



## Education Report: Charter schools | kura hourua: Authorisation Board

|                                               |                                                    |                     |         |
|-----------------------------------------------|----------------------------------------------------|---------------------|---------|
| <b>To:</b>                                    | Hon David Seymour, Associate Minister of Education |                     |         |
| <b>Cc:</b>                                    | Hon Erica Stanford, Minister of Education          |                     |         |
| <b>Date:</b>                                  | 23 February 2024                                   | <b>Priority:</b>    | High    |
| <b>Security Level:</b>                        | Budget Sensitive                                   | <b>METIS No:</b>    | 1322942 |
| <b>Drafter:</b>                               | Pam Mclean                                         | <b>DDI:</b>         | 9(2)(a) |
| <b>Key Contact:</b>                           | Andy Jackson                                       | <b>DDIs:</b>        | 9(2)(a) |
| <b>Messaging seen by Communications team:</b> | No                                                 | <b>Round Robin:</b> | No      |

### Purpose of Briefing

This paper provides you with information on the role of the Authorisation Board as requested during a meeting with Ministry officials on 12 February 2024. It seeks decisions on the role, functions, and settings for the Authorisation Board to inform the cabinet paper for policy approvals needed for the legislation.

### Summary

1. At the meeting on 12 February, we discussed providing further information to you on your proposal for an Authorisation Board to be able to approve new and converting charter schools and make other decisions.
2. Since then, you have agreed with advice from Te Kawa Mataaho Public Service Commission (PSC) on the establishment of a departmental agency (hosted by the Ministry of Education) to service an Authorisation Board and implement the charter school model.
3. We have concerns about a number of aspects of the establishment of a departmental agency that are not covered in their advice (in particular their proposed timeline and the lack of clarity on its functional relationship with, and impact on, the Ministry) and will brief you separately about this.
4. However, the decision to establish a statutory authorisation board needs to proceed and you do not need to decide immediately on the administrative arrangements needed to support it.
5. This paper outlines the role and settings of the authorisation board and further advice on the Treaty of Waitangi.

## Recommendations

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The Ministry of Education recommends that you:

- a. **agree** that an Authorisation Board would be established under the legislation and have key responsibilities for:
- i. approving applications for sponsors to manage specific charter schools as a necessary condition for the agency<sup>1</sup> to contract and fund the new charter schools  
**Agree / Disagree**
  - ii. as part of the application and assessment process, seek information from the Secretary for Education and the Education Review Office, and consult with affected parties for converting school applications  
**Agree / Disagree**
  - iii. deciding on interventions in the event of serious failure of a charter school to meet contractual requirements on the advice of the agency (which could lead to the termination of a contract, replacement of sponsors or reconverting to a State school)  
**Agree / Disagree**
  - iv. providing strategic advice to the Minister responsible for Partnership Schools on the charter school model, including on the performance management system  
**Agree / Disagree**
  - v. oversight of the performance management system  
**Agree / Disagree**
  - vi. any other independent advice and oversight as directed by the Minister  
**Agree / Disagree**
- b. **agree** that where there is an impasse between the Authorisation Board and the agency (such as for sponsor applications and the use of interventions), either of these entities could refer the matter to the Minister responsible for Partnership Schools for a final decision  
**Agree / Disagree**
- c. **agree** the Authorisation Board should consist of:
- EITHER**
- i. at least 5 and not more than 9 members  
**Agree / Disagree**
- OR**
- ii. at least 5 and not more than 7 members  
**Agree / Disagree**

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<sup>1</sup> “agency” is used in this advice for a departmental agency or a business unit

[IN CONFIDENCE]

- d. **agree** that when appointing the member, the Minister responsible for Partnership Schools should have regard to the collective skills, experience and knowledge needed for the Authorisation Board, including in the following areas:
- i. the education system;
  - ii. governance;
  - iii. leadership skills and experience;
  - iv. financial management;
  - v. audit and performance management experience; and
  - vi. understanding of Te Tiriti o Waitangi/Treaty of Waitangi.

