



Report: Charter schools – legislative amendments for a pathway back to a State school

To:	Hon Erica Stanford, Minister of Education, Hon David Seymour, Associate Minister of Education		
Date:	22/04/2025	Deadline:	2/05/2025
Security Level:	In-Confidence	Priority:	Medium
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Why are we sending this to you?

- Some State schools have cited concerns about the lack of assurance that they may re-open as new State schools in the future, should they voluntarily terminate or opt not to renew their contracts is a barrier to conversion. Some State integrated schools have highlighted concern over the termination of their integration agreement upon conversion.
- This advice builds on our previous advice regarding legislative changes that would be required to provide a pathway for charter schools to open as a new State school should the sponsor voluntarily terminate its contract or opt not to renew it [METIS 1342784 refers].
- Progressing this policy requires joint Ministerial agreement as it will directly impact the Minister of Education's absolute discretion to manage the State schooling network.

What action do we need, by when?

- We are seeking your preferred direction for progressing this policy. We have identified a range of options that would provide greater certainty. However, the trade-off for providing greater certainty against the Minister's current absolute discretion to manage the network.
- Should you choose to progress legislative change, then we are seeking your agreement to:
 - explore alternative options for the charter school to remain open prior to using the proposed provision;
 - maintain the school's character should they be established as a new State school;
 - offer similar terms as the former integration agreement when the school established is a State integrated school; and
 - provide existing charter school staff preferential applications and be offered priority for employment positions at the new State school to be opened.
- The Education and Training (System Reform 9(2)) Amendment Bill is the next legislative vehicle. It is now on a shorter timeframe and restricted in the number of clauses it can include. We recommend that Ministers discuss including the charter school proposals in this Bill.

Alignment with Government priorities

1. This report provides advice on possible changes to the charter school model.

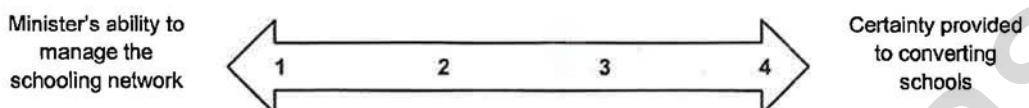
Background

2. Section 212F of the Education and Training Act 2020 (the Act) provides the ability for State schools (except for specialist schools) to convert to become a charter school. This includes State integrated schools, designated character schools, and Kura Kaupapa Māori, provided they retain their character after conversion. For State integrated schools, their integration agreement is treated as cancelled at conversion as set out in clause 116 of Schedule 1 of the Act.
3. Currently, there is no pathway for converted charter schools to re-open as a State school. Under current legislative settings, the Minister of Education (the Minister) has the power to establish State schools under section 190 of the Act in her absolute discretion. Prior to establishing a State school, the Minister must consult with the boards of all State schools whose rolls might be affected by the establishment under section 209 of the Act. In practice, there is an established operational process by which the Ministry provides the Minister with advice which includes consultation feedback, the network impacts, population projections, location, property, and financial implications.
4. Some State schools have expressed that a lack of assurance of being able to re-open as a new State school when voluntarily terminating their contracts is a barrier to them converting. In particular, some State integrated schools have expressed concern over the termination of their integration agreement upon conversion.
5. To provide assurance to these schools, the Associate Minister of Education (the Associate Minister) has indicated he wants to progress work on policy changes to support a pathway back to the State schooling system for converted charter schools [METIS 1342784 refers]. The Associate Minister has indicated he would like to progress legislative changes that would:
 - provide some certainty that a similar type of State school will be established, should a converted charter school voluntarily close;
 - only apply when a charter school sponsor has voluntarily terminated its contract or has decided not to renew its contract, and will close as a result (i.e. not when a contract is terminated or not renewed by the Charter School Agency (CSA)); and
 - not include transitional arrangements relating to staffing, assets, liabilities and funding.
6. Any changes to current settings to support a pathway for converted charter schools to open as State schools would require joint Ministerial agreement on the key policy decisions because they would restrict the Minister's ability to manage the schooling network.
7. This report seeks decisions on:
 - the degree of certainty provided to prospective converting charter schools;
 - specific considerations regarding the type and character of the school; and
 - further advice relating to transitional arrangements, including staffing transfer.

