

Briefing Note: Partnership Schools Contract Review – Options for dealing with known issues


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To:	David Seymour MP, Parliamentary Under-Secretary to the Minister of Education		
Copy to:	Hon Hekia Parata, Minister of Education	s 9(2)(a) OIA	
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Background and purpose of this report

1. On 11 May 2015 we provided a briefing note to you, copied to the Minister of Education, with a proposed process and timeline for the immediate Partnership Schools work programme [METIS 927178 refers].
2. In the report we advised that we would provide further advice on options for dealing with known issues with the contracts, and any new issues, by 15 June 2015.
3. This report also follows the Partnership Schools work programme update report of 18 May that identified known issues to be addressed through the contract review [METIS 928289 refers]. That report sought feedback on any other areas that you or the Minister wished to be considered as part of the contract review.
4. The report of 18 May identified that we would be approaching Bull Gully to support the review (which has been done) and seeking the views of the Partnership Schools Authorisation Board (the Board). We met with the Board on 10 June 2015.
5. In line with the agreement from the Minister in response to the 18 May report, we have also sought the views of the current sponsors, with one sponsor replying within the timeframe available.

Identified issues for review of the Partnership Schools' contract

6. A full list of issues that we are reviewing within the Partnership Schools' contract is attached as Annex One.
7. This annex includes, in further detail, those items previously identified to ensure that the contract:
 - is up-to-date; including confirming that references to circulars and legislation within the contract were current
 - reflects any policy and funding changes (including those that are still under active consideration)
 - is fit for purpose (specific matters were listed in the report of 18 May)
 - addresses identified issues.

8. The wider consultation has reinforced the need to consider those issues raised for consideration in the 18 May report. Those items were:
- whether 90 days between a performance event and termination are sufficient time to carry out required processes
 - whether the Crown should be able to recover a proportion of a school's establishment funding or unused funding should it close
 - whether there is a need to address some sponsors' concerns about reconciling the requirement of open enrolment with the performance target of at least 75% priority learners.
9. The new areas that have been identified for review that were not specified in earlier reports include:
- whether the introduction section sufficiently covers the key 'scene-setting' matters
 - the introduction of the notion of a minimum roll, separate from the funding-linked Guaranteed Minimum Roll
 - stronger emphasis and a more prescriptive requirement for schools to establish robust baseline data and to measure student achievement progress
 - a widening of options to support the identification and response to issues that fall short of direct intervention, including:
 - an escalation process that can be used with minor breaches, such as one that provides for the options of a letter and then formal notice process (without removing the ability to progress to, or go directly to, to the intervention process)
 - whether the Minister or Ministry should have the ability to introduce random audits (or inspections) and/or appoint or require a specialist adviser s 9(2)(f)(iv) OIA
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10. Consideration is being given to the Board's request that the introduction section include specific reference to a number of new factors, including a clearer focus on student achievement, reinforcement of the partnership concept and being specific about having a high trust/high accountability model.
11. The idea of having a minimum roll, to mirror the maximum roll requirements, has been raised. This requirement would operate independently from any funding linked to roll size (such as the Guaranteed Minimum Roll concept). Such a clause would put in place a contractual baseline for roll numbers, beneath which a school could not fall without risk of being seen to be in breach of its contract.
12. There is a strong desire, especially from the Board, to increase the emphasis on the collection of student achievement baseline data by the schools, and the measurement of progress against such data. We are considering whether the tool for collecting baseline data should be specified e.g. e-Asttle (or able to be specified if the school is not able to establish an agreed method promptly).

13. The schedule six Performance Management Standards around student achievement, student engagement, financial performance and targeting performance learners give effect to the expectations we have for each school. We are considering an increased contractual emphasis on the frequency and form of reporting by the schools. Any changes will need to flow through to the Performance Management Standards.
14. The direct move to intervention is seen as a blunt stick in the case of a school that is in a minor breach. There is also concern that the contract limits the ability to formally signal or record minor breaches or failure to meet minimum requirements (such as the first version of quarterly or annual reports not covering all topics or failure to meet an administrative requirement).
15. To remedy this, consideration is been given to the introduction of an escalation process that provides for the options of a letter and a new formal notice process (not a performance notice) prior to intervention (without removing the ability to go directly to the intervention process). This would allow the Minister or Ministry to raise concerns or to flag a minor breach to a sponsor in a way that allows for quick remedy, but also provides feedback and clarity on unacceptable behaviour. Other, more technical responses, such as the option of a period when extra reporting is required, are also being considered.
16. In a more serious situation, or when there is a trend of breaches, the option of being able to require or impose a specialist adviser is being considered. This adviser could be of a general nature or a targeted specialist if there is a specific area of concern. Currently only a specialist audit can be imposed on schools.
17. Linked to this is a desire to increase our options to be able to see early trends that might signal a wider or growing problem. Advice will be provided in the upcoming Education Report on whether the frequency of the Minister's audit rights¹ should be increased (either generally, or where there is a reasonably held belief of the existence of a breach).
18. Alongside an increase in options to raise and address issues with schools is a desire, especially from the sponsors, to be able to have a lighter touch with schools that establish a track record of strong performance. Options being explored include a less frequent or softer reporting regime or greater personalisation within the contracts to reflect the school's culture and goals.

Next steps

19. Further advice and options will be provided in the Education Report due on 2 July. This report will seek decisions on proposed changes to the contract.