**Agree / Disagree**

- e. **agree** that the legislation will allow the Minister responsible for Partnership Schools to appoint the Authorisation Board members on terms and conditions to be determined by the Minister

**Agree / Disagree**

- f. **agree** that the legislation will allow the Authorisation Board to determine its own procedures

**Agree / Disagree**

- g. **note** that the Education and Training Act 2020 contains provisions relating to the Te Tiriti o Waitangi/Treaty of Waitangi that will apply to charter schools | kura hourua

**Noted**

- h. **agree** to include in the legislation specific and directive provisions for charter schools' relating to the Crown's Te Tiriti o Waitangi/Treaty of Waitangi obligations

**Agree / Disagree**

#### Proactive release recommendation

- i. **agree** that the Ministry of Education release this report once final Cabinet policy decisions have been made.

**Agree / Disagree**

Andy Jackson  
Hautū Deputy Secretary  
Te Pou Kaupapahere / Policy

Hon David Seymour  
Associate Minister of Education

23/02/2024

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## Introduction

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1. This paper provides you with information on the role of the Authorisation Board as requested during a meeting with Ministry officials on 12 February 2024 and seeks your decisions on the role, functions and settings for the Authorisation Board.
2. Since then, you have agreed with advice from the Te Kawa Mataaho Public Service Commission (PSC) on the establishment of a departmental agency (hosted by the Ministry of Education) to service an Authorisation Board and implement the charter school model.
3. The PSC has not yet advised you on a number of key issues that will need to be worked through as part of any implementation. These include the cost of establishing a departmental agency, functional analysis of its relationship with the Ministry of Education, and the balance of opportunities and risks in establishing it quickly.
4. In particular, we are concerned about the timing of the proposal to establish it at the same time as the significant reductions in departmental operating budgets come into effect. The decisions being made through Budget 2024 will see significant staff reductions across the Ministry of Education which will significantly impact its operations.
5. Until we understand in more detail the functions that the departmental agency would undertake, and the nature of the relationship between it and the Ministry, we do not know what risks we would be creating either to the charter schools model or to the Ministry's remaining functions in relation to state schools.
6. We would like to discuss with you whether the authorisation board could be supported by a business unit within the Ministry (which would be consistent with the level of resourcing signalled in the budget bid), during the initial period when we expect a relatively small flow of conversion and new school applications, with the establishment of a departmental agency later when we understand more about what its functions would need to be.
7. We have informed the PSC that we are giving you this advice.

## Background

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8. In the meeting on 12 February, you proposed the Authorisation Board would ideally be giving approval in the application process of new sponsors and make other key decisions in the charter school model. This is to make this approval role more independent and less influenced by the political context.
9. With the ability to convert State schools to charter schools there could be significant number of charter schools seeking to open this parliamentary term which means the decision maker will need to give considerable time and attention to these responsibilities. It would also provide a distinct presence for the charter school model as the Board would be supported by an agency (used in this advice for either a departmental agency or a business unit within the Ministry).

### *Previous partnership school model*

10. Under the previous partnership school model, the contracts with partnership schools were between the Crown acting by and on behalf of the Minister of Education and the sponsor. Under the legislation the Authorisation Board (referred to as "Advisory Group in the legislation) recommended a sponsor to the Minister who had "absolute discretion" on whether or not to approve them.
11. A sponsor was contracted by the Minister on behalf of the Crown to provide educational services to students who attend their school. The sponsor was paid by the Ministry for performing these services from funding from Vote Education: Partnership Schools / Kura Hourua. The sponsor had to comply with the contract as well as the legislation for partnership schools.

## A Statutory Authorisation Board will approve the opening and closing of charter schools

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12. We recommend establishing a statutory Authorisation Board as the decision maker on the establishment and disestablishment of charter schools. The Board can be established in time for new charter schools to open from early 2025 subject to the legislation being enacted and budget being approved.

### *Authorisation Board role*

13. We propose the Authorisation Board would be established under the legislation and would be responsible for:
- a. approving applications for sponsors to manage specific charter schools as a necessary condition for the agency to contract and fund the new charter schools;
  - b. as part of the application and assessment process, seek information from the Secretary for Education and the Education Review Office, and consult with affected parties for converting school applications;
  - c. deciding on interventions in the event of serious failure of a charter school to meet contractual requirements on the advice of the agency (which could lead to the termination of a contract, replacement of sponsors, or reconverting to a State school);
  - d. providing strategic advice on the policy settings for the charter school model, including on the performance management system;
  - e. being responsible for the oversight of the performance management system; and
  - f. any other independent advice and oversight as directed by the Minister.

