



Briefing Note:

Cabinet paper: Charter schools | Kura hourua: additional legislative policy changes relating to staffing ready for lodging

To:	Hon David Seymour, Associate Minister of Education		
Cc:	Hon Erica Stanford, Minister of Education		
Date:	16 July 2024	Priority:	High
Security Level:	In-Confidence	METIS No:	1332520
Drafter:	Ella Campbell	DDI:	+64 463 2818
Deadline Date:	18 July 2024		
Key Contact:	Jennifer Fraser	DDI:	9(2)(a) [REDACTED]
Seen by the Communications Team:	No	Round Robin:	No

Purpose of Report

This paper provides a final version of the draft Cabinet paper 'Charter schools | Kura hourua: additional legislative policy changes relating to staffing' (Annex 2 and 3).

Proactive Release

Agree that the Ministry of Education will release this report once final Cabinet policy decisions have been made.

Agree / Disagree

J Fr
Jennifer Fraser
General Manager, Schools Policy
Te Pou Kaupapahere

DS
Hon David Seymour
Associate Minister of Education

16/07/2024

16/7/24



Background

1. You agreed to start departmental and Ministerial consultation on the draft Cabinet paper 'Charter schools | Kura hourua: additional legislative policy changes relating to staffing' from 5 to 12 July [METIS 1331952 refers].
2. The Ministry of Education (the Ministry) consulted with departmental agencies on the draft Cabinet paper from 5 to 12 July. We received feedback from five of the agencies we contacted,¹ an additional three agencies responded that they did not have any feedback.² Eight agencies did not respond.³
3. Your office consulted with appropriate ministers from 5 to 12 July. We understand your office received verbal feedback from this consultation, which we have included.
4. Due to time constraints, the Ministry of Education has not been able to undertake formal consultation with the public on any of the proposals in the Cabinet paper.
5. The disclosure statement (including the general policy statement for the Cabinet paper) and the amendment paper for this Bill are both attached. A final version of the Regulatory Impact Statement (RIS) will be sent tomorrow.
6. This paper will be lodged by your office on Thursday 18 July 2024 to be considered by Cabinet on 22 July, along with the disclosure statement, the Regulatory Impact Statement (RIS), and the amendment paper.
7. Further changes have been made to the Cabinet paper since the last version you received. The changes to the Cabinet paper are highlighted in yellow (annex 3). We have also included a clean version of the paper (annex 2). Please let us know today if you would like any further changes.

Summary of Cabinet paper

8. The Cabinet paper 'Charter schools | Kura hourua: additional legislative policy changes relating to staffing' seeks approval for the following additional legislation changes:
 - to continue the sharing of resources (including staff, funding, and/or space allocation) between schools by:
 - providing, despite their employment agreement, that an employee of a State school may not refuse a requirement from their employer to provide services to a charter school or to students enrolled at a charter school if that requirement would otherwise be a lawful and reasonable instruction.
 - deeming the Sponsor of a converted charter school to be a party to any arrangement regarding the sharing of staff that the board of a converting school was a party to prior to its conversion.

¹ Ministry for Pacific Peoples, Te Puni Kōkiri, Ministry of Justice, Te Kawa Mataaho – Public Service Commission, Oranga Tamariki – Ministry for Children, Department of the Prime Minister and Cabinet

² New Zealand Qualification Authority, Ministry of Youth Development and Office of the Privacy Commissioner

³ The Treasury, Education Review Office, Te Arawhiti – The Office for Māori Crown Relations, Ministry of Social Development, Whaikaha – Ministry of Disabled People and Office of the Auditor-General

- to provide that the Multi-Employer collective agreement (MECA) provisions in the Employment Relations Act 2000 do not apply to sponsors and staff of charter schools, so unions cannot initiate MECA bargaining with those employers.

Agency feedback on the Cabinet paper

9. We received the below feedback on the Cabinet paper. For a summary of responses see Annex 1.

Feedback on shared resources proposal

10. The Ministry for Pacific Peoples (MPP) and Te Puni Kōkiri (TPK) both stated that, overall, they support the proposed amendment to shared resources between schools.

Feedback on Multi-Employer Collective Agreement (MECA) provisions

11. MPP, TPK, the Public Service Commission (PSC) and the Ministry of Justice all raised concerns around the proposed MECA amendments in the Cabinet paper.

12. 9(2)(g)(i)

[Redacted content]

13. 9(2)(g)(i)

[Redacted content]

14. 9(2)(g)(i), 9(2)(h)

[Redacted content]

15. As such, the changes we have made in line with this feedback are outlined in the section below (for a summary of responses see Annex 2).

Changes to the Cabinet paper following agency and Ministerial feedback

16. Based on the feedback and further discussion with your office, we have made the following changes:

- a. Para 14: to clarify the focus on teacher employment, rather than all collective agreements.
- b. Para 16: to clarify what would happen if we do not include the amendment to shared resources in the Bill.
- c. Para 32: to clarify why you are changing MECA provisions in the Education and Training Amendment Bill rather than Employment Relations Act, in line with advice from PSC.

