



Title:	Charter Schools Kura Hourua: update and current issues		
Report No:	2024-0135		
Date:	7 May 2024	Security Level:	IN CONFIDENCE
Minister and Portfolio:	Hon Nicola Willis, Minister for the Public Service		
CC:	Hon David Seymour, Associate Minister of Education (Partnership Schools)		

Purpose

To provide a short update on the establishment of the charter school model and the Charter School Agency, and to provide a draft paper for the Cabinet Legislation Committee for ministerial consultation.

Update

Following Cabinet's decisions in early April work is proceeding apace as follows:

- The **Bill to amend the Education and Training Act** is being drafted and, under delegated decision-making authority, officials are seeking additional decisions from Ministers Stanford and Seymour (these are discussed below).
- A draft paper for the Cabinet Legislation Committee and the draft **orders to establish the Charter School Agency** are attached for ministerial consultation. They are due to be finalised and lodged by 16 May (refer below).
- You (with a recommendation that it be forwarded to Minister Seymour) have been sent a report on Deputy Public Service Commissioner Rebecca Kitteridge's process to appoint an **Acting Chief Executive, Charter School Agency**. Feedback is sought on matters to be considered for this role, via the position description.
- Before the agency is established, we will work with Cabinet Office to ensure that **Minister Seymour's delegations** for Partnership Schools cover the Charter School Agency and the Authorisation Board as well as the charter school policy. This is a procedural step to ensure he is the 'appropriate Minister' under the Public Service Act 2020.
- Minister Seymour is anticipating making a **pre-Budget announcement** about the Charter School Agency on 14 May and we are providing background supporting material. The Ministry of Education (MoE) is providing information on the model itself.

Statutory settings for the Authorisation Board

The Authorisation Board will be making statutory decisions that have impact on students in compulsory schooling, on public and private sector participants, and which will determine the use of public funds by the Charter School Agency and Charter Schools | Kura Hourua.

Cabinet agreed that the standard requirements for statutory boards would apply to the Authorisation Board and delegated decisions on the details to the Minister of Education and the Associate Minister of Education. We have worked with MoE on appropriate arrangements for accountability, performance reporting, and appointment/removal of members. MoE is now providing Ministers with advice on these issues.

Applying standard accountability and governance arrangements

We have recommended to MoE that standard governance and accountability frameworks be used as much as possible. The existing frameworks are well developed and fit-for-purpose; bespoke arrangements are difficult and inefficient to manage over time and there is no compelling reason to depart from standard arrangements.

	The Board does not govern an entity and will not have direct operational or financial responsibilities, so financial reporting requirements are not needed. However, its decisions will determine the operational and financial activities of the Charter School Agency. We have recommended that: - the arrangements that would automatically apply to other government bodies should apply to the Authorisation Board: the Ombudsmen Act 1975, the Public Audit Act 2001, the Public Records Act 2005, and the Official Information Act 1982. The Privacy Act 2020 will apply automatically. This advice is consistent with the Legislation Design Advisory Committee Guidelines. - Appropriate parts of the Public Finance Act, Public Service Act and Crown Entities Act that should apply include: - Members are accountable to the responsible Minister for their duties, behaviour and for complying with relevant ministerial directions. - Minister can appoint and remove members. - Entity must report on its intentions and performance to the Minister who tables it with Parliament. The reporting requirements can be relatively simply met through the Authorisation Board combining its reporting with that of the Charter School Agency (which will have its reporting combined with that of the MoE). The relevant provisions that we recommend apply to the Authorisation Board are set out in the appended table.
Cabinet Legislation Committee (LEG), Cabinet, and the Executive Council need to establish the Agency	Two Orders in Council are required to give effect to Cabinet’s decision to establish a new departmental agency. A draft paper for LEG is attached and the timeline for the process follows: Ministerial consultation: now until Tuesday 14 May. We recommend that you consult Minister Seymour and Minister Stanford on this paper. It is a routine administrative paper and contains no policy decisions. Lodgement: your office needs to lodge the paper, and accompanying Advice Sheets with the Cabinet office by 10am on Thursday 16 May. We will provide the Advice Sheets to your office on Wednesday 15 May and the Parliamentary Counsel Office (PCO) will send the Orders themselves directly to Cabinet office. LEG meets: Thursday 23 May Cabinet and Executive Council meet: Monday 27 May Orders published in the Gazette: 30 May 2024 and the 28-day period begins (it ends 27/6) Agency commences: 1 July 2024 While the legislative instruments will have little to no effect on the public as they involve adjusting internal governance arrangements, a waiver to the 28-day rule is not sought as there is sufficient time for the change to be notified in the Gazette before the Agency commences. If for some reason there is not a pre-Budget announcement about the new departmental agency, we will work with PCO to ensure that the Gazette notice comes out after the Budget as the funding for the Agency remains subject to the Budget.
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Appendix

Relevant Provisions		Modifications
Accountable to Minister		
s26 Crown Entities Act (CEA)	Accountability of members to responsible Minister for complying with duties and directions	Change the legislative references to refer to Charter School legislation rather than Crown Entities Act
s49 – 50, s53 – 57 CEA	Individual and collective duties of members	-
s12 Public Service Act	Uphold public service principles: politically neutral, free and frank advice, merit-based appointments, open government, stewardship	Follow the model for a Crown agent the Authorisation board has a collective duty to uphold the principles and it owes this duty to the responsible Minister
s103, 115 CEA	Minister may direct entity to give effect to a government policy that relates to the entity's functions and objectives following standard procedure	-
s113 CEA	Safeguard independence of entity	-
Appointment by Minister		
s28 CEA	Minister appoints members	-
s30 CEA	Qualifications of members	Simplify to remove references to financial management
s31-32 CEA	Requirements and term of appointment (up to 3 years plus reappointment)	-
s34-35 CEA	Validity of acts and appointments	-
s36 CEA	Minister has full discretion to remove members by providing written notice	-
s41 CEA	Process for removal	-
s43 CEA	No compensation for loss of office	-
s44 CEA	Resignation of members	-
Performance Reporting		
s138 - 149A CEA	Statement of intent	Simplify to remove references to finances, operations and organisational health and capability. Clarify that the statement of intent can be provided as a short supplement to that of the Ministry of Education as that already covers the Charter School Agency
s150, 152 CEA	Annual report	Simplify as above
s45AA(2)(b) Public Finance Act	Contents of annual report	Require an assessment of progress in relation to Statement of intent. This is the model that applies to Interdepartmental Executive Boards who do not manage finances.

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