### *Authorisation Board settings*

14. The Minister, according to the legislation, would appoint the Authorisation Board which would consist of a specified number of members. Under the previous partnership school model this was “at least 5 but not more than 9 members”. We recommend the same number of members, or alternatively “at least 5 but not more than 7 members”. Some of these members may be people who will be on the Establishment Group.
15. In appointing the member, the Minister should have regard to the collective skills, experience and knowledge needed for the Board, including in the following areas:
- a. the education system;
  - b. governance;
  - c. leadership skills and experience;
  - d. financial management;
  - e. audit and performance management; and
  - f. understanding of Te Tiriti o Waitangi/Treaty of Waitangi.
16. The legislation would provide for the standard requirements when setting up a Statutory Board. This includes allowing the Minister to determine and to vary the terms and conditions for the Board. The Board would be able to determine its own procedures. Board members would be paid at rates determined by the Minister in accordance with the fees framework for statutory and other bodies the Crown has an interest in.

### *Other roles*

[IN CONFIDENCE]

17. The agency would be responsible for the implementation and day-to-day operational management of the charter school model. It would also be responsible for funding charter schools and the contracts would be held by the agency.
18. The PSC has advised us that the Authorisation Board would not be able to hold an Appropriation so could not fund or hold the contracts.
19. You as Minister would retain overall responsibility for the delivery of the charter school model, and the Authorisation Board and agency would be accountable to you. Where there is an impasse between the Authorisation Board and the agency (such as for sponsor applications and the use of interventions), either of these entities could refer the matter to you for a final decision.
20. The Secretary for Education would retain statutory responsibilities that apply across the education system. The Ministry of Education would be the administrator of all education legislation and provide advice on the overall performance of the charter schools model.

### Te Tiriti o Waitangi/the Treaty of Waitangi

21. In our previous report on key features, we recommended discussing Te Tiriti o Waitangi/Treaty of Waitangi (Treaty) obligations for the charter school model (METIS 1319517 refers). In a meeting with officials on 12 February 2024 you indicated a preference for not having a specific provision in the Education and Training Act 2020 for the Treaty obligations for charter schools.
22. 9(2)(h) [REDACTED]
23. 9(2)(h) [REDACTED]
24. To clarify how the Treaty would apply to charter schools in a practical way, we propose the Bill include specific and directive provisions in the legislation, such as:
  - a. requiring the Authorisation Board to consider how a conversion would affect the interests of Māori students at the existing State school;
  - b. requiring the Authorisation Board and the applicant to consult with affected Māori students, whanau and iwi when a State school applies to convert and there are Māori interests in the conversion; and
  - c. requiring the Authorisation Board and agency to consider wellbeing impacts and higher learning outcomes for Māori students as part of the performance management system for charter schools.

### Financial implications

25. We expect the Authorisation Board to cost \$0.220 million in 2024/25 – the same amount as that sought for the Establishment Board. For the purposes of the charter schools Budget bid, we have assumed that annual Authorisation Board costs will increase by 3% annually, giving some allowance for inflation and potential workload increases.
26. The PSC has advised that the Authorisation Board would not be able to hold an appropriation so that would be held by the agency. The Authorisation Board's approval for new and converting schools would need to be made within a funding envelope determined by Cabinet. This could require trade-offs between, for example, the number of charter schools and the number of students in charter schools.

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<sup>2</sup> Section 4(d) of the Education and Training Act 2020 (Act) records one of its purposes as being “to establish and regulate an education system that honours Te Tiriti o Waitangi and supports Māori-Crown relationships

[IN CONFIDENCE]

## Next steps

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27. The next step is to prepare a cabinet paper on the policy settings for the charter school model. To draft a cabinet paper for all policy decisions, we would ideally have your decisions by next Tuesday, 27 February.
28. We will also continue to work with the PSC and will brief you on the institutional arrangements.

Proactively Released