers).
20. Officials engaged with sponsors through face to face meetings, workshops, teleconferences and other correspondence. The level of interaction varied with each sponsor according to their preferences and needs.
21. Your preferred approach was termination by mutual agreement as it was likely to provide a better result with more favourable terms for both parties. It was also more likely to ensure a smoother transition for students and staff, as they transitioned out of the charter school model. Ideally, students would notice no significant difference when they came back to state schools and not charter schools in 2019. A concerted amount of effort was required from sponsors to complete the processes required to end their contracts and prepare to open state schools for instruction. We particularly wanted to avoid sparking time-consuming, and potentially costly legal disagreement. We similarly recognised that individual sponsor's ability to pay for legal disputes was more limited than the Crown's.
22. By reaching agreement with all sponsors this provided both parties with greater certainty over any financial sums that would be payable, before the contracts

terminated. Under the standard contractual terms of a Termination for Minister's Convenience the calculation of committed costs would be a process that commences after termination occurred, so it would have been underway throughout 2019, if it had been required.

23. Independent probity was in place to support the termination process, on top of the Ministry's own internal controls.

### Case-by-case discussions with Sponsors

24. In principle agreement was reached in late 2017 with three sponsors (of six) that their contracts for charter schools due to open in 2018 and 2019 would not go ahead to open (Blue Light Ventures, City Senior School and Vanguard Christchurch). One sponsor decided it would proceed to open as planned in 2018 (Te Rangihakahaka), two others were considering their options (Waatea High, Tūranga Tangata Rite).
25. Termination agreements were agreed in principle in early 2018 with the first three sponsors (METIS 1118472, 1118476 and 1118480). Discussions with the other three continued in 2018 and they followed the same overall termination process that subsequently applied to the remaining ten charter schools that had been operating in 2017 (METIS 1089096). The overall termination process included the remaining 13 contracts: two contracts for unopened charter schools and 11 contracts for already opened charter schools.
26. We provided regular updates to you throughout our discussions, including updates at our regular meetings. You kept Cabinet informed at key points in the process (25 January, 26 March, 9 April, 14 May and 11 June).
27. As a contingency in the event that agreement could not be reached, in order to meet the notice requirements under the charter school contracts, Notice of Intention to Terminate for Minister's Convenience was required for all 13 contracts. At this point all of the sponsors had already submitted their application(s) for establishment of state schools (designated character or integrated). Later in May, sponsors were issued termination notices and given the opportunity to respond (CAB-18-MIN-0220). The negotiations that had been underway were officially suspended to allow sponsors to engage fully.
28. Following your consideration of the responses received from sponsors you considered advice and made case-by-case decisions in respect of each contract. Your decisions were to terminate all of the remaining contracts under termination for Minister's Convenience. You communicated this to each sponsor in June 2018. At both the point where you communicated your intention to terminate, and then made decisions to terminate, you shared with sponsors the advice you had received from the Ministry in relation to their contract(s).
29. The Notice of Termination for Minister's Convenience did not preclude the ability to reach termination by mutual agreement. Giving notice provided certainty for all involved so that students, schools and sponsors all could understand the likely timing that contracts would end. However, it remained possible (where mutual agreement was possible) for both parties to agree to other terms, including changing the date of termination to a later date in the future. If an application for establishment of a state school was unsuccessful, or if a newly established state school required additional time to open, there was the option to agree to an amended termination date at the end of 2019 (CAB-18-MIN-0220). However in actual events, this option for providing another year of operation as a charter school was not required.