Degree of certainty provided to converted charter schools

8. We have identified options that will provide different degrees of certainty to State schools considering applying to convert to a charter school, with regard to a future pathway back to the State sector. The trade-off for providing greater certainty to converting schools is against the Minister's current absolute discretion to manage the network, which is shown along a spectrum in figure 1 below.

Figure 1. Spectrum of network management ability or certainty provided



9. **Option 1 – Make no changes to current legislation (status quo):** This option would not require legislative changes, and instead rely on current practice when a request to establish a new State school is made of the Minister. Under section 209 of the Act, before establishing a State school the Minister must first consult the boards of all state schools whose rolls might be affected. In practice, the Ministry also provides the Minister with advice which includes the network impacts, population projections, location, property and financial implications. The legislation does not state specific criteria that must be considered, meaning the Minister has absolute discretion when deciding to establish a new State school.

10. **Option 2 – The Minister must consider establishing a new State school based on various criteria if a converted charter school voluntarily closes:** This option would set out in legislation the criteria that the Minister must consider when determining whether to establish a new State school when a converted charter school voluntarily closes. This option offers a little more certainty around the pathway back to a State school for prospective converting charter schools and sponsors. This is as it shifts from the Minister having absolute discretion to making it mandatory through legislation to consider specific criteria. Progressing this option would include the following criteria in legislation:

- The financial implications for the Crown if the proposed State school is established. In practice, this would include financial implications such as property, establishment funding, school transport implications, and governance costs.
- Whether the proposed State school's establishment achieves the purpose of section 32(e) which is establishing and managing a network of State schools and charter schools that allows every student to access quality schooling and provides choice about the types of education they receive.
- The level of support for the proposed State school from the community in which it is proposed to be established.

11. **Option 3 – The Minister must establish a new State school if a converted charter school voluntarily closes unless specific criteria apply:** This option would require legislative changes so that the Minister must have a clear rationale, aligned with specific criteria, to decide not to establish a new State school after a converted charter school voluntarily closes. This offers converted charter schools more certainty as it shifts away from the Minister having absolute discretion. Progressing this option would include the following criteria in legislation:

- When establishing the proposed State school, there are significant financial implications for the Crown that the Minister believes to be unjustifiable.

- Establishing the proposed State school does not benefit the network of State schools to allow every student to access quality schooling and provides choice about the types of education they receive.
- There is insufficient community support for the Minister to justify establishing the proposed State school.

12. **Option 4 – The Minister must establish a new State school if a converted charter school voluntarily closes:** This option would require legislative changes to provide complete certainty that a new State school will be established following a converted charter school voluntarily closing. However, this option would bind the Minister of Education to establishing a State school which may not be needed within the schooling network, creating unnecessary financial implications.

13. We have provided a table below which compares the options against the status quo for the following criteria:

- Certainty** provided to charter schools
- Disruption** to the network, students, and staff
- The Minister's ability to **manage the schooling network**
- Potential **costs** involved

Table 1. Comparison of options against the status quo

	Option 2: The Minister must consider establishing a new State school based on specific criteria	Option 3: The Minister must establish a new State school unless specific criteria apply	Option 4: The Minister must establish a new State school
Certainty	+ Provides some confidence to sponsors that a new State school would be established.	++ Provides a significant amount of certainty to sponsors. Establishing a new State schools is a requirement, unless specific criteria apply.	+++ Provides a guarantee that a new State school would be established.
Disruption	+/- May cause disruption to students and staff in the event that the Minister decides not to establish a new State school. In this case, students would move to another school in the network and staff would seek alternative employment.	+ Less risk of disruption for students and staff than under option 2. However, if the specific criteria were met and no new school established, students would move to another school and staff would seek alternative employment.	++ Least risk of disruption for students as this option guarantees that a similar school is established. This is the least disruptive for staff as they could apply for positions at the new State school.
Network management	- Slightly reduces the Minister's power to manage the school network. If a new State school is not established, the schools in the same area as the charter school would need to take on the students.	- Places a requirement on the Minister to establish a new State school which currently does not exist. However, the Minister would have the ability to opt not to open a new school if it would not benefit the network. This criteria acts to preserve the Minister's ability to manage the network.	-- Significantly reduces the Minister's power to manage the school network. Over time with population and demographic shifts, this option could lead to an oversupply of schools in the local network.
Costs	+/- Limited as the Minister would be required to consider the financial implications for the Crown in establishing a new school. There could be minor financial implications for the Crown, similar to establishing a new school.	+/- Limited as the Minister could decide not to establish the proposed school based on the financial implications for the Crown of doing so. There could be minor financial implications for the Crown, similar to establishing a new school.	-- Could have significant financial implications for the Crown as a new State school must be established. For example, if the school was relatively small, the per-pupil costs would be higher under the State system.

