

## **Charter Schools: Process for Removing the Model and Options for Existing Schools**

### **Proposal**

1. This paper outlines the approach and process for the removal of the Partnership School | Kura Hourua (charter school) model and possible options for existing charter schools to apply for establishment as new schools.

### **Executive summary**

2. I have directed the Ministry of Education to remove the charter school model and close these charter schools in their current form. Charter schools do not have a place in the New Zealand education system.
3. Two separate processes are involved with this removal;
  - (1) the termination of contracts and
  - (2) the possible establishment of new schooling options that have a similar special character to existing charter schools but that don't undermine the existing public provision of schooling.

Minimising the disruption to current and potential students is a priority.

4. I intend to introduce an Education Amendment Bill to amend the Education Act 1989 (Education Act), which includes repeal of the legislation allowing for charter schools. The legislation will continue to apply to charter schools currently operating until their contracts are terminated or expire by the use of transitional provisions in the Bill.
5. Initial discussions with sponsors (the operators of charter schools) have begun or will begin soon. Early termination of contracts by mutual agreement is being explored as a preferred option. This will minimise disruption for students and their families, and allow for a more rapid removal of the model. I will also explore use of my right of termination for convenience under their contracts. If early termination of contracts by mutual agreement cannot be reached, notice to issue termination for convenience will need to be made by May 2018 if currently open charter schools are not to continue in 2019.
6. There are some legal, continuity of schooling, and publicity risks associated with this process, as with any process to modify the school network. I have directed the Ministry of Education to ensure appropriate treatments for these risks are in place.

### **Background**

7. The previous Government signed contracts to open 17 charter schools, one of which was subsequently closed. As of December 2017, ten of these schools were open with students enrolled; a further two were scheduled to open in 2018, and four in 2019.

8. The charter school model is exempt from some state school quality controls like the requirement for teachers to be registered and to teach the curriculum. Despite per student funding rates higher than many public schools, there is limited evidence that the charter schools model allows for innovations beyond that of equivalent public schools.
9. We are committed to quality public education and backing our world-class, public education system. I have therefore directed the Ministry of Education to remove the charter school model and close these charter schools in their current form [CBC-17-MIN-0092].
10. In November and December 2017, the Ministry of Education led discussions s 9(2)(j) OIA with the six charter schools scheduled to open in 2018 and 2019. Of the schools scheduled to open in 2018, one agreed not to open, and the other has chosen to continue to open as it is entitled to do so.
11. I wrote to the sponsors of the remaining charter schools in November 2017, outlining this Government's commitment to remove the charter school model, and expressing that we intend to work constructively with charter schools to minimise disruption to young people and their families and whānau.
12. The Ministry continues to negotiate with the four charter schools scheduled to open in 2019. Negotiations with schools which are already open will begin in February.
13. We therefore have two groups of charter schools:
  - Five charter schools which are yet to open and will not be open in 2018
  - Eleven charter schools which will be open in 2018, with a total roll of around 1,200 - 1300 learners.
14. The priority for both groups is to identify a path to closure which does not disadvantage the young people, families and whānau who are currently attending these charter schools, is fair to the contracting parties, and where possible is mutually agreeable to both the Government and the charter schools.

## **Comment**

### ***Removing the charter school model***

15. I have instructed the Ministry of Education to take a case-by-case approach to managing the closure of the charter schools, considering the options available. We have a range of options to close these charter schools in their current form:
  - I have a right of termination for convenience under their contracts
  - Termination can be agreed between the Government and each charter school
  - If no termination option is exercised, the charter school contracts will expire from early 2020, with final school terms in 2019 (4), 2020 (3), 2022 (3) and 2023 (the last remaining school).
16. A number of charter schools have expressed interest in staying open under another schooling model – in particular, as designated character schools under section 156 of the Education Act 1989. While we have made it clear that it is not an option for these schools to “remain open” under their current arrangements, an application to establish a designated character school may incorporate elements of their current special character.



17. Initial discussions with sponsors are exploring termination by mutual agreement. While preserving all our termination options, this approach is preferred as it:

- Allows greater flexibility in timing (for yet to open schools) [REDACTED]  
[REDACTED] s 9(2)(j) OIA
- Minimises disruption to students and planning for transition to other schooling (whether to an existing school or a new school with a similar character).

