

Regulatory Impact Statement Addendum: Additional legislative changes for Charter schools | Kura hourua

Coversheet

Purpose of Document	
Decision sought:	Additional legislative changes for Charter schools Kura hourua
Advising agencies:	Ministry of Education
Proposing Ministers:	Hon David Seymour, Associate Minister of Education
Date finalised:	17/07/2024
Problem Definition	
<p>This document is an addendum to the previous Regulatory Impact Statement: Reinstating a New Zealand model of charter schools (20 March 2024, CAB-24-MIN-0107.01). This Regulatory Impact Statement provides analysis of two additional policy issues being included in an Amendment Paper to the Education and Training Amendment Bill, and is intended to be read in conjunction with the previous Regulatory Impact Statement. This addendum sets out options and analysis for two additional issues, namely:</p> <ul style="list-style-type: none"> • charter schools' access to shared resources between schools, and • changes to the provision of Multi-Employer Collective Agreements in charter schools. 	
Shared resources between schools	
<p>State (including State integrated) schools receive shared resources as part of a local network. The resources provide staffing to schools which also includes in some cases additional supporting funding and/or space allocation. The charter schools funding model is designed to ensure that resourcing will be broadly equivalent to a similar State school. This means that it is important that students and staff in charter schools would largely have access to the same resources a state school would have. However, to ensure that charter schools and their students will have access to shared services, legislative changes are needed.</p> <p>Current employment agreements for teachers and principals assume that work will be undertaken in State schools. 9(2)(h)</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	
<p>Additionally, by converting a State school into a charter school, a Crown Entity School Board will be dissolved and replaced with a sponsor entity operating under a contract with the Crown. As a result, any Board-agreed arrangements relating to the sharing of staffing in that school will cease to exist.</p>	
Multi Employer Collective Agreements	
<p>The possibility of a charter school sponsor being required to engage in bargaining for a Multi-Employer Collective Agreement (MECA) could mean that sponsors have less flexibility in</p>	

setting specific terms and conditions for staff, which is against the charter school model's core objectives.

There is also the possibility that the Secretary for Education (the Secretary) could become party to a MECA involving charter schools, if a MECA was sought that would bind State schools or State integrated schools and one or more sponsor. MECA bargaining involving charter schools and State schools would likely be complex and time-consuming as it could require the Secretary and charter school sponsors, who may have different approaches to terms and conditions of employment, to bargain collectively.

Executive Summary

Shared resources between schools

To provide charter schools access to shared resources that are funded by the Government, we have considered the following legislation changes:

- 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.

The proposed amendment to the Education and Training Act 2020 (the Act) supports equity for students at charter schools as it enables access to the same services for students whether they are enrolled in a charter or a State school. Providing access to these shared resources will help improve collaboration so both charter and State schools learn from each other and coordinate support for students.

Multi Employer Collective Agreements

For the application of MECAs to charter schools, the following options were considered:

- Option One: Maintain the status quo.
- Option Two (full carve out): Charter schools could be carved out of the MECA provisions so unions cannot initiate MECA bargaining with those employers.
- Option Three (limited carve out): Charter schools could be carved out of the MECA provisions so unions cannot initiate MECA bargaining covering both State and charter schools.
- Option Four (full opt-out): Charter schools and/or the Secretary could be given an explicit opt-out of the bargaining process.
- Option Five (limited opt-out): Allow charter schools or the Secretary, or either, to opt out of MECA bargaining which crosses the charter/State boundary.

These options were evaluated against how well they provided flexibility, aligned with existing employment regulation provisions, 9(2)(h), 9(2)(j)

The Ministry recommends Option Three as it 9(2)(h) and increases the flexibility for charter school sponsors to set their own terms and conditions for their employees. 9(2)(j)

Alternatively, Options Two and Four will provide further

flexibility in individual sponsors negotiating the terms and conditions. 9(2)(j)

The legislative changes being proposed to Cabinet is Option 2 a full carve out, meaning charter schools would be carved out of the MECA provisions so unions cannot initiate MECA bargaining with those employers.

Limitations and Constraints on Analysis

There are limitations and constraints to this analysis, including the limited timeframes.

As the Minister’s aim is to open the first charter schools in early 2025, there are limitations on the analysis due to the constrained timeframe available. The Education and Training Amendment Bill is currently at Select Committee, and the Minister prefers that the amendment paper is being consulted on during this process.

