

Regulatory Impact Statement

Developing and Implementing a New Zealand Model of Charter School

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Education.

New Zealand's social and economic future requires all its citizens have the qualifications and skills they need to succeed in education, in the workforce and in life. The Government has set ambitious targets to achieve this. Meeting the targets will require significant effort, especially in respect of those groups of students whom the system has not served well.

The Confidence and Supply Agreement signed by the National and ACT Parties agreed to pilot a model of charter school within this Parliamentary term (ending in 2014).

A pilot of a New Zealand model of charter school will allow an evaluation of whether new approaches that couple high accountability requirements based on outcomes targets with more freedom to govern and manage the school produces good results for learners.

This Regulatory Impact Statement provides an analysis of options for seven of the design elements of the model. Those addressed are: the decision-maker for the establishment of a charter school; secular education; enrolment; suspension and expulsion; teacher registration; curriculum; and qualifications. The design of these elements needs to balance the interests of:

- the sponsor of the charter school be free to innovate
- students, to be both protected from harm and to get a good education
- the Crown as both the policy owner and funder of charter schools.

All options have been analysed for their impact on these three stakeholders.

The Working Group appointed by the Government to advise on the design of the policy has been given the major role of consulting on the policy. Although there has been considerable consultation and discussion about charter schools, it has mostly centred on whether or not charter schools should be implemented. It has not addressed all of the design elements covered in this paper as a package. However, concerns about teacher registration, suspension and expulsion, secular education, curriculum and enrolment have all been raised in the course of consultation. The nature of further consultation is a matter for the Working group to determine.

This analysis has focussed on the options needed to develop legislation. It has not considered the decisions that will be made later by Cabinet/Ministers on matters such as **[withheld under section 9(2)(f)(iv) – to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials]**, resourcing formulae and implementation processes.

None of the policy options are likely to have effects that the government has said will require a particularly strong case before regulation is considered – namely, that they could:

- impose additional costs on businesses
- impair private property rights, market competition, or the incentives on business to innovate and invest, or
- override fundamental common law principles.

Frances Kelly
Group Manager, Schooling Policy

[Signature of person]

[Date]

Status quo and problem definition

1. New Zealand schools perform very well for many of their learners. In international studies, our top students are amongst the best in the world. However, these studies also identify a long tail of underachievement. Compared to other high performing countries we continue to have a relatively large proportion of learners performing below the basic competency level of PISA. Almost 9,000 New Zealand 15 year-olds (or 14 percent) are at the *lowest* levels of reading literacy according to PISA. Similar numbers are also at the lowest levels for mathematics literacy and science literacy. This has remained stable since 2000 and is a major concern.
2. New Zealand has one of one of the widest variations between the performance of its best performing students and its worst. This variation exists both within schools and within classrooms, regardless of socio-economic factors.
3. One of the important factors in ensuring New Zealand's social and economic future is that all its citizens have the qualifications and skills they need to succeed in education, in the workforce and in life. To this end, one of the Government's Better Public Service targets is that 85% of students achieve NCEA level 2 or equivalent by 2017.
4. The Government has identified four priority groups for whom the system does not perform well – Māori, Pasifika, children with special education needs, and children from low socio-economic areas. If we are to achieve the target set for NCEA achievement, the educational outcomes for these groups need to improve urgently. In 2011 provisional data, for example, 68% of all 18 year-olds achieved NCEA level 2 or equivalent, but only 50% of Māori and 60% of Pasifika students did so.

Current Position

5. Some schools have been slow to acknowledge the changes they could make to accelerate the achievement each of their learners. Teachers need to acknowledge and use students' identity, language and culture in ways that would make learning more authentic and relevant¹. Other factors for success are high expectations for every student's achievement and good engagement with parents, families and whānau over their children's education².
6. Some schools are doing really well for their students, including those from the priority groups. They take evidence-based, innovative approaches, and achieve very good education outcomes for all their students.
7. The Government is already providing considerable assistance to schools to lift the achievement of all learners, but particularly those from its priority groups. It is investing in initiatives, including:
 - *National Standards* – which aims to lift achievement in literacy and numeracy by being clear about what Year 1-8 students should achieve and by when

¹ See "Evaluation of Te Kotahitanga: 2004-2008" Myer, L.H. and others Wellington 2010

² Alton-Lee, Adrienne "Quality teaching for Diverse Students in Schooling: Best Evidence Synthesis" Wellington 2003