18. Our alternative option (other than allowing the contracts to expire) is to exercise the contractual right to terminate for convenience. This option has set timelines for closure (a minimum of six months' notice and must take effect at the end of a school year). If currently open charter schools were not to continue in 2019, the latest date for issuing the notice for termination for convenience would be mid-May 2018. It also requires us to pay financial compensation (up to \$1 million) for reimbursement of committed costs per school.

19.

s 9(2)(f)(iv) OIA [REDACTED]

20. Until termination is mutually agreed, or I exercise the right to terminate for convenience, open charter schools will continue as contracted. For yet-to-open charter schools we have suggested it would be prudent to suspend implementation plans.

#### **The process for opening new schools**

21. The majority of sponsors have indicated their desire to continue to provide schooling for their students.
22. If they wish to continue to provide education they will need to apply to me as the Minister of Education to establish another form of school within the existing legislative framework set for those schools in the Education Act.
23. Charter schools differ from schools in the state system in a number of significant respects, including in relation to property arrangements (leased rather than state supplied or state leased), governance structures (no Board of Trustees) and teaching qualification requirements (potentially lower levels of registered teachers). This will mean that sponsors wishing to open schools under another model may need to change how they operate.
24. Establishing alternative schooling options is separate to the question of contract termination. Each schooling option has its own legislative considerations, and each school will be considered on a case-by-case basis.
25. However, progress on termination of contracts and alternative schooling options can occur concurrently, and I have directed the Ministry of Education to begin work on these options. Further, a school does not have to have its contract terminated before the process for the establishment of a new school can be commenced.
26. Current schooling options available to continue a similar type of education to that provided by charter schools are: establishment of a new state school (including a designated character school), establishment and integration of a state integrated school, or establishment of a private school.
27. Of the possible options, establishment of an integrated school or a private school are the least likely outcomes:

- An integrated school would have to have a special character that is religious or philosophical in nature. Only a few of the charter schools would likely fit this definition. Sponsors would also likely become the Proprietor under integration and would be required to provide the land and buildings for the school, a significant financial investment that many are unlikely to have to the inclination or resources to make. Funding shortfalls for maintenance would also have to be sought from parents or fundraising and would pose a challenge
  - Similarly, private schools require significant funding via fees or other income, and for many schools it would be difficult to raise this income from parents and families/whānau.
28. Consequently, the most likely option to appeal to charter schools is as a designated character school. Such a school would have to have a particular character and delivery of education that differs significantly from the education that they would get in an ordinary state school, and this would be set out in the Board's constitution and strategic plan.
29. Discussions are at an early stage. Establishing a new a school would follow normal processes and timelines. It may be possible to have a closure of a charter school followed by the immediate opening of a new school within the state system or as a private school. For this to occur, I would need to be satisfied that there is sufficient interest in this option relatively soon. However these discussions proceed, the Ministry will work to ensure there is continuity of education for any affected students.

### **Repealing the legislation allowing for charter schools**

30. In parallel with this paper, I am in the process of seeking approval through the Cabinet Legislative Committee process to introduce an Education Amendment Bill to amend the Education Act which will include proposals to repeal the legislation allowing for charter schools. The proposed changes will ensure that the legislation continues to apply to charter schools currently operating until their contracts are terminated or expire.
31. The legislative changes will mean that the charter school model is removed and once the current contracts expire or are terminated, existing sponsors will no longer be able to provide education under the charter schools model.
32. The Amendment Bill will also propose a new provision to allow me as the Minister of Education to approve an alternative constitution as part of the process to establish a school. The use of an alternative constitution may provide more flexibility around the governance structure of a school as it allows for a school community's particular character or identity to be recognised. For example, this could allow for the appointment of the sponsor's representatives to the Board of Trustees, and may help the smooth transition for students should they and their parents wish them to continue their education at a school with a similar special character as the charter school.

### **Risks**

33. There are some risks to removing the charter school model that the Ministry of Education will be managing. These generally relate to the progress of negotiation with sponsors who wish to continue to operate, but are unable to meet the requirements to open a new state or private school.