14. If you wish to progress legislative changes to address the concerns raised and provide greater certainty to schools and sponsors, we would recommend progressing Option 3. We consider that this option strikes a balance between achieving a greater degree of certainty, while also preserving the ability to manage the network by providing specific criteria under which the Minister may decide a State school should not be established. The proposed criteria are intended to limit financial cost to the Crown where establishment of a new State school in place of a converted charter school would otherwise lead to an oversupply of schools in the local network and mitigate any risk of low community support.
15. Currently, only a small number of prospective converting charter schools would be eligible under this provision due to the limited number of converted charter schools in the first tranche of implementation. This means that, at present, the overall network impacts of converted charter schools voluntarily closing and opening as new State schools would be fairly limited. However, changes to the Act will be of ongoing effect meaning that the potential network impacts will grow over time, if the number of converted charter schools increases. Therefore we consider that the Minister's ability to manage the changing needs of the schooling network should be an important consideration and we do not recommend Option 4.

Further legislative considerations

16. Should you decide to progress either options 2, 3, or 4, there are three specific considerations that we require your decisions on:
 - exploring alternative options for the charter school to remain open;
 - maintaining the character of the previous charter school; and
 - integration agreements with former State integrated schools.

We recommend that the CSA would first explore options for the school to remain open as a charter school

17. We recommend that the CSA would first investigate ways for the school to remain open as a charter school, which will include looking at replacing the sponsor. Once these avenues are exhausted, the Minister would be informed, which would trigger the process to establish a new State school that replaces the charter school. First exploring options for the school to remain open as a charter school will decrease any disruption for the students and staff, and provide certainty to the community that a similar school will still be available.

We recommend maintaining the character of the previous charter school

18. We recommend that the Minister must establish a new State school that maintains the character of the former charter school (where applicable), similar to the provisions set out in section 212K (1)(b). This would include State integrated schools, designated character schools, and Kura Kaupapa Māori. We consider that this reduces the disruption for learners, parents and the community as it would maintain the same character of the school from prior to its conversion to a charter school. Should the community wish to change the character of the school, then there are already existing provisions in place to do so.

We recommend the Integration agreements with former State integrated schools

19. Upon conversion, the integration agreement between the State integrated school's Proprietor and the Crown is deemed to be cancelled. This means for converted charter schools that were previously State integrated, a prospective proprietor would need to negotiate a new integration agreement with the Crown to be integrated into the State system. The integration agreement sets out (amongst other things), the maximum roll for the school, "tagged" staffing, attendance dues, and the special character of the school.

20. Currently, the Minister can choose whether to accept an application from a prospective proprietor under clause 2 of Schedule 6 to the Act. If you decide to progress either options 2, 3, or 4 for converting charter schools that wish to re-open as State schools, we consider that this would also apply to prospective State integrated schools.
21. We would recommend that the Minister must offer similar terms as the previous integration agreement if a similar State integrated school is opened based on your preferred option outlined in paragraph 9 - 12. This provides some assurance and certainty for State integrated schools considering conversion but gives the Minister the ability to re-negotiate some aspects of the integration agreement should there be significant changes since the school was last integrated. For example, if the maximum roll size needs to change following any roll growth during its period of being a charter school.