- *Youth Guarantee* – which is about providing new opportunities for 16 and 17 year olds to progress into further education, training or employment
 - *Positive Behaviour for Learning* – which provides programmes for schools, teachers and parents across the country to turn around problem behaviour in young people and to encourage pro-social behaviour
 - *Te Kotahitanga and He Kākano* – programmes which help schools to provide culturally intelligent teaching and leadership, with a focus on enabling the success of Māori learners
 - *Professional learning and development* – which assists schools and teachers to use data effectively to monitor, plan and report on students' progress.
8. None of these initiatives is of itself a 'silver bullet'. But together, they should bring about a major shift in the education system, so improvements in student achievement are wide-spread and sustained. This will take time as new attitudes and practices are bedded in across the system.
9. However, we are not getting the lift in achievement needed fast enough, particularly for those learners in the priority groups. On current trends, only approximately 73% of students will achieve NCEA level 2 or equivalent by 2017. We need to try innovative approaches to accelerate the progress and achievement of learners. Current school accountability mechanisms are organised around outputs such as developing and implementing policies rather than outcome measures, such as information on what students have achieved. Some schools feel the law, policy and administration restricts them. A pilot of a New Zealand model of charter school will allow us to evaluate whether new approaches that couple high accountability requirements based on outcome targets with more freedom to govern and manage the school produce good results for learners.

Decisions already taken

10. In December 2011, the Confidence and Supply Agreement signed by the National and ACT Parties agreed to pilot a model of charter school within this parliamentary term (ending in 2014). The agreement stated these schools will have freedom from some of the administrative constraints that apply to other schools in return for delivering clearly defined outcomes.
11. Some key givens from the Confidence and Supply Agreement are that:
- charter schools will have a sponsor that could be a for-profit organisation or a not-for-profit organisation
 - accountability arrangements will be through a contract between the sponsor and the Crown
 - the sponsor will be expected to meet agreed student achievement goals
 - the sponsor can expect freedoms from some requirements that apply to other schools
 - charter schools will have an ambitious mission statement that will define the distinguishing characteristics of the school
 - there will be an application process and prospective charter schools will have to meet certain standards to be permitted to operate.
12. Charter schools will operate in areas of significant educational challenge, and for those groups of students that the system has not served well. Currently, these are

Māori, Pasifika, students with special education needs and students from low socio-economic areas. The desired areas of focus may shift over time.

Objectives

13. The outcome sought is to accelerate improvements in the educational achievement of all New Zealand students, particularly those in areas of significant educational challenge, and those that the system has not served well.
14. A pilot of a New Zealand model of charter school will help do this by trialling a new governance and accountability model that will have freedom from some existing restrictions in return for stringent outcomes-based accountability for specified results. This will allow these schools to find new ways to provide education that will engage their students in learning.
15. Objectives need to balance the interests of three sets of stakeholders:
 - sponsors as the owners of charter schools
 - students to be both protected from harm and to get a good education
 - the Crown as both the policy owner and funder of charter schools
16. The interests of these three groups may not always align. Sponsors will need the flexibility to manage their own approaches to teaching and learning and the running of the school but these may not always coincide with the best interests of students both at the charter school and schools nearby. The Crown has to take a wider view of what happens in the education network and to ensure that its policies are fiscally responsible.
17. For the seven design elements discussed below, the objectives are to:
 - ensure that charter schools have freedom to innovate or use different approaches in order to achieve good results for their students
 - ensure that the pilot is designed so that sponsors with vision, capability and capacity for the school to succeed are those that are chosen to run charter schools
 - provide desirable protections for children because they are required to attend school
 - ensure students in charter schools receive an education that fits them for their future and that of New Zealand
 - ensure that education for students in other schools is not significantly jeopardised by enrolment law and practices for charter schools that would make other schools unviable
 - minimise fiscal and reputational risk to the government
 - assist government to achieve its targets for student achievement.
18. There is no authoritative or statutory basis for undertaking the analysis.
19. The Confidence and Supply Agreement with the Act Party states that the charter school policy will be implemented by the end of this Parliamentary term. This sets the timeframe to accomplish the passage of legislation, and a selection and set-up phase.

Regulatory impact analysis

20. This Regulatory Impact Statement focuses on the design and implementation of an appropriate New Zealand model of charter school within the parameters of the Confidence and Supply Agreement. The Cabinet paper outlines seven key design elements where choices must be made and this statement addresses each of these in turn. The seven elements are:
- the decision-maker for the establishment of a charter school
 - secular education
 - enrolment
 - suspension and expulsion
 - teacher registration
 - curriculum
 - qualifications
21. The analysis for each sets out the context, identifies options and analyses them against the relevant objectives and the impact on each of the stakeholders.