9(2)(g)(i)

9(2)(j)

Responsible Manager(s) (completed by relevant manager)

Jennifer Fraser
General Manager School Policy
Te Pou Kaupapahere | Policy
Ministry of Education



17 July 2024

Quality Assurance (completed by QA panel)

Reviewing Agency: Ministry of Education

Panel Assessment & Comment: The Ministry of Education’s Quality Assurance Panel has reviewed the Addendum to the Regulatory Impact Statement produced by the Ministry of Education and dated 16 July 2024. The panel considers that it partially meets the Quality Assurance criteria. The Addendum is concise and makes a clear case, on balance, for the preferred options. 9(2)(g)(i), 9(2)(j)

The Addendum clearly identifies the constraints on the analysis.

Introduction

1. This document is an addendum to the previous Regulatory Impact Statement: Reinstating a New Zealand model of charter schools (20 March 2024, CAB-24-MIN-0107.01). It provides analysis of two additional policy issues being included in an amendment paper to the Education and Training Amendment Bill (the Bill), and is intended to be read in conjunction with the previous Regulatory Impact Statement.
2. The Cabinet paper asks approval for the following additional legislation changes to the Education and Training Act 2020 (the Act):
 - to continue the sharing of resources between clusters of 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.
 - to provide that the 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.
3. This addendum sets out options and analysis for two additional issues, namely:
 - charter schools' access to shared resources between schools, and
 - changes to the provision of Multi-Employer Collective Agreements in charter schools.

Sharing resources between schools

What is the context behind the policy problem?

4. Resources are allocated to individual State schools, and to schools as part of local networks. The networks are typically geographically based, and they provide the system with economies of scale across each group of schools. The resources provided mainly include staffing to schools, but can also includes in some cases funding and/or space allocation. The resources are intended to result in:
 - stronger relationships between schools;
 - reduced costs for the Crown;
 - utilising staff more efficiently, particularly within areas of existing shortages; and
 - reduced property costs, noting that this is balanced against increased travel costs.
5. Network-allocated resources include specialist roles such as:
 - Communities of Learning | Kāhui Ako (Kāhui Ako): This initiative provides additional staffing roles to support collaboration between schools to lift the quality of leadership and teaching so that best practice becomes universal;
 - Resource Teachers: These services aim to improve teaching and learning for students;
 - Learning Support Coordinators (LSC): A role that focuses on the identification and coordination of responses to learning support needs; and

- Technology staffing for year 7-8 students: This allows for the shared use of specialist teachers and infrastructure for technology education for years 7 and 8 that the Crown would otherwise need to provide for all schools.

What is the policy problem or opportunity?

6. While charter schools will have more flexibility over their curriculum and teaching than State schools, the charter schools funding model is designed to ensure that resourcing will be broadly equivalent to a similar State school. Additionally, the conversion process would take into account any ongoing commitments to reduce the disruption of learning, including any shared resources.
7. While teachers' employment agreements do not expressly stipulate that services can only be provided to State and State-integrated school students, the agreements only cover the employee for work undertaken in state and state integrated schools. Sharing network-based resources with charter schools will require teachers, who previously worked in State and State integrated schools exclusively, to perform work at charter schools. 9(2)(j) [redacted]. This could have the effect of disadvantaging students who attend charter schools as they may not receive access to specific services.
8. Additionally, converting State schools that become charter schools will undergo a change in governance structure. A Crown Entity Board (School Board) would be dissolved and replaced with a Sponsor entity with a contract with the Crown. As a result, any Board-agreed arrangements relating to sharing of staffing will cease to exist, disrupting these services provided to students.

What criteria will be used to compare options?

9. The Ministry has assessed the options based on the following criteria:

Criteria	Description
Policy intent	Achieving the policy intent of charter schools model.
Economic efficiency	Minimising deadweight costs.
Horizontal equity	Charter schools receiving resourcing in a way that would be broadly equivalent for that of State schools.
Vertical equity	Supporting students from varying socio-economic backgrounds is provided.

What options are being considered?

10. This part sets out options to consider relating to shared resources between schools. Our options are:
 - Option One: No legislative changes are made, meaning charter schools potentially may not have access to specific services.
 - Option Two: Making legislative changes, enabling charter schools to have access to shared resources between schools.

Option One – No legislative changes are made, meaning charter schools potentially may not have access to specific services.

