

20 December 2011

## **Education Report: Initial Advice on Charter Schools**

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### **Executive summary**

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Following your meeting to discuss charter schools with Ministry of Education officials on Tuesday 31 January, 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.

## Recommendations

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### 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. **note** that the Ministry believes new legislation will be required to allow charter schools to take full advantage of the flexibilities that the Agreement envisages
- c. **note** that the Ministry is preparing a further briefing on how charter schools could be implemented under existing private schools legislation. This is scheduled to be ready on Friday 3 February
- d. **note** that the Ministry will also provide advice on appointment of an implementation group for the charter school initiative
- e. **agree** that Ministry officials share this briefing with Catherine Isaac when we meet with her on Friday 3 February

*Frances Kelly*

**Frances Kelly**  
Group Manager  
Schooling Policy Group

NOTED / APPROVED

*[Signature]*

**Hon John Banks**  
Associate Minister of Education

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## **Education Report: Initial Advice on Charter Schools**

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### **Purpose of report**

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1. On Tuesday 31 January, you met with the Secretary for Education and senior officials from the Ministry of Education to discuss charter schools. This briefing provides you with more detail on that topic and outlines the early work that the Ministry has conducted.
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**

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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 learners, 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 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. This 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.

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

13. 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.
14. 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*

15. Academic measures in the secondary sector could include 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 aSTTle<sup>1</sup>. 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.
16. 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.
17. Learner engagement is an intermediate outcome that leads to increased achievement. Proxy measures such as truancy rates, attendance, suspensions and expulsions and survey tools to measure bullying are also possible outcome measures.

#### *Financial and operational standards*

18. 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.
19. Operational outcomes would probably focus on measures of good governance and management/leadership.

#### *Minimum requirements*

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

<sup>1</sup> Assessment Tools for Teaching and Learning

and building legislation. Similarly, applicable employment legislation will need to be considered.

21. 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. Similar problems could occur 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?**

22. 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.
23. 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.

#### *Sections 155 and 156*

24. Section 155 is restricted to schools that subscribe to the principles of Te Aho Matua which are a potentially small subset of charter schools. As indicated in a previous briefing, implementing charter schools under section 156 would also place restrictions on their proposed freedoms [Metis 643133 refers]. 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.
25. 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.

#### *Private schools legislation*

26. 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. The standard for registration is loosely based on the standards for state schools, and in some cases is required to be comparable. Teachers in private schools must be registered teachers although they are not subject to the state industrial relations regime.
27. While still problematic, using existing private schools legislation to establish charter schools would allow you to more closely follow the proposals in the Agreement than using section 155 or section 156. The Ministry is preparing

further advice on the feasibility of private schools legislation to implement charter school proposals. This is scheduled for completion by Friday 3 February.

28. To conclude, establishing charter schools under any existing legislation would restrict your ability to implement the proposals as set out in the Agreement. 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 would 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 would have implications for the legislative programme, because legislation would need to be passed in 2012 to have charter schools open in this term of government. The Minister of Education has sought a place on the legislative programme for an Education Amendment Bill with Priority 2 (“to be passed this year”) to provide a contingency for new legislation is required.

#### **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 and government officials. We understand your intention is that the group will focus on implementation.
31. 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. Yesterday you announced your intention that Catherine Isaac would chair this group. The Ministry will prepare advice on the scope, terms of reference, membership, expertise required (including experience of educational leadership) and process for Cabinet approval of appointments to the implementation group.
32. 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**

33. 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*

34. 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.

35. 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?

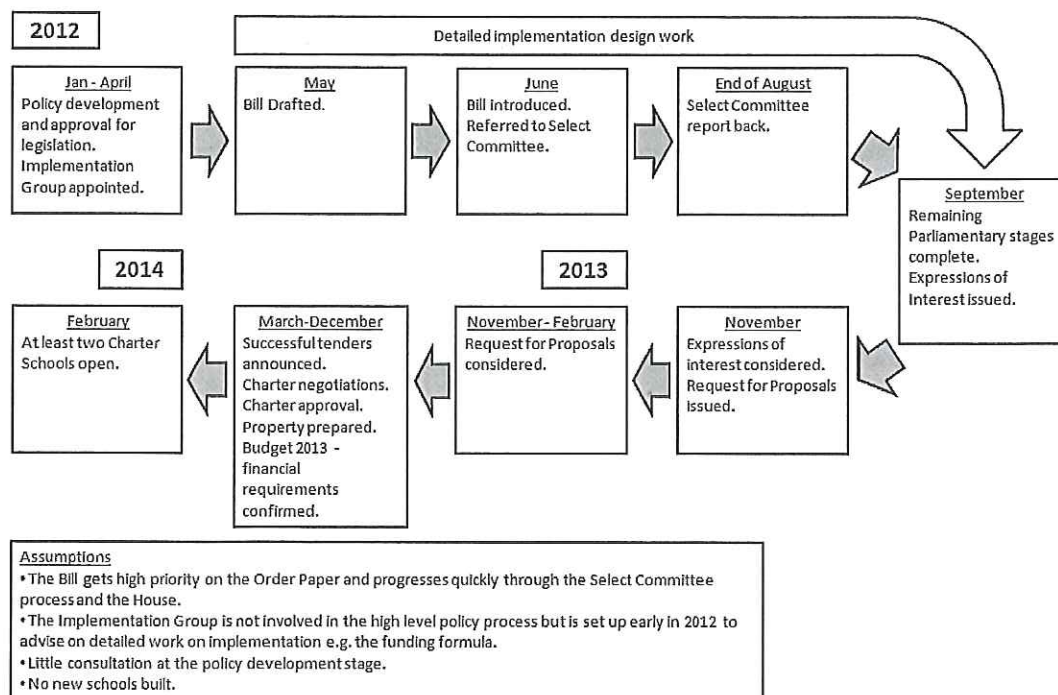
*Operating funding*

36. 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 towards disadvantaged groups. Funding will be on a per child basis and tuition fees will not be permitted.
37. 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**

38. The Agreement is clear that charter schools will be introduced during this parliamentary term. This is achievable, including making changes to legislation if Ministers decide to pursue this route. Based on Ministry analysis, an optimal timetable is outlined below.

### Indicative timetable



39. 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

40. 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.
41. 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.
42. We would also recommend developing a more focussed engagement plan for potential sponsors and parents in the communities of South Auckland and Central/Eastern Christchurch.

### **Next steps**

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43. We are currently preparing a range of further advice for you and the Minister of Education. Areas that we have identified as the highest priorities for decisions are:
- a. the establishment, membership and terms of reference for the implementation group
  - b. whether to pursue legislative changes in order to implement charter schools (including advice on how existing private schools legislation could be used to establish charter schools)
  - c. the design of the process for granting charters and key aspects of the charter school model, potentially to inform the instructions for drafting legislation.