



Report Title:	Institutional arrangements for implementing the charter school model		
Report No:	2024-0046		
Date:	16 February 2024		
To:	Hon David Seymour, Associate Minister of Education (Partnership Schools)		
Action Sought:	Refer the paper to the Minister of Education for discussion Direct officials if Cabinet decisions sought	Due Date	23 February 2024
Cc:	Hon Nicola Willis, Minister for the Public Service		
Contact Person:	Hannah Cameron, Deputy Commissioner, Strategy & Policy		
Contact No:	9(2)(a) privacy		
Encl:	No	Priority:	Medium
Security Level:	SENSITIVE-STAFF		

Executive Summary

1. We met with you on 7 February to discuss how institutional arrangements can support your objectives for charter schools to have greater flexibility for how they operate while ensuring they deliver high quality state funded education. This report sets out further information on the Departmental Agency (**DA**) model and how this could be implemented alongside the urgent work on legislating the charter schools model.
2. Our view is that either a DA or a unit within the Ministry of Education (**MoE**) could provide a suitable vehicle for supporting the implementation of the model. A DA would come at a higher cost but may provide a better fit with your vision that charter schools are publicly funded but have greater freedom in how they achieve high quality educational outcomes.
3. It would be advisable to avoid duplication between the DA and the existing responsibilities of the MoE. The Ministry retains responsibility for the overall strategy for the New Zealand education system and is the administrator of all education legislation. The Secretary for Education will continue to hold statutory responsibilities that apply across the system (some of which may or may not apply to charter schools depending on the legislative framework).
4. If a DA is to be established, care will need to be taken to ensure that the change process does not divert effort from the substantial work on the model itself. If Cabinet decisions on the institutional settings are made by mid-March alongside other policy decisions, legal establishment of the DA could be by 1 July (coinciding with the commencement of the Authorisation Board). We can work with you, and your office, on how work could begin before this time. We can also discuss with you whether it would be appropriate to appoint an acting chief executive or proceed straight to recruitment of a substantive chief executive.

5. 9(2)(f)(iv) confidentiality of advice

Recommended Action

We recommend that you:

- a **note** that a departmental agency would come at a higher cost but may provide a better fit for your vision of charter schools than a branded business unit
- b **discuss** this paper with the Minister for Education and how this impacts on the wider work programme of the Ministry of Education
Discussed/not discussed.
- c **direct** officials from the Public Service Commission and Ministry of Education to prepare a Cabinet paper on the establishment of a departmental agency to service the Authorisation Board and implement the Charter School model set out in legislation
Agree/disagree.
- d **note** this report is copied to the Minister for the Public Service in their role in maintaining oversight of the overall structure and number of entities in the system
- e **agree** that Te Kawa Mataaho release this briefing in full once a legislative bill is released
Agree/disagree.

Hon David Seymour

Associate Minister of Education (Partnership Schools)

Purpose of Report

6. The purpose of this report is to provide further information to that discussed on 7 February about the institutional arrangements to support charter schools and to get your steer on the next steps. It:
 - a. Further explores the institutional arrangements for the activities required to deliver the first charter schools by 2025 and the features of the departmental agency (**DA**) model that may be appropriate to support this.
 - b. Proposes the implementation of institutional arrangements that are suited to the immediate work of designing and implementing the charter school model. You may want to consider transitioning this into another form once the system is operational.
 - c. Proposes next steps for officials from the Ministry of Education (**MoE**) and the Commission.

Delivering the first charter schools

7. We understand that charter schools are intended to be publicly-funded schools run by independent sponsors and with flexibility over how they achieve high-quality educational outcomes. The charter schools will therefore be simultaneously part of the education system, but operate with greater freedom within it.
8. The activities that are significant in this implementation phase will be the design of innovative contracting models, setting the benchmarks and basis for performance monitoring, providing the analytic work to support the decision to establish the first round of charter schools and establishing a distinct presence to engage with the sector about these opportunities.
9. As we discussed with you there are options for how the public service can be organised to implement and support the charter school model. Our advice is coloured by a strong focus on ensuring that charter schools are ready to be implemented for the next school year, which creates ambitious timeframes for legislation and set-up. You have already decided to use a statutory Authorisation Board to make the decision about establishing a charter school and having a role in the oversight of their performance.
10. While there is still a lot of detail to be worked through, at this stage we see the high-level arrangements being that:
 - a. The MoE would continue its responsibilities for the education system overall (of which charter schools would be a part, albeit with distinctive characteristics). The statutory powers of the Secretary for Education continue to apply unless specifically provided for in the charter school legislation. The Ministry would have the ability to advise on the overall performance of charter schools and their place as education providers as part of its strategic advisory function. The Ministry would also be the administrator of the charter school legislation.
 - b. The Authorisation Board would be responsible for deciding on the establishment of the first charter schools, and holding them to account for their performance. The Board would be appointed by the Minister and required to make decisions independently of the Minister.
 - c. The Authorisation Board needs to be supported with secretariat functions, advice on the design of the charter school contracting, procurement model and performance

management and in the administration of their decision to enter into, or cease, a charter school contract.