11. 9(2)(h) [REDACTED] this option would have the risk that new and converting charter schools may not be able to access shared resources between schools which are funded by the Government. Crown Entity Board would be dissolved and replaced with a Sponsor entity with a contract with the Crown, meaning any Board-agreed arrangements relating to sharing of resourcing will cease to exist.
12. This would go against the charter school funding model design principle to provide broadly equivalent resourcing. It would also prevent charter schools from accessing resourcing for specific services, such as learning support services, forming technology agreements to provide specialist instruction to students, or knowledge sharing between schools.
13. It may also reduce the economic efficiency, as each charter school may provide these services separately. It also goes against the policy intent of some specific shared resources that are designed to be delivered at a network level, for example sharing best teaching practice across schools.

Option Two – Making legislative changes, enabling charter schools to have access to shared resources between schools.

14. This option would enable that new and converting charter schools have access to shared resources that are funded by the Government. To implement this option, the following legislation changes would be needed:
 - providing, 9(2)(h), 9(2)(j) [REDACTED], 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.
15. The proposed amendment to the Act supports equity for students at charter schools as it enables access to the same services for students whether they are enrolled in a charter or State school. For example, students with specific learning support needs will be able to access specialist services which will assist their development and participation in schooling. It also allows charter schools to form technology agreements with other schools to share or provide access to technology centres with specialist teaching and facilities which is particularly important for year 7-8 students.
16. While charter schools are not required to deliver the same curriculum, providing them with access to these shared resources will help improve collaboration so both charter and State schools learn from each other and coordinate support for students. This may also enable a greater spread of innovative practice due to the increased diversity in the way teaching and learning is organised at these schools.
17. This option is likely to preserve or support preservation of pre-existing collaborative relationships where a school in that collaboration converts. The impact on collaboration is less certain for new charter schools entering a shared resourcing arrangement.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

We recommend Option Two – Making legislative changes, enabling charter schools to have access to shared resources between schools.

18. As highlighted in the analysis, this option will allow charter schools to have access to shared resources with other schools and aligns better with all criteria described. This option aligns better with the policy intent, increases efficiencies by reducing deadweight costs, and increases horizontal and vertical equity in comparison with Option One. It also reduces the risk of charter school students being disadvantaged by not receiving specific services.

19. 9(2)(g)(i), 9(2)(j)

Multi-Employer Collective Agreement provision

What is the context behind the policy problem?

The charter schools model focuses on an increase in flexibility

20. Workforce flexibility is a key objective of the charter school model. The policy intent is for staff of a converting school to transfer to an individual employment agreement on the conversion date on terms which are no less favourable overall, and for the sponsor to have flexibility to directly negotiate employment terms and conditions with new staff. The sponsor will be the employer for the purpose of negotiating terms and conditions of employment for staff employed by charter schools.

Current legal provisions relating to Multi-Employer Collective Agreements

21. Unions can bargain for a collective agreement that either applies to the employees of one employer (Single Employer Collective Agreement, or SECA), or to multiple employers (MECA). Under section 33(5) of the Employment Relations Act 2000, a MECA is defined as a single collective agreement involving two or more employers. In MECA bargaining, agreement is only reached if each employer agrees to the terms, i.e., one employer cannot bind another.

22. Under current legislative settings:

- employers cannot opt out of collective bargaining for a MECA at initiation, but must enter into bargaining in good faith.
- unions and employers must conclude a collective agreement unless there is a genuine reason based on reasonable grounds for not concluding.

23. We note that the settings for State schools in the education service are unique, in that although individual employers are Crown entities they do not bargain the employment agreements that cover their staff. Rather, the Secretary, acting under delegation from the Public Services Commissioner, bargains the collective agreements as the “employer” party. The resulting SECAs are binding on all State school boards covered by the agreements.

24. A union(s) could initiate MECA bargaining with all or some charter school sponsors and/or the Secretary, subject to timing relating to the expiry of any current collective agreement in force (if any) and other statutory preconditions of doing so.
25. Since 2019 the Employment Relations Act 2000 has specified that opposition to concluding a MECA is a genuine reason not to conclude a collective agreement if that opposition is based on reasonable grounds. 9(2)(g)(i), 9(2)(h)

[REDACTED]

New Zealand is a signatory of the International Labour Organisation

26. New Zealand has ratified and is therefore bound by the International Labour Organisation's (ILO) Right to Organise and Collective Bargaining Convention, 1949 (Convention 98). This convention obligates New Zealand to promote voluntary negotiation between employers' and workers' organisations, with a view to regulating terms and conditions of employment by means of collective agreements.
27. Additionally, the ILO's Declaration on Fundamental Principles and Rights at Work obligates New Zealand to respect, promote, and realise the principles concerning the fundamental rights which are the subject of ILO fundamental conventions (including Convention 98). New Zealand's commitments under the Declaration are reinforced through a number of free trade agreements. 9(2)(h)

[REDACTED]

What is the policy problem or opportunity?