Further advice relating to transitional arrangements

We recommend providing staffing transfer arrangements to reduce disruption

22. Currently, following termination of the charter school contract, all staff would be made redundant at the cost of the sponsor. All positions at the new State school would be publicly advertised and appointed on merit, not allowing for any guaranteed transfer of staff. During a meeting with officials, the concern was raised that there would be a high cost for sponsors if there are no transitional arrangements.
23. We recommend amending legislation to provide preferential status for existing charter school staff to apply for roles at the new State school. This in practice would give staff priority for employment, however not all staff may transfer to the new State school because there may be a reduced staffing entitlement or the teachers at the charter school were not registered teachers. This option would reduce disruption by providing a continuity of employment for staff and learning for students, as well as reducing redundancy costs to the sponsor.
24. When the previous partnership school model ended and transition arrangements were put in place, legislation provided for any partnership school employee to be offered the position on terms no less favourable than they had enjoyed in the partnership school. We do not recommend including this in the proposed legislation as the Ministry will not have any oversight into the terms and conditions of staff employed by charter schools. Charter schools have full flexibility to set the terms of employment, meaning a "lift and shift" approach may incur significant costs to the Crown if the school has a high number of teachers or teachers paid more than the salaries provided under State school teacher collective agreements. There may also be terms and conditions outside of remuneration which would not be possible to mirror in the state sector (i.e. hours of work).

Further advice will be provided on establishment funding for the new State school

25. When a new State school is established, its Establishment Board receives establishment resourcing, including:
 - **Establishment staffing** to appoint a principal and teachers prior to opening of the school. This enables the school to plan, appoint staff, and generally prepare for teaching and learning. The amount of funding given depends on the school type and expected roll.
 - **Establishment funding** to fund non-teaching staff, purchase curriculum materials and buy other equipment required prior to the school opening.
26. As the newly established State school will be opened in a shorter period compared to other schools because the school is already operational, we do not consider that they will need

the same level of establishment funding. You will receive further advice on establishment funding for converted charter schools re-opening as new State schools.

Next Steps

27. The next vehicle for progressing legislative change is the Education and Training (System Reform 9(2)) Amendment Bill (the Bill). The Minister of Education is lead Minister for this Bill, which progresses the Minister's education system reform priorities.
28. The Bill is now on a shorter timeframe and is restricted in the number of clauses it can include. The inclusion of the charter school proposals will increase the size and complexity of the Bill and may impact the planned timing for drafting and introduction. It therefore may not be feasible to include the charter school proposals in the Bill.
29. We recommend that Ministers urgently discuss legislative priorities and the inclusion of the charter school proposals in this Bill.

Recommended Actions

The Ministry of Education recommends you:

- a. note that some State schools have expressed concern about their inability to revert back to the state Schooling sector if they convert to a charter school

Minister of Education

Noted

Associate Minister of Education

Noted

- b. select ONE of the following options for the extent to which you would like to provide certainty to prospective converting charter schools:

- i. Option 1 – Make no changes to current legislation (status quo)
- ii. Option 2 – Include in legislation that the Minister must consider establishing a new State school based on various criteria if a converted charter school voluntarily closes
- iii. Option 3 – Include in legislation that the Minister must establish a new State school if a converted charter school voluntarily closes unless specific criteria apply
- iv. Option 4 – Include in legislation that the Minister must establish a new State school if a converted charter school voluntarily closes

Minister of Education

Option 1 / Option 2 / **Option 3 / Option 4**

Associate Minister of Education

Option 1 / Option 2 / **Option 3 / Option 4**

- c. should you agree to either option 2, 3 or 4 in recommendation (b):

- i. agree that the Charter School Agency would be able to first explore ways for the school to remain open as a charter school (including looking at replacing the sponsor) before the provision as agreed to in recommendation (b) is triggered

Minister of Education

Agree / Disagree

Associate Minister of Education

Agree / Disagree

ii. agree that the converted charter school's character (i.e. State integrated schools, designated character schools, and Kura Kaupapa Māori) must be maintained when a replacement State school is established

Minister of Education

Agree / Disagree

Associate Minister of Education

Agree / Disagree

iii. agree that the Minister must offer similar terms to the previous integration agreement of the previous State integrated school

Minister of Education

Agree / Disagree

Associate Minister of Education

Agree / Disagree

iv. agree that staff employed at the charter school at the time of its closure will be given preferential status to apply for roles at the new State school (if one is opened in its place)

Minister of Education

Agree / Disagree

Associate Minister of Education

Agree / Disagree

Proactive Release:

d. agree that the Ministry of Education release this paper once final decisions on how arrangements for opening as a new State school have been made, with any information needing to be withheld done so in line with the provisions of the Official Information Act 1982

Minister of Education

Agree / Disagree

Associate Minister of Education

Agree / Disagree

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