### Overarching negotiation approach to mutual termination

30. The resulting termination agreements are specific to the individual circumstances that applied to each sponsor. Most, but not all, termination agreements included terms for the Crown to make a termination payment to the sponsor, as was envisaged by the contracts in a scenario where the Crown sought termination. However, some of the agreements included the return of funds to the Crown.
31. In discussing termination by mutual agreement and, where applicable and as relevant to each sponsor's situation, agreement on a termination payment amount, the following range of factors and costs were considered (Annex 3 provides further detail):
  - a. Potential Committed Costs: These are costs that would likely be payable under termination for Minister's Convenience.
  - b. Contribution to the administrative costs of ending the charter school contract: Extensive financial information and evidence was required from sponsors. External accounting and legal advice was recommended and inclusion of a contribution to those costs supported sponsors' ability to engage in negotiations towards reasonable and evidenced termination amounts.
  - c. Disengagement activities: These activities (e.g. transfer of records) support the smooth transition of students, and where relevant, staff to new State schools.
  - d. 2018 retained 1% funding: Payments that would only be paid in 2018 if the schools' met specified performance criteria during 2018, which were no longer meaningful because of early termination, so here offered to be released as an incentive for sponsors to agree to mutual termination (METIS 1129228 refers).
  - e. Contribution to the additional costs of ending the contract/sum to secure agreement: This included reasonable costs specific to the individual circumstances of each sponsor.
  - f. Other considerations: The approach taken was that the Ministry would consider other costs that did not meet the definition of committed costs but which may leave sponsors in a worse financial position due to the termination of the contract. It may also include factors such as redundancy. Costs could only be counted once – either as a termination cost or as part of the new school establishment process.
32. Consideration was also given to the certainty of having the sponsor's agreement in reaching a termination related agreement and reaching full and final settlement of claims. Reaching agreement on termination would also assist sponsors to remain fully focused on the establishment and operation of the new state schools.
33. Termination related agreements were reached for all remaining 13 charter school contracts in December 2018, before Termination for Minister's Convenience would have taken effect.
34. Where the Crown made termination payments to sponsors, the quantum of payments included consideration of the sponsors' likely committed costs, the remaining lifecycle of their contract, the size and type of the school (larger/secondary schools: higher costs), sponsors' disengagement costs and other costs; together with assessment of any opportunities for Crown cost-reductions where termination costs could be avoided through parallel but separate actions of the Ministry to support the establishment of new state schools.



35. In assessing sponsor specific considerations, the Ministry was seeking to ensure that sponsors were not left in a financially worse-off position due to the early termination of their contract. The Ministry considered reasonable and substantiated costs related to the termination of the charter school contract. These factors varied from sponsor to sponsor and were reflected in the termination agreements we recommended to you.
36. Sponsors were required to provide evidence for costs and these were verified with external accounting, financial and legal support as required and to the extent reasonably practicable. In the case of sponsors with charter schools that were open in 2018, under the contract and termination agreement the Crown required the sponsor's full co-operation and disengagement activities were required from the sponsors before any payments were made.
37. In the case of the six contracts signed ahead of the 2017 Election, the Ministry also factored in any unspent portion of establishment payments the Crown had made. Although the charter schools would not be opened, there was no provision in the charter school contracts to require the return of those funds. Where agreement could be reached, it was agreed that unspent sponsor funds could be utilised for the new state schools or for other educational purposes.

#### **Other relevant matters**

##### *Complaint to the Office of the Auditor-General*

38. On 20 February 2018 a complaint was made to the Office of the Auditor-General concerning the way the Government was managing its contract negotiations with charter schools and the possible transition of schools to other schooling models. The decision by Deputy Controller and Auditor-General, Greg Schollum, was not to investigate.<sup>1</sup>

##### *Urgent Treaty of Waitangi Claim*

39. On 3 July 2018, a Treaty of Waitangi claim was lodged that broadly related to the removal of the charter school model. Urgency was applied for on 16 October 2018 and the Crown filed submissions with the Tribunal. On 1 April 2019 the Waitangi Tribunal declined the application for urgency. We are preparing separate advice for you on the recent decision (METIS 1184375). We remain ready to cooperate with any Tribunal investigation, now expected to occur as part of the kaupapa inquiry into education.

##### *Ngā Parirau Mātauranga Charitable Trust – termination-related recovery process in 2018*

40. One charter school contract was terminated for breach in 2016 by the previous Government. In 2017 we were in a confidential dispute process with its sponsor, Ngā Parirau Mātauranga Charitable Trust (the Trust). While the deed of settlement is confidential, satisfactory terms were agreed between both parties in 2018. The Trust agreed to pay a confidential amount to the Crown. The Trust retained the farm property where the charter school formerly operated to be applied to its charitable purpose. The Crown had no legal basis in the charter school contract to recover the farm. Further details remain subject to the confidentiality agreement reached in the Deed of settlement.