28. The charter school model aims to lift educational achievement by increasing choice and enabling innovation in schooling. Key features of the charter school model include greater flexibility in setting employment terms and conditions than in the State schooling system. This flexibility is balanced by a high level of accountability for outcomes, as specified in the contracts.
29. The possibility of a charter school needing to engage in bargaining for a MECA could conflict with this key objective of sponsors having greater flexibility in their operations, including in employment conditions for staff. A MECA could affect sponsors' ability to offer employees varied terms and conditions, and therefore decrease the flexibility the schools can provide in teaching and other aspects of school operations.
30. MECA bargaining would likely be complex and time-consuming as it would require multiple employers, who may have different approaches to terms and conditions of employment, to bargain collectively. There is also the possibility that the Secretary could become party to a MECA involving charter schools, if a MECA was sought that would also bind State schools. This would also modify the Secretary's role to become both funder of charter schools and party to negotiation of their employment agreements.

Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

31. The Ministry has assessed the options based on the following criteria and compared them against the status quo. These criteria are developed to assess whether the policy solutions will achieve the overarching objective of supporting the charter school model.

Criteria	Description
Flexibility	Providing increased flexibility to charter schools relating to bargaining of employment terms and conditions.
9(2)(g)(i), 9(2)(j)	9(2)(g)(i), 9(2)(h)
Disruption to the sector	Reducing any disruption towards State sector bargaining or the opening of charter schools.
Consistency with existing provisions	Minimising differences in how charter school sponsors and other employers are regulated, by preferring options which are consistent, or as close as possible, to the existing employment relations settings.

What options are being considered?

32. This part sets out options for achieving flexibility in employment conditions for charter schools. Our options are:

- **Option One:** Maintain the status quo.
- **Option Two (full carve out):** Charter schools could be carved out of the MECA provisions so unions cannot initiate MECA bargaining with those employers.
- **Option Three (limited carve out):** Charter schools could be carved out of the MECA provisions so unions cannot initiate MECA bargaining covering both State and charter schools.
- **Option Four (full opt-out):** Charter schools and/or the Secretary could be given an explicit opt-out of the bargaining process.
- **Option Five (limited opt-out):** Allow charter schools or the Secretary, or either, to opt out of MECA bargaining which crosses the charter/State boundary.

Option One – Maintain the status quo

33. In this option, unions would be able to initiate MECA bargaining with both charter school sponsors and the Secretary. Charter schools would not be able to opt-out of bargaining. This would align with the Employment Relations Act 2000 9(2)(g)(i).
34. However, it would reduce flexibility for charter schools in their employment settings, as terms and conditions could become standardised between two or more charter schools. Given the Secretary could become involved in MECA bargaining with charter schools, this option could also result in the terms and conditions of employment being sought to be the same as those in State schools, for charter schools party to the MECA.

Option Two – Full Carve Out (The Associate Minister of Education’s proposed option)

- 35. In this option, the union(s) would not be able to initiate a MECA that includes charter schools. They would only be able to seek a SECA, which provides charter schools with full autonomy to negotiate changes to employment terms and conditions relevant to their particular context. This provides bargaining autonomy for charter school employers and reduces the disruption of bargaining for State schools as no MECA bargaining will occur across the State/charter school line.
- 36. Although this option provides bargaining autonomy for Sponsors and reduces the disruption for bargaining for State schools, it would also preclude charter school employers from participating in union-initiated multi-employer collective bargaining if they want to do so. Some sponsors may prefer to share the time and energy needed to negotiate and manage the industrial process with other employers, allowing them to focus on their core business.

9(2)(h) [Redacted]

37. 9(2)(h) [Redacted]

38. 9(2)(h) [Redacted]

39. 9(2)(h) [Redacted]

Option Three – Limited carve out

- 40. In this option, unions could initiate a MECA with two or more charter schools but could not include State schools in the same MECA. This option would mitigate any potential complexities for the Ministry of Education as the Secretary will not be part of any MECA negotiations for charter school employees.
- 41. This also enables somewhat more flexibility for charter schools, as the terms and conditions agreed in charter schools will not be the same as those for State school employees. However, unions will still be able to form a MECA within charter schools, reducing the flexibility in setting terms and conditions compared to Option two.