The decision-maker for the establishment of a charter school

22. Decisions on whether a state school will be established or a private school enters the state school system are made by the Minister of Education. Decisions to register a private school are made by the Secretary for Education. In some overseas jurisdictions, decisions on whether a charter school can be set up are made by an authoring body or bodies. These are either set up for the purpose or are existing bodies such as District Education Boards.
23. There is evidence that where there more than one authorising body, potential charter schools have “shopped around” to find the one with the easiest standards to reach. New Zealand will have a relatively small number of charter school applications. For these reasons the authorising body option has been restricted to a single body.
24. **Option 1. A new body is created to decide which proposals meet the standard to become a charter school.** Setting up a new body (Crown entity) to perform this function would be costly and initially it could be underemployed. Using an existing body would be possible. It is difficult to identify a non-Crown entity that would have the breadth of knowledge and expertise to perform this function. This option could only manage fiscal risk if the government capped the numbers or the budget for new charter schools. Decisions would be made at arm’s length from the government and the interpretation and application of criteria could diverge from government’s intentions over time. This option could reduce risk of suggestions of political involvement in the decisions but it increase the risk that the government could be ultimately held accountable for costly decisions that it had no part in.
25. **Option 2. The Minister of Education decides which proposals meet the standard to become a charter school.** Under this option the decision-maker would be the same for all schools entering the state system of education. The Minister would receive advice on proposals from the Ministry of Education, supplemented by an expert panel of advisers if necessary. This option gives the government more direct control over high-cost decisions for which the government

can be held accountable. No new body would need to be set up and the Ministry of Education already has expertise in understanding what makes an effective school.

26. **Impacts**

	Option 1 (New body (Crown entity) set up)	Option 2 (Minister of Education on advice from the Ministry.)
Impact on charter school	Neutral	Neutral
Impact on students and their families	Neutral	Neutral
Impact on the Crown	<p>The Crown entity model means that decisions are more at arm's length from the Crown and therefore increased risk that the board of the Crown entity will not be responsive to government policy. Cost of setting up a separate body with a board, management structure, corporate overheads etc.</p> <p>Accountability for decisions is at one remove from the Crown.</p>	<p>Closer control by the Crown, especially over fiscal matters.</p> <p>Less costly option as Ministry of Education already exists and has a range of expertise to judge proposals.</p> <p>Ministers can be held more directly accountable for decisions</p>

27. Either model could ensure strong capable sponsors and freedom of approach. Either model could also provide protections and an appropriate education for students. An arm's-length decision-making body (Option 1) can, however, result in policy drift from the government's intentions so that over time the authorising and contracting process could result in less rigorous standards.

28. The most substantial impact is on the Crown. Option 2 provides the Crown with the greatest control over which proposals are accepted and therefore the strongest lever to achieve its student achievement targets and to manage fiscal and reputational risk.

29. **Preferred Option:** The need for tight fiscal control and the high profile of this initiative means that Option 2 is the preferred option because the Crown has the most control over decisions.

Secular Education

30. A fundamental principle of the national education system is that it is secular and many people have strong opinions on this. The first Education Act of 1877 contained a section requiring teaching in state primary schools to be "entirely of a secular character." The secular section was never extended to secondary schools when they became part of the state education system but the Bill of Rights Act would now ensure that similar law would apply to them. The current Education Act

allows primary schools to close when religious instruction is offered and no student can be compelled to attend.

31. The system does allow for religious education through state integrated schools and through private schools but these are schools of choice.
32. The primary aim of the special character of a charter school will be to improve educational outcomes for students in the priority groups or areas. It may support and enhance this through other elements of a special character. The Confidence and Supply Agreement proposes that being faith-based is one of these.
33. **Option One: Charter schools are secular and cannot include religion as part of their special character.** This option would align charter schools with the secular education principle which many New Zealanders believe should apply. The existing sections of the Education Act 1964 relating to religious instruction and the Bill of Rights Act would apply. Schools with a religious special character that wish to become part of the state system can still enter through the integration process.
34. **Option Two: Charter schools can have a faith-based element to their special character.** Charter schools could opt to have a faith-based element to their distinguishing characteristics if they can show that this will enhance and support the primary aim to improve outcomes for the priority groups or areas. Although it is difficult to account for selection bias, Ministry of Education analysis indicates that many faith-based schools produce good outcomes for their students. In line with provisions in the Private Schools Conditional Integration Act 1975, students could opt out of religious observance and instruction. Existing sections of the Education Act 1964 relating to religious instruction and the Bill of Rights Act would apply to charter schools that do not have a faith-based element to their special character.