- d. ERO would have a role in monitoring the performance of charter schools and providing information about the performance of any existing schools that apply to become charter schools.
11. It is the work highlighted at point c, that is the main subject of this advice. Given the compulsion for families to participate within the education system Ministers will face scrutiny over decisions to open or close schools even when you do not have the formal decision rights. This makes it important for you to be able to oversee and influence the initial work that is done to design and establish the charter school model, and the basis on which future decisions will be made. You will also want to have confidence that the authorisation board is supported with all the necessary information to implement the policy successfully.

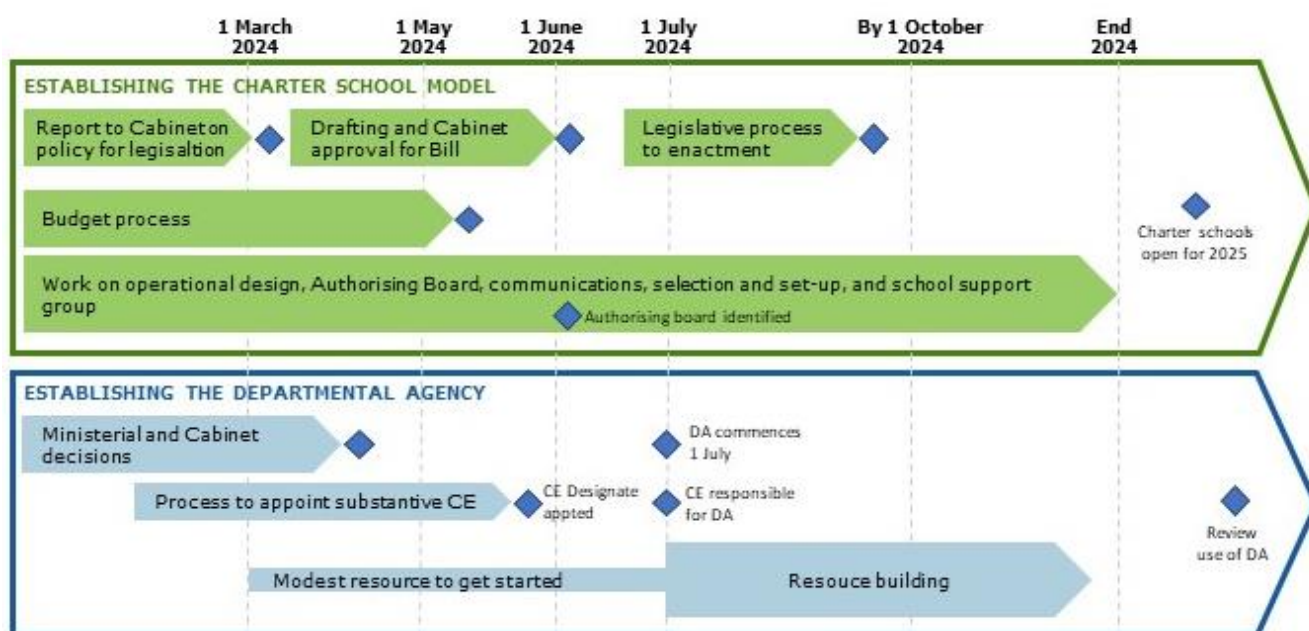
Institutional arrangements to get started