9(2)(h)

- 42. 9(2)(h)

Option Four - Full opt out

43. In this option, union(s) could seek a MECA with the Secretary and/or charter school employer(s), but the Secretary and/or charter school employer(s) could opt out. This option will provide full flexibility to charter school sponsors as they will have autonomy over deciding whether to be part of the MECA bargaining process.

44. This option aligns with previous legislative settings in the Employment Relations Act 2000 that were in place from 2015 until 2018, which allowed employers to opt out of MECA bargaining without having to provide a reason.

45. Under this option, MECA bargaining could still occur if at least one charter school decides to stay in and/or if the Secretary does not opt-out. 9(2)(j)

- 46. 9(2)(j)

9(2)(h)

- 47. 9(2)(h)

Option Five – Limited opt out.

48. In this option, charter schools or the Secretary could opt out of MECA bargaining with the other party (i.e. the Secretary could opt out of bargaining with a charter school sponsors and vice versa). This option would only permit a sponsor to opt-out from a MECA involving the Secretary. They would still be required to participate in MECA bargaining with other charter schools.

49. For the Secretary this option is no different than Option Four, as there is only one employer for the State schooling sector. For charter schools this option would provide greater flexibility than the status quo but be more restrictive than Option Four, as it only permits the sponsor to opt-out from a MECA involving the Secretary. Sponsors would still be required to participate in MECA bargaining with other charter schools. 9(2)(g)(i), 9(2)(j)

50. Should the Secretary choose not to opt out, this option provides the flexibility for charter school sponsors to choose to participate in MECA bargaining with the State schooling sector. 9(2)(j)

51. As this legislative change provides an opt out rather than a carve out, and it also enables MECA bargaining to be initiated with multiple charter schools, this option will create less significant restriction on parties' ability to bargain freely.

9(2)(h)

52. 9(2)(h)

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How do the options compare to the status quo/counterfactual?

Scoring: The overall assessment of options has been determined through averaging the ratings across the criteria. The maximum possible score is ++ and the minimum score possible is --

	Option One – Status Quo	Option Two – Full Carve Out	Option Three – Limited Carve Out	Option Four – Full Opt-out	Option Five – Limited Opt-out
	0	++	+	++	+
Flexibility	Unions would be able to initiate MECA bargaining with all or some charter school employers and/or the Secretary.	Unions would not be able to initiate a MECA that includes charter schools. They would only be able to seek a SECA, which provides charter schools with full autonomy to negotiate changes to employment terms and conditions relevant to their particular context, meaning there is an increase in flexibility.	Unions could initiate a MECA with charter schools but could not include State schools in the same MECA. This enables more flexibility for charter schools, as the terms and conditions agreed in charter schools will not automatically be the same as those for State school employees. However, unions will still be able to form a MECA within charter schools.	Unions could seek a MECA with the Secretary and/or charter school employer(s), but the Secretary and/or identified charter school employer(s) could opt out. This option will provide full flexibility to charter school sponsors as they will have autonomy over deciding whether to be part of the MECA bargaining process.	Charter schools or the Secretary could opt out of MECA bargaining with the other party. This enables more flexibility for charter schools, as the terms and conditions agreed in charter schools will not automatically be the same as those for State school employees. However, unions will still be able to form a MECA within charter schools.

9(2)(j), 9(2)(h)

9(2)(j)

<p>Consistency with existing provisions</p>	<p>0</p>	<p>--</p>	<p>-</p>	<p>--</p>	<p>-</p>
	<p>Aligns with existing regulatory employment relations settings for State schools.</p>	<p>A strong misalignment with existing regulatory employment settings.</p>	<p>Although creating a limited carve out of existing employment settings, charter schools will retain MECA bargaining rights.</p>	<p>Undermines the intent of the MECA policy within the Employment Relations Act.</p>	<p>Although creating a limited carve out of existing employment settings, charter schools will retain MECA bargaining rights.</p>

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Our preferred option is Option Three: a limited carve out of MECA provisions.

53. The Ministry recommends Option Three as it 9(2)(g)(i) [redacted] increases the flexibility for charter school sponsors to set their own terms and conditions for their employees. 9(2)(j) [redacted]
54. Alternatively, Options Two and Four will provide further flexibility in individual charter schools negotiating the terms and conditions. 9(2)(g)(i), 9(2)(j) [redacted]
55. The Amendment Paper proposes Option Two a full carve out, meaning charter schools would be carved out of the MECA provisions in the Employment Relations Act 2000 so unions cannot initiate MECA bargaining with those employers.

Proactively Released