35. **Impacts**

	Option 1 (Charter schools are secular)	Option 2 (Charter schools are able to have a faith – based element)
Impact on charter school	Prevented from using an element that could help students' performance improve.	Enabled to use an element that could help students' performance improve.
Impact on students and their families	Education with a religious special character can only be accessed through integrated schools within the state system.	Allows more choice for parents/students
Impact on the Crown	Upholds secular education which will be regarded as the right decision by many.	Could be seen as making further inroads into secular education. Could help achieve targets

36. Option 1 could have a reasonably significant negative impact on any charter school that wished to use a faith-based approach as an element to enhance its student achievement. Many parents prefer a faith-based approach to their children's education but integrated schools of an appropriate faith are not available to all. Option 1 could prevent some parents from being able to access a type of education that they believe will be the most suitable for their children's success. There could be some negative impact on the targets for student achievement.
37. Although Option 2 does not provide an absolute protection against a sponsor whose educational purposes are secondary to religious ones, a rigorous process for considering proposals to establish a charter school should be able to identify where this occurs. Faith-based approaches can have a positive impact for students and their families. The impact on the Crown's risks would be limited to negative reactions to taxpayer funding for religious purposes. Since charter schools will be schools of choice, secular education provision will be available for all students that want it. Option 2 could contribute to the achievement of government targets.
38. **Preferred Option:** Option two is the preferred option because it has the ability to enhance student achievement and therefore to help the government achieve its targets.

Enrolment

39. Enrolment policy is necessary to ensure that any new school added to the school network is viable and that the quality of education in neighbouring schools is not compromised. Because of the compulsory nature of education for learners between 6 and 16, the state needs to ensure that every student can access state-provided free and secular education. If a school has a special character (such as an integrated school) no students can be required to attend it because their parents may not agree with the special character. Charter schools will belong to the group of schools of choice because they will have a special character since a specialist focus is one of the tools that they can use to engage their students and support improved outcomes.
40. The state has an obligation to manage the network so that all students receive access to a good education and that there are not so many empty places in the school network as to be fiscally imprudent. If the new school draws too many students from neighbouring schools, those schools may become ineffective and learners in them may be negatively affected. This is because staffing and funding is based on roll numbers and less resourcing may, for instance, result in decreased subject options for students, less learning and support from peers for students and teachers, and a reduced pool of parents to provide effective governance. Schools may have to be closed or be placed into statutory interventions.
41. When introducing a new school into an existing network of schools, enrolment policy is the key lever to balance the negative impacts on the existing schools with the success of the new school. There are two key elements in enrolment policy: the maximum number of students that may be allowed to enrol at the school and how students are chosen.
42. **Option One: Enrolment Policy Similar to that for Special Character Schools.** There are already three types of special or designated character schools in the

state system. These are kura kaupapa Māori, designated character schools and integrated schools. This option would require:

- a maximum roll number. Maximum rolls could be set as part of the contract negotiations (as they are with integrated schools). The school may have more applicants than the maximum roll allows. If no increase in the maximum roll is negotiated, an enrolment scheme is put in place. For charter schools, this would consist of a ballot for available places with priority given to siblings of current or former students. This is a fair way of choosing between potential applicants.
- The school cannot refuse to enrol any student whose parents agree with the special character. This prevents it choosing students on the basis of criteria such as ability and protects the erosion of the special character over time.

43. **Option Two: The sponsor determines the maximum roll.** This option varies the maximum roll requirement. It allows the charter school freedom to attract as many students as it has property capacity for. It would allow a charter school to set up with a small number of students that might not be optimal for quality teaching and learning or financially viable. There could be significant negative impacts on neighbouring schools. The requirement around choice of students is as in Option 1.

44. **Option Three: School can choose pupils e.g. on the basis of ability.** This option varies the way schools can choose their students. It allows the charter school freedom to choose its students up to the maximum roll (set as in Option 1) and to choose those students most likely to allow it to achieve its targets. It means that the student profile in neighbouring schools could change negatively. It could also mean that charter schools do not contribute significantly to the Government's goals if they enrol only students who are already achieving. As state schools cannot choose their students on the basis of such factors, the effectiveness of charter schools will never be considered credible within the education sector.