#### **Overall cost of ending all charter school contracts**

41. The Crown's net termination-related costs (payments from the Crown to sponsors less payments to the Crown from sponsors) is \$4.3 million (excl GST). The termination costs would have been significantly higher if charter schools had opted to close, as property costs would have been borne by (and generated higher committed costs for) sponsors.

<sup>1</sup> <https://www.oag.govt.nz/media/2018/partnership-schools>

## Financial Implications

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42. The expected Crown's net termination-related costs (payments from the Crown to sponsors less payments to the Crown from sponsors) are planned to be funded from within existing appropriations.

## Confidentiality and Proactive Release

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43. We have considered the public interest in the process to remove charter schools and recommend that this Briefing Note is publicly released in a final charter schools' information release, including all related advice and reports relating to the process to terminate contracts (subject to further consideration where specific information should be withheld). Both parties are subject to confidentiality obligations (the Crown and individual sponsors). Such obligations are normal for arrangements of this kind.
44. The release of the individual termination related agreements, including termination amounts, is not recommended as to do so would be likely to breach confidentiality and legal advice cannot be released without approval from the Attorney-General. On balance releasing such information would not be outweighed by the public interest in their release. This can be reconsidered if any specific requests are made for termination related agreements or negotiations information.
45. The final charter schools proactive release is expected to include contract termination Cabinet Papers, Minutes and Education Reports, including documents previously requested under the Official Information Act and withheld during negotiations. We will work with your Office to finalise the proactive release.
46. In accordance with our standard procedures with proactive releases, we will consult sponsors and give them the opportunity to provide feedback on the information relevant to them that we propose is released.
47. Although the specific termination related agreements are not proposed for proactive release, an early draft termination agreement template will be included. This will give anyone who is interested an opportunity to understand broadly how termination agreements were drafted without compromising individual sponsor's confidentiality.

## Annexes

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- Annex 1: Sponsor, Contract and Charter School details
- Annex 2: New State Schools established
- Annex 3: Overarching Negotiation Approach

## Annex 1: Sponsor, Contract Expiry and Charter School

	Sponsor	Original Contract expiry	Charter school opened	Charter school closed	Charter school
1	Ngā Parirau Mātauranga Charitable Trust	2019	2014	2016	Te Pūmanawa o te Wairua (Te Kura Hourua Ki Whangaruru) Closed in early 2016 due to termination of contract
2	Advance Training Group Ltd	2019	2014	2018	Vanguard Military School
3	He Puna Marama Charitable Trust	2019	2014	2018	Te Kura Hourua O Whangarei Terenga Paraoa
4	Rise Up Trust	2019	2014	2018	The Rise UP Academy
5	Villa Education Trust	2019	2014	2018	South Auckland Middle School
6	He Puna Marama Charitable Trust	2020	2015	2018	Te Kāpehu Whetū - Teina
7	Manakau Urban Māori Authority	2020	2015	2018	Te Kura Māori o Waatea
8	The Pacific Peoples Advancement Trust	2020	2015	2018	Pacific Advance Secondary School
9	Villa Education Trust	2020	2015	2018	Middle School West Auckland
10	Kia Ata Mai Educational Trust	2022	2017	2018	Te Kōpuku High
11	Trustees of the Te Aratika Charitable Trust	2022	2017	2018	Te Aratika Academy
12	Te Rangihakahaka Company Limited	2023	2018	2018	Te Rangihakahaka Centre for Science and Technology
13	Blue Light Ventures Inc	2023	NA	NA	Unopened
14	City Senior School Limited	2024	NA	NA	Unopened
15	Te Runanga o Tūrangānui a Kiwa	2024	NA	NA	Unopened
16	Te Whare Wananga O MUMA Limited (Manakau Urban Māori Authority)	2024	NA	NA	Unopened
17	Vanguard Military School Christchurch Ltd (Advance Training Group Ltd)	2024	NA	NA	Unopened