¹ Under the current Partnership Schools contract, the Minister's audit rights may only be used once in any six month period

Annex One: Areas of PSKH contract to be reviewed

Areas of contract	Issue	Options to remedy
Overall		
Multi	Policy and funding changes, such as any new funding model, will need to be reflected in the contract.	To be confirmed.
Multi	Drafting tidy-ups to ensure that: <ul style="list-style-type: none"> legislative changes are included (e.g. Vulnerable Children Act); cross references are up-to-date (e.g. Education Circulars list); and any existing drafting errors corrected. 	A review has been sought from legal and operational teams.
New	Consideration is being given to whether there is scope for more customisation, especially for Partnership Schools with a track record of success.	Further advice will be provided on this; limited applicability for contracts for new sponsors.
Introduction	The Authorisation Board has questioned whether the introduction section sufficiently covers the key scene-setting matters.	Review the policy and legal benefits of including direct references to: <ul style="list-style-type: none"> focus on student achievement the notion of partnership high trust/high accountability model.
Part One – Design of Agreement and Introductory Matters		
Clause 2.1	This review provides an opportunity to review the status of documents is commensurate with their importance.	Review the benefits of including documents, such as the curriculum handbooks, as operative documents.
Part Two – Key Requirements of a Partnership School / Kura Hourua		
Clause 7.2 and Schedule 6	There is a known issue with reconciling the requirement of open enrolment with the performance target of at least 75% priority learners.	This is a policy decision and confirmation of the position will be sought.
Clause 7.8	Should the twice a year report to parents be shared with the Ministry?	This clause is being redrafted to give effect to this (pending approval of changes).
Clause 14.2	The equipment clause can be amended to give sponsors the flexibility to ensure access to equipment at relevant times (rather than the current obligation to have needed equipment at all times).	This clause is being redrafting to give effect to this (pending approval of changes).

Part Three – Performance Regime		
Clause 16.1	<p>There has been general confusion and non-adherence to the Guaranteed Minimum Roll (GMR).</p> <p>[See also proposed payment change below].</p>	<p>A minimum roll number separated from the GMR and funding implications, is seen to have benefits (links to funding review).</p> <p>This clause is also being redrafted to provide a clearer layout.</p>
Clause 16.3	<p>The declaration as to minimum requirements (clause 16.3) is seen as an ineffective safeguard.</p>	<p>Consider a power to ask for evidence at any time that schools are meeting the minimum requirements.</p>
Clause 17 and schedule 6; annex A	<p>The Authorisation Board would like to see a greater emphasis on building an evidence base and measuring student achievement progress.</p>	<p>Advice to be provided following consultation with experts in this area.</p> <p><i>Note: link to Clause 20.3</i></p>
Clause 18	<p>Review underway of whether the information that schools are required to report on meets Ministerial and Ministry needs.</p> <p>The requirements around reporting, including consequences of insufficient detail in report, could be strengthened to improve reporting.</p>	<p>Drafting improvements, such as showing the requirements in a diagram, and tighter wording.</p> <p>Draft wording will be provided to give clearer consequences to poor reporting (also see escalation proposal below). Consideration being given to reflecting a possibility that schools performing well can move to less frequent reporting.</p>
Clause 19	<p>Whether the contract should support an ability to have the Minister or the Minister's delegate undertake random audits (or preliminary inspections).</p>	<p>This could occur as of right, or if there is any recent history of a breach (however minor).</p>
Clause 20.3	<p>It is unclear that all schools have appropriate assessment tools in place. The requirement for baseline evidence to be established by schools could be strengthened.</p>	<p>Consideration is being given to whether we should prescribe the choice of assessment tool to enable performance to be reliably compared or provide for quicker processes to have an appropriate assessment tool applied if no agreement between the parties is reached.</p> <p>Improved drafting to articulate how the school would meet the criteria in schedule 6 may assist.</p> <p><i>Note: link to Clause 17 and schedule 6.</i></p>

Part 4 – Interventions for Poor Performance and Performance Standards		
New	There are limited options to manage breaches and consideration is been given to whether there can be a new escalation process to signal minor breaches or to provide warnings to schools. For instance if minimum requirements in 16.1 aren't been meet.	Introduction of an escalation process that provides for the options of a letter and formal notice process prior to intervention (without removing the ability to go directly to the intervention process). Also, the option of a period when extra reporting etc sits in place will be reviewed.
Clause 24.5	Alongside specialist audit, consideration should be given to being able to require a specialist adviser.	Advice and draft wording will be provided on this proposal.
Clause 25.1(c)	90 days between a performance event and termination is not sufficient time to carry out required processes, conduct an investigation, implement potential remedies and exhaust remedial options.	Advice and draft wording will be provided on this proposal.
Part 5 – Disengagement		
Nil	s 9(2)(f)(iv) OIA	
Part 7 - General		
Clause 32.1	Should the Crown should be able to recover a proportion of a school's establishment funding or unused funding should it close.	Further advice will be provided on this, as well as how an appropriate amount would be determined (if introduced). Links to funding review.
Clause 34.13	Clarification could be provided as to what items, as a minimum, survive the expiry or termination of the contract.	Draft wording will be provided on this proposal.
Clause 35	Update definition section to capture all relevant words.	Draft wording will be provided on this proposal.