45. Impacts

	Option 1 (Similar to enrolment policy for other special character schools)	Option 2 (Sponsor sets a maximum roll)	Option 3 (School chooses students)
Impact on the charter school	Does not allow a charter school to grow as much as it might want to.	Allows the charter school to grow to a size that it determines is optimal for its property.	Allows a charter school to have the greatest possibility of meeting its targets.
Impact on students and their families	Places some restrictions on opportunities for students to enrol at the charter school. Allows the impact on students in other schools to be	Allows students the greatest opportunity to attend the charter schools. Because the roll of the charter school would be based only on its physical space,	Could restrict opportunities for those who want to enrol but are not chosen. This could result in the best students in other schools being

	managed as effectively as possible so that they have good quality educational options if they do not want to attend a charter school.	there could be significant depletion of the rolls in neighbouring schools and a negative impact on the education that they could offer.	concentrated in the charter school. It could have a negative impact on those schools because of the peer effect that high performing students can provide.
Impact on the Crown	Allows the Crown to manage fiscal risk.	Does not manage fiscal risk well because of uncertainty about increases in roll numbers and possible consequential reduced opportunity and unused places in other schools.	May not assist in achieving government targets because these are already high performing students. Will create reputational risk because charter schools will not be regarded as credible if they are able to choose students in a way that other schools are not.

46. The objectives most relevant to this design element are those that focus on education for students in other schools and minimising of fiscal and reputational risk to the Crown there could be circumstances where the impacts could be significant. The negative impacts on charter schools and their potential enrollees are not so great, especially since there are mechanisms such as an increase in the maximum roll that can allow charter schools to grow if this is in the best interests of the network.

47. **Preferred Option:** Option one is the preferred option. While it could be seen as restricting the freedom of charter schools, it best balances their needs against those of other schools and their students and restricts fiscal risk for the Crown.

Suspension and expulsion

48. Removing a student from a school cuts across a student's ability to meet their statutory requirements to enrol at and attend a school. The grounds on which schools can do this and the procedures that they must follow needs to be a careful balance between an individual student's rights to natural justice and the rights of other students to obtain an education in a safe environment. The Government's current priority groups are disproportionately overrepresented in suspension and expulsion statistics.

49. Suspensions and expulsions are one proxy for measuring student engagement in schooling. In some overseas jurisdictions, the results of some charter schools

have been discredited because it has been alleged that the schools have pursued aggressive policies to expel students who are not achieving.

50. **Option One. Charter schools will be subject to the same legislation as state schools for stand downs, suspensions, exclusions and expulsions.** The current provisions set out threshold tests that trigger a set of procedures that can lead to the student being reinstated or asked to leave the school permanently. Schools are required to inform the Ministry of Education when this happens so that the student can be assisted to enrol at another school. The sections in the Education Act 1989 are supported by a set of more detailed rules around procedure made by the Secretary of Education that have the status of deemed regulations.
51. This option would ensure direct comparability with existing state schools. It would provide students with protections that have been tested in the courts and found to be fair. It gives all parties more certainty in what is a difficult area of law to get right.
52. **Option Two. Charter schools will be subject to the same requirements as private schools for suspending and expelling students.** Private schools are free to set their own reasons and procedures for suspending or expelling students providing that these do not contravene the rules of natural justice, other law such as human rights legislation and any contractual arrangement with parents. Private schools are required by the Education Act to inform the Ministry of Education if a student is required to leave the school permanently
53. This option would give flexibility to charter schools to develop their own reasons and procedures for suspending or expelling students. These may not meet the standards required by the courts for the protection of student rights. Since charter schools will be free, there will be no contractual arrangement with parents as there is with private schools. This could mean less certainty for students and their families.

54. Impacts

	Option 1 (Charter schools will be subject to the same legislation as state schools for stand downs, suspensions, exclusions and expulsions)	Option 2 (Charter schools will be subject to the same requirements as private schools for suspending and expelling students)
Impact on charter school	No freedom to determine their own threshold tests and procedures	Freedom to determine their own threshold tests and procedures.
Impact on students and their families	Known procedures that have been tested in the courts and have been found to be fair. Students have the same rights as students in the state system.	Could be some uncertainty around the adequacy of the policies determined and the robustness of procedures devised. Students and their families

		may not be as certain of the policies and procedures to be followed.
Impact on the Crown	Ensures a basis for comparison with other schools.	Charter schools could be accused of having processes that made it easier for them to get rid of non-performing students in order to meet their targets.

55. Option 1 would have some negative impact on charter schools' freedom to manage their own affairs. This may not be significant since the procedures under the Education Act are based on the common law principles of natural justice that would apply to any procedures developed by a charter school. Option 1 has a positive impact on the protection of students' right to access education by providing certainty and tested procedures. The procedures in Option 1 have an emphasis on returning a student to education as soon as possible. The Crown has an interest in ensuring that student rights are protected and that procedures cannot be manipulated to allow a charter school to achieve its goals. Having charter schools follow the same procedures as state schools will remove argument that different charter school procedures make it easier to exclude or expel troublesome students.

56. Option 2 provides charter schools with more freedom over their internal management of the school, although, as noted above, that freedom may not be significant. It could have negative impacts on students and their families because of uncertainty around untested procedures. The Crown's reputation may be negatively impacted if there is no true basis for comparison with suspension and expulsion data for state schools.