- d. 9(2)(j) [Redacted]
- e. Para 35-37: to clarify what other options were considered regarding MECA provisions in the Education and Training Amendment Act 2020 and why these changes were not chosen, in line with advice from Department of Prime Minister and Cabinet (via your office).
- f. Para 44: to include previous advice from the Ministry of Justice, that the Bill engaged sections 14, 17, and 19 of BORA but concluded that any limitations could be justified under section 5.
- g. 9(2)(g)(i), 9(2)(h) [Redacted]

Next Steps

- 17. The Cabinet paper, and the attached disclosure statement, RIS, and amendment paper are intended to be lodged by 10am on Thursday 18 July. The Cabinet paper will be considered by Cabinet on 20 July.

Annexes

The following are annexed to this paper:

- Annex 1: Summary table of feedback
- Annex 2: Cabinet paper: Charter schools | Kura hourua: additional legislative policy changes (including Amendment paper and Disclosure Statement)
- Annex 3: Cabinet paper: Charter schools | Kura hourua: additional legislative policy changes (highlighted changes)

Annex One: Agency feedback on Cabinet paper

Feedback on shared resources proposal

Agency	Feedback (summarised)
Ministry for Pacific Peoples	<ul style="list-style-type: none"> Overall MPP show support for cluster resourcing amendments. Amendments will allow for equitable access to important education services while maintaining the flexibility of curriculum at charter schools. Recommended using the Ministry's cultural capability tool (Yavu – Foundations of Pacific Engagement) as a resource to support engagements with Pacific communities.
Te Puni Kōkiri	<ul style="list-style-type: none"> TPK support this amendment due to the potential benefits it may create. They can see the benefits of having a cluster of schools sharing staffing and teaching resourcing, particularly for ākonga Māori. There are significant advantages that come with sharing resources, especially for Māori students who are currently achieving lower results than other groups in the education system. This may help with some of the challenges faced by schools (such as technology or support staff).

Feedback on Multi-Employer Collective Agreement (MECA) provisions

Agency	Feedback (summarised)
Ministry for Pacific Peoples	<ul style="list-style-type: none"> While MPP understand that workforce flexibility is a fundamental element of the charter school model, they nonetheless state that this proposal is a significant departure from the current position set out in the Employment Relations Act 2000 and may result in existing conditions for employees not being protected. MPP want to ensure that the proposed amendment does not create further labour market implications for Pacific workers. The scope of the sponsors' autonomous powers may mean that the interest of the sponsor lies in the operation of the charter school and may lead to labour exploitation of staff. 9(2)(g)(i) <div style="background-color: black; width: 100%; height: 100%; min-height: 100px;"></div>
Te Puni Kōkiri	<ul style="list-style-type: none"> TPK are concerned about the proposed MECA amendments. The removal of MECA provisions may exacerbate issues already faced by teachers/Kaiako as the bargaining power of staff in charter schools will likely decrease (regarding salaries, specific needs, etc). TPK also note that there may be negative implications for learners and whānau. For instance, the removal of MECA provisions could impact on teacher/Kaiako morale and stability, which can in turn create a less stimulating learning environment for students thus affecting students' wellbeing

	<p>and academic performance. This can create stress and anxiety for whānau and families.</p> <ul style="list-style-type: none"> • TPK suggest that the proposal place teachers/Kaiako, learners, and whānau at the centre of decision-making rather than sponsors of charter schools. • TPK wrote that (as para 21 states) – <i>workforce flexibility is a fundamental element of the charter school model</i> – teachers/Kaiako should be offered a choice of employment agreements, including the option of a MECA. • TPK feel the proposal is imbalanced, mainly favouring sponsors by offering them greater autonomy and flexibility at the expense of the employment conditions of staff (as noted in para 2 and 26).
Ministry of Justice	<ul style="list-style-type: none"> • 9(2)(g)(i) [Redacted] • They agree that the legal challenges mentioned in paras 42-45 are likely to arise based on s17 of the New Zealand Bill of Rights Act 1990 (BORA). They propose vetting the amendment paper for compliance with BORA, given the likelihood of these changes engaging BORA rights if they progress. • The Ministry suggested including their previous advice to the Attorney-General on the Bill (as referred to in para 42) that the Bill, as introduced, appeared to be consistent with the rights and freedoms affirmed in BORA. The Ministry's advice noted that the Bill engaged sections 14, 17, and 19 of BORA but concluded that any limitations could be justified under s5. They have stated it might be useful to include this context given that any amendments are also likely to engage BORA rights.
Public Service commission	<ul style="list-style-type: none"> • 9(2)(g)(i) [Redacted]