## Annex 2: New State Schools Established

### Designated character schools

Charter School 2018	New State School 2019
Vanguard Military School	Vanguard Military School
Pacific Advance Secondary School	Pacific Advance Secondary School
Te Aratika Academy	Te Aratika Academy
Te Kāpehu Whetū -Teina	Te Kāpehu Whetū (Teina)
Te Kura Hourua O Whangarei Terenga Paraoa	Te Kāpehu Whetū (Tuakana)
Te Kōpuku High	Te Kōpuku High
Te Rangihakahaka Centre for Science and Technology	Te Rangihakahaka Centre for Science and Technology
South Auckland Middle School	South Auckland Middle School
Middle School West Auckland	Middle School West Auckland
The Rise UP Academy	Rise UP Academy

### State integrated schools

Charter School	New State School 2019
Te Kura Māori o Waatea	Waatea School (Year 1-8). The proprietor can apply to become Year 1-13 in the future.
Waatea High (unopened)	

Charter School	New State School 2020
Tūranga Tangata Rite (unopened)	Tūranga Tangata Rite



### Annex 3: Overarching Negotiation Approach

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Overarching negotiation considerations:

- All termination related agreements should be evidence-based, fair, justifiable and able to withstand audit scrutiny.
- Each agreement is to be considered on a case-by-case basis, but to the extent practicable employ a methodology consistent across the agreements (METIS 1166067 refers).

Factors considered in the termination related agreements:

- Potential committed costs:** Under Termination for Minister's Convenience the Crown would be expected to cover these costs and these costs formed the starting point of the termination by agreement discussions. Committed costs are defined within the contracts and include costs due to third parties related to the charter school that the sponsor is already committed to, are due after the termination date and cannot be mitigated against, e.g. leases for equipment, or rent. The establishment of new schools in the state system has meant many committed costs have been assumed by the new schools.
- Administrative (e.g. legal and accounting) costs:** The discussions have required the sponsors to provide information and evidence for a number of financial issues and claims. It has been reasonable to expect sponsors to seek independent legal advice. To enable an appropriate level of disclosure and verification (which includes sourcing, collating and sharing business records and invoices) of relevant information by sponsors, and to enable sponsors to engage in termination by agreement discussions, the Ministry has agreed to provide a contribution towards legal and accounting costs, depending on the circumstances of each sponsor.
- Disengagement activities:** Although the activities under disengagement are not expected to be onerous for the sponsor, there will be some additional activities and some that may occur after the termination of the contract. This may include any activities agreed related to the transfer of students, student records and contracts or assets from the charter school to the new state school. It is reasonable for the Crown to provide some funding for activities required from the Sponsors after termination. The Ministry has provided a contribution towards those activities for sponsors with an open charter school under a termination related agreement. A Disengagement Plan forms part of the agreement for sponsors with open charter schools.
- 2018 retained 1% funding:** As agreed in *Education Report: Charter school reporting, performance assessment, and administration matters* (METIS 1129228), the 2018 1% retained funding would be included as part of the mutual termination discussions. This retained funding would usually be subject to performance assessment in the following year. Note due to the nature of the contract, this does not apply to Round Four contracts.
- Additional other costs associated with ending the contract/sum to secure agreement:** This includes reasonable costs (outside of committed costs) specific to the individual circumstances of each sponsor. This may range from general additional staffing costs incurred to respond to the negotiations to specific costs incurred to support the discussions. The sum would be an amount

that both parties consider reasonable to recognise the additional work/costs. Termination by agreement would secure for the Crown the benefit of the release and waiver of any legal claims that the sponsor might have against the Minister arising from the operation of the charter school or the Minister's decision to exercise his Termination for Minister's Convenience rights under the contract.

- f) **Other considerations/"make whole":** As part of the negotiations, the Ministry sought to work with sponsors to understand if they would be left with any financial obligations that would not meet the definition of a committed cost and would therefore leave them in a worse position due to the termination of their contract (including a net deficit they are unable to fund or a deficit that would require them to use other financial resources they have but which are unrelated to their charter school activities). This approach has meant the Ministry would consider any other reasonable and substantiated costs incurred by the sponsor in relation to terminating the agreement and closing the school. The amount of these costs that the Crown might consider meeting would be guided by the cap of \$1 million (including any relevant taxes) unless there were strong reasons to depart from this.
- g) **Other benefits of reaching a termination related agreement:** This may include the benefits of a termination related agreement in providing certainty of timing of termination and the full and final settlement claims. Other benefits may be securing the commitment that unspent establishment funding is applied for the benefit of the new state school or other educational purposes.