57. **Preferred option:** Option one is the preferred option because it best protects the rights of students and ensures a basis for comparison with other schools on what will be a key feature in determining the success of charter schools.

Teacher registration

58. All teachers and principals at state, state-integrated and private schools are required to be registered teachers by law. This is to ensure all teachers and principals meet minimum levels of competence and probity.

59. Teacher registration is undertaken by the New Zealand Teachers Council (NZTC), which certifies that a teacher is satisfactorily trained, qualified and suitable to be a teacher. It assures future employers, parents and the public that the requirements for registration have been met. Police vetting is part of the registration requirements.

60. The Government has recently announced changes to initial teacher education that will mean graduate entry to teacher training and a focus on increasing quality within the teaching profession. Quality teaching is the in-school factor that makes the biggest difference to student's achievement.

61. Some schools have found the requirement to employ all registered teachers restrictive in areas such as teaching trades and teaching in Te Reo Māori.
62. The current definition of a teaching position includes a school's principal, and this precludes the appointment of someone to this position who is the manager, rather than the professional/educational leader of the school.
63. Charter schools are to be offered freedoms in return for increased accountability for outcomes. Should one of those freedoms be the ability to employ the teaching staff that they believe will most meet those outcomes without requiring registration or by having different requirements from other schools?
64. **Option 1. No registration requirements, police vetting required.** This option would allow charter schools the freedom to employ anybody to teach in the school. This could allow the employment of people with specialist qualifications or experience that would be particularly suited to teaching in a charter school, despite the fact that they were not registered. Learners would have the protection that the employing body would know about any criminal convictions that any such person had and could decide whether or not they were a suitable person to be employed.
65. **Option 2. No requirement for teachers to be registered, but must hold a recognised teaching qualification and be police vetted.** This option would require charter school teachers to hold a professional qualification that would provide a minimum level of knowledge about the “craft” of teaching. There would be no requirement for any level of subject knowledge. Overseas teachers with a recognised teaching qualification could be employed. Learners would have the protection that the employing body would know about any criminal convictions that any such person had and could decide whether or not they were a suitable person to be employed.
66. **Option 3. A requirement for a certain percentage or number of teachers on the staff to be registered.** This option would provide for a core of teachers who were required to be registered and freedom to have another group of teachers who were not required to be registered but who were police vetted. This would allow the charter school to have some ability to employ those, who while not formally trained and/or qualified, could provide appropriate teaching for students. It would provide a group who were trained and qualified to provide professional support and leadership to the others.
67. **Option 4. All teachers in charter schools are required to be registered in the same way as teachers in state and private schools.** This option would require that all people in teaching positions in charter schools would have to seek and maintain teacher registration.
68. **A further option was considered. This option would allow the New Zealand Teachers Council to develop new criteria for registration for teachers at charter schools with fewer restrictions on eligibility. Police vetting would be required. This option is best considered as part of the current review of the Teacher Council and has not been further analysed here.**

69. *Impacts*

	Option 1 (No registration requirement)	Option 2 (No registration but recognised teaching qualification)	Option 3 (% of staff to be registered)	Option 4 (All teachers to be registered)
Impact on the charter school	Freedom to employ teaching staff without any outside requirements	Some restriction on freedoms to employ teaching staff.	Increased restriction on freedoms to employ teaching staff but some flexibility as well.	Teaching staff who can be employed are limited to those who can gain registration.
Impact on students	<p>Some safety protections as criminal convictions will be known to the employer.</p> <p>No minimum guarantees of the quality of teaching.</p> <p>Restricted movement between charter schools and the rest of the teaching profession as registration cannot be gained or maintained at a charter school. This could impact negatively on the quality of teachers available</p>	<p>Some safety protections as criminal convictions will be known to the employer.</p> <p>Some guarantee that employees will know something about teaching but no guarantee that it is up-to date or suitable for NZ.</p> <p>No guarantee of subject knowledge depth, especially at secondary level.</p> <p>Limited or no ability to maintain registration.</p>	<p>Probity requirements for registration are about more than criminal conviction. Some safety protections in respect of unregistered teachers because convictions will be known to the employer.</p> <p>A core of teachers who have minimum requirements in respect of teaching quality and subject depth. These can provide advice and guidance to non-registered staff.</p> <p>Increased ability move between the charter school sector and other sectors</p>	<p>Probity requirements are about more than criminal conviction.</p> <p>Students are assured of minimum requirements in respect of teaching quality and subject depth.</p> <p>Healthy transfer of teachers across the sectors.</p>
Impact on the Crown	Does not align with the Government's	Does not align with the Government's	Partially supports the Government's	Supports the Government's quality

	quality initiatives	quality initiatives as teachers in charter schools would still sit outside most of the levers that government has to improve quality teaching.	quality initiatives.	initiatives.
--	---------------------	--	----------------------	--------------