### ***Continuity risks***



34. If charter schools do not seek establishment as a new form of school, if they do apply but do not meet the requirements and/or if more time is required (for example for consultation), the Ministry will provide me with advice setting out the best next options. I expect this will include the option of proceeding with contract termination effective by December 2018 or 2019.
35. If designated schools are to be established and opened for 2019 it would be usual for applications to be received by 1 April at the latest. Although establishment processes can be condensed the amendments to the Education Act that allows Establishment Boards to have an alternative constitution would not be approved at that time, and if the current site / property leases were not able to be rolled over for future use, there would be more likely that the new school would be open for 2020.
36. The Ministry will work with sponsors wishing to apply to open a new school to ensure that they understand the requirements and timeframes, and to support the continuity of educational provision for their students. Consultation will also be required under section 157 of the Education Act. Network and population demographics will also have to be taken into account. I have asked the Ministry to work with sponsors, students and whānau to ensure that they provide educational options for students on a case by case basis depending on the future pathway. The wellbeing of students will be a priority throughout this process.

#### **Litigation risks**

37. There is a risk that some sponsors may seek to challenge the Government's decision not to continue with existing contracts with charter schools.
38. In general, this risk can be managed within the terms of the contract with the sponsors.

#### **Consultation**

39. The Department of the Prime Minister and Cabinet, State Services Commission, the Treasury, Te Puni Kōkiri and the Ministry for Pacific Peoples were informed.

#### **Financial implications**

40. I agreed in December with the Minister of Finance that the balance of the operating s 9(2)(j) OIA contingency of [REDACTED] for "Additional charter schools in 2018 and 2019" established in Budget 2016 [CAB-16-MIN-0189] be renamed and redirected to the removal of the charter school model.
41. The cost of removing the charter school model is unknown and may exceed the current funding contingency. Factors that impact on the total cost include the timing and calculation of payments required to reach an agreement for mutual termination. If termination for convenience is exercised, costs depend on what has actually been committed but is capped at \$1.000 million per school.
42. Additional costs in relocating students are also unknown but is estimated at up to s 9(2)(j) OIA [REDACTED] per school based on the past experience in closing Whangaruru charter school for non-performance. It has also been necessary to establish a short-term project team within the Ministry of Education.
43. There may also be property-related costs, either because the Crown is taking over existing property arrangements, or because of the need to provide new state school

property, for example a new school, or roll growth classrooms to accommodate students in existing school).

44. Additional funding may still be required after reprioritisation within current Ministry of Education baselines. I will provide Cabinet with detailed information on financial implications as discussions and negotiations continue and likely outcomes emerge.

45.

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



#### **Human rights, Gender and Disability implications**

46. Except for the potential issues noted in the risk section, there are no human rights, gender or disability implications in the proposed approach to negotiate towards reaching agreement to mutually terminate or in the exercise of the contractual right to terminate for convenience.

#### **Legislative implications**

47. Termination of sponsor contracts will have no legislative impacts. As per paragraph 30, I intend to introduce an Education Amendment Bill amending the Education Act and which will repeal the legislation allowing the charter school model. If any further legislative changes are recommended an analysis of the legislative implications will be provided.

#### **Regulatory impact analysis**

48. N/A.

#### **Publicity**

49. High public interest and scrutiny in the process is expected and likely to be encouraged by some sponsors.
50. I expect particular areas of comment may include:
- a. Public calls to guarantee the continuation of charter schools in substantially the same format
  - b. Opposition from schools whose roles in the network might be affected by new schools opening, and/or schooling representative and peak bodies opposed to the establishment of designated character schools.
  - c. Treaty of Waitangi considerations
51. The Ministry of Education will take a proactive approach to managing this publicity, including issuing joint communications with sponsors who have agreed to mutual termination, publishing reactive media statements as appropriate, and working to ensure that relationships with the sponsors are managed proactively.

#### **Recommendations**

The Minister of Education recommends the Committee:

- a. **Note** that I have directed the Ministry of Education to remove the charter school model and close these charter schools in their current form.

- b. **Note** that discussions on a without prejudice basis continue with sponsors of currently open, and contracted to open, charter schools with a view towards agreement by mutual termination.
- c. **Note** the consideration of possible alternative schooling options is a separate process to negotiations to terminate charter school contracts.
- d. **Note** proposed legislative amendments to the Education Act.
- e. **Note** that the final cost for the removal of the charter school model is unknown at this stage. [REDACTED]

s 9(2)(f)(iv) OIA [REDACTED]

f. [REDACTED]

s 9(2)(f)(iv) OIA [REDACTED]

Authorised for lodgement  
Hon Chris Hipkins  
  
Minister of Education