12. In the short term we have proposed the Authorisation Board could be supported by either a dedicated unit within the MoE or a DA hosted by MoE. You have asked us to explore the DA model further.
13. A departmental agency is an appropriate model when:
- a. Dedicated leadership, accountability, and the mandate to work with other agencies at chief executive level is required.
 - b. There is a need for an agency with a distinct culture and presence that can effectively work with and represent a distinct stakeholder community as opposed to working broadly across a sector.
 - c. It is important to minimise costs and disruption (noting that the nature of the DA's role will impact on the extent to which this is achievable).
 - d. The functions within the DA are strongly connected to the strategic and policy framework of the host Department. The DA model enables a joined-up approach to an overall system even where there are distinct implementation responsibilities.
14. Given the relative ease of establishment and disestablishment, Departmental agencies can also be used for time limited functions, either where the function will come to an end at some point or where there is a logical point at which to review arrangements and assess next steps (such as in the case of the previous government's health reforms).
15. While both the business unit model and the DA model can support the implementation of charter schools, the DA model is better aligned with your vision that charter schools are publicly-funded but privately-provided and separate within the mainstream education system. 9(2)(f)(iv) confidentiality of advice
16. That said, a DA would be more expensive than a branded business unit. Costs derive from having a separate chief executive and the organisational infrastructure to support accountability arrangements such as planning and reporting. Under both options there will be increased costs arising from bringing in new capabilities to design and deliver innovative contracting and performance models. A DA will take more time to establish, but this shouldn't be significant and can be done in a phased manner. Either option will rely on existing data, capability and systems from MoE.

Implementation of a departmental agency

23. You are seeking to have the charter school model operational for the 2025 school year and work is underway apace in the MoE to meet this expectation. Given the timeframe, and your wish to introduce both the charter schools arrangements and the ability for mainstream schools to convert at the same time, the focus for officials needs to be on the critical path of legislative changes needed, establishment of the Authorisation Board and the other arrangements needed in order to give the schools themselves sufficient time to be approved and established. This is a substantial work programme that is being led by the MoE.
24. The DA establishment can be done alongside this work but shouldn't divert attention from it. An overview for how the work could unfold is set out at a high level below. The key time is mid-year when legislation for the model needs to be introduced (June). It would work well if the DA could come into being at a similar time as an Authorisation Board is identified (in anticipation of being appointed by you under legislation once it is made).

Diagram: Indicative implementation path for a departmental agency



25. While a DA could be established in law reasonably quickly, it would likely take six months to clarify roles and operating model, and establish the right capability for the future. Other DAs that have been established recently have had existing functions and systems held within organisations that have been “lifted and shifted” into the DA. This enabled quicker timelines than we anticipate in this case where an existing team is not in place.
26. The workstreams for the DA would be:
- Legal establishment process – relatively straightforward process involving Cabinet decisions followed by an Order-in-Council. Once a ministerial decision has been made to proceed these processes would take approximately 6-8 weeks. The Order-in-Council would set 1 July as the date when the DA is established (start of the financial year). The process to appoint a chief executive could commence once a ministerial decision has been made and would ramp up as the Cabinet process unfolded. We can work with you, and your office, on the sequencing of work and whether to appoint an acting/establishment chief executive or proceed straight to recruitment of a substantive chief executive.

- b. Physical establishment process –staff transfers and recruitment, office location etc. Some of these processes (eg. staff transfers, financial and IT systems) will be more straightforward than for the Ministry for Regulation as the DA will be hosted by the MoE and will draw on its systems. Once a ministerial decision has been made these processes can get underway in preparation for the actual establishment of the DA but care will be needed to ensure that the focus stays on the critical path to getting schools established.
- c. Interface with MoE – an agreement between the DA and the MoE will need to be developed to set out how the two agencies will work together (eg in respect of data and information resources) and how back-office supports will be provided (IT and other corporate services). These things will require careful thought given the close relationship between the roles of the two agencies and the need the DA will have, at least in the first instance, to draw on the MoEs resources. There may be trade-offs between what systems can be developed quickly and at low cost now compared to stand-alone systems that maximise the flexibility for transferring to a separate entity in the future.
- d. Funding – MoE is already working with you on obtaining funding and budget approvals in Budget 2024. This may need to be amended to reflect additional costs specific to the DA such as a new chief executive and any costs around changing corporate systems to manage the information of two separate entities.
- e. Work programme – following a decision to establish the DA and the identification of staff that will transfer to it, work can begin on its work programme. This will, of necessity, be modest and you have indicated your view that it include financial modelling (to determine the cost of the schools) and performance measurement. These functions would then build over time as the DA becomes embedded and fully operational.

Next steps

27. If you are interested in establishing a departmental agency of the MoE this will need to be discussed with the Minister responsible for the Ministry.
28. MoE is working with you to seek Cabinet agreement on 1 April to drafting instructions for the charter schools' Bill. We can support you with preparing a Cabinet paper on institutional arrangements to occur alongside the decisions on the legislative framework. To achieve this timeline we are seeking your feedback on this paper by 23 February. This will allow us to work with MoE on the draft paper and support you with the following consultation process:
 - Departmental Consultation 4-7 March
 - Ministerial consultation 8-18 March
 - Lodge 21 March
 - Cab committee approval 27 March (SOU)
 - Cabinet 1 April