70. It is difficult to assess the impact of the options on charter schools because we do not know how many charter schools will want to employ significant numbers of teachers who are not eligible for registration. Our best guess is that most charter schools will want to employ experienced, qualified teachers. The pool from which they can draw will be reduced if teachers are unable to obtain and maintain registration as would occur in Options 1 and 2. The negative impact of the more restrictive requirements of options 3 and 4 is therefore not likely to be significant.
71. The overall potential for a negative impact on students' education from teachers who do not meet the minimum standards for the profession is high. Options 3 and 4 will have the least negative impact on student's learning.
72. The government has initiated a programme of work to improve teacher quality as a matter of high importance and urgency. The review of the Teachers Council is part of this work. Teacher registration is one the most influential levers in raising teacher quality across the profession in both state and private schools. Allowing charter schools to stand outside this work will significantly damage the credibility of the Crown.
73. **Preferred Option:** The preferred option is option 4 since this supports the government's policy objectives for teacher quality without significant negative impact on charter schools or their students. The review of the Teachers Council may result in policy changes that allow more flexibility within a registration system.

Curriculum

74. State schools are required to follow the National Curriculum. This consists of two streams - the New Zealand Curriculum for English-medium schools and Te Marautanga o Aotearoa for Māori-medium schools. The curriculum is a broad, enabling framework and schools are expected to develop their own more detailed curricula and plans within that framework but tailored to the needs and interests of their particular school. The National Curriculum is highly regarded internationally and is widely accepted within the education sector in New Zealand. Private schools have to have a curriculum and make details of it known to parents
75. **Option 1. Charter Schools will be required to follow the National Curriculum.** The framework ensures that all schools have regard to the vision, values, key competencies and essential learning areas that are necessary to equip students for life in the 21st century. The framework is sufficiently broad that most schools should be able to customise it to their needs. This option ensures that the curriculum taught is appropriate for New Zealand students.

76. **Option 2. Charter schools will not be required to follow the National Curriculum.** There may be approaches that do not fit easily within the curriculum framework that work well for the priority groups. This option has the potential to result in a curriculum that is too narrow, closes off future options for students or does not give enough emphasis to the key competencies. It would allow the adoption of overseas curricula that may not be suitable for New Zealand students.

77. **Option 3. Charter schools do not have to follow the National Curriculum but must demonstrate how their curriculum aligns with the vision, principles, values and key competencies of the National Curriculum.** This option ensures that any curriculum is fit for New Zealand students but allows freedom for the charter school to adopt a curriculum outside the National Curriculum if it believes that that will best serve the needs of its students.

78. **Impacts**

	Option 1(Required to follow the National Curriculum)	Option 2 (Free to set own curriculum)	Option 3 (Can set own curriculum but must demonstrate the alignment with the vision and key competencies etc of the National Curriculum)
Impact on the charter school	Lack of freedom to develop the curriculum that schools believe is best fitted to support its students' learning.	Charter school is free to develop the curriculum that schools believe is best fitted to support its students' learning	Charter school has some freedom to develop its own curriculum to best serve its students' needs.
Impact on students	Ensures that students are taught using a broad and flexible curriculum that is suited for NZ.	Could result in a curriculum that is too narrow, closes off future options for students or does not give enough emphasis to the key competencies. It would allow the adoption of overseas curricula that may not be suitable for New Zealand students.	The curriculum is suitable for NZ students but allows for different approaches if these are decided to be in the best interests of the students.
Impact on the Crown	Neutral.	Could result in some students being disadvantaged in the future.	Allows some assurance that what will be taught will be suitable.

79. Option 1 would have small negative impact on the freedom of a charter school to develop a curriculum that it believed would help it achieve its outcome targets. This

would be small because the National Curriculum is a very enabling framework and the majority of state and state integrated schools do not have difficulty in using it to suit their particular approaches to teaching and learning. Option 1 would have a positive impact on students because they will be taught using a curriculum that has been specifically designed for New Zealand students and has international credibility. There would be no impact on the Crown.

80. Option 2 has a positive impact on charter school's freedom but could result in a significant negative impact on students' education if it resulted in unsuitable overseas curricula being adopted in New Zealand schools. This could also reflect negatively on the Crown.
81. Option 3 mitigates somewhat the negative impact on the ability of a charter school of being unable to choose its own curriculum. It ensures that students are taught the same values and key competencies as students in the state system.
82. **Preferred Option:** Option 3 is the preferred option. The curriculum is suitable for NZ students but allows for different approaches if these are decided to be in the best interests of the students.

Qualifications

83. Students need to be able to achieve qualifications that are recognised and valued within New Zealand society and internationally. NCEA is New Zealand's nationally developed and administered qualification and the majority of students enter for this. Students also study for other qualifications that have originated overseas such as Cambridge and the International Baccalaureate and these are recognised within New Zealand e.g. for the purposes of entry to university. Secondary schools must offer NCEA but they are also able to offer other qualifications.
84. **Option 1: Charter schools must offer NCEA but may offer other qualifications that can be benchmarked to NCEA.** This would put charter schools on the same footing as state schools. It would give them a limited freedom to offer other qualifications if they felt that these were best suited for their students' future.
85. **Option 2: No requirement to offer NCEA but qualifications must be able to be benchmarked to NCEA and be fit for purpose for New Zealand citizens.** This option provides some safeguards around the portability and acceptability of any qualification. It not as restrictive of the ability of charter schools to offer other qualifications if they felt that these were best suited for their students' future.

86. Impacts

	Option 1 (Required to offer NCEA)	Option 2 (Not required to offer NCEA)
Impact on charter school	Requirement to offer NCEA will restrict the ability to offer other qualifications	More freedom to offer other qualifications
Impact on students and their families	Will have the option of a qualification that is the national one.	Will need to be able to explain the qualification to e.g. employers.
Impact on the Crown	Neutral – the same position as	Neutral – contracting process

	state secondary schools.	can provide a control on very inappropriate qualifications.
--	--------------------------	---

87. Option 1 has a small negative impact on the freedom of the charter school that is balanced by a small positive impact on students. Option 2 has a small positive impact on the freedom of charter schools (they may choose to focus on offering different qualifications) but this is restricted by the need to benchmark the qualification to NCEA so that it does not disadvantage students in their further study or employment.

88. **Preferred Option:** Option 1 has a slightly more positive impact particularly for students who will have the choice of gaining New Zealand's national qualification. This will ensure that career pathways are not inadvertently closed to students because of the qualifications that their school chooses.

Consultation

89. The Confidence and Supply Agreement is a public document. It has engendered much public debate of the merits and disadvantages of charter schools from academics, the media, education sector groups and individuals, including those interested in setting up a charter school.

90. The New Zealand Model of Charter Schools Working Group is the main channel for consultation. It has set up a website through which information on progress is disseminated and queries answered. The Working Group has met with representatives of the teacher unions and some community groups and consultation is planned including with iwi. The Working Group will continue to consult on elements of policy.

91. Feedback: Much of the feedback to the Working Group has focussed on the desirability or otherwise of setting up charter schools in New Zealand and is therefore outside the scope of this Regulatory Impact Statement. The design elements in the Statement have featured in some of the discussions but they have not been consulted on as a package of options. Concerns have, however, been expressed about:

- manipulating enrolment to choose students who will offer the best opportunities to meet the targets (addressed by the preferred option under enrolment)
- excluding or expelling students in order to achieve targets (addressed in the preferred option for suspension and expulsion policy)
- no requirement for teacher registration (preferred option in this paper would require teacher registration).

92. There has been both support for and concerns about charter schools being able to be faith-based (partly addressed in the preferred option).

93. The Ministry of Education has consulted with other government departments in the development of these options.

Conclusions and Recommendations

94. The following summarises the conclusions reached for each of the six design elements:

- **The decision-maker for the establishment of a charter school:** The Minister of Education decides which proposals meet the standard to become a charter school.
- **Secular education:** Charter schools can have a faith-based element to their special character.
- **Suspension and expulsion:** Charter schools will be subject to the same legislation as state schools for stand downs, suspension, exclusion and expulsions.
- **Teacher registration:** All teachers in charter schools should be required to be registered.
- **Curriculum:** Charter schools do not have to follow the National Curriculum but must demonstrate how their curriculum aligns with the vision, principles, values and key competencies of the National Curriculum.
- **Qualifications:** Charter schools must offer NCEA but may offer other qualifications that can be benchmarked to NCEA.

Implementation

95. Once legislation is passed and non-legislative and operational policy is complete, there will be a call for proposals to set up the first charter schools in line with the appropriate government guidelines. A rigorous selection process will help to mitigate implementation risks. Compliance costs will be balanced against the need for confidence that the charter schools set up will succeed. The amendments proposed will set out the way that charter schools will interact with education and other applicable legislation. Because the proposal adds a new type of school to the schooling system there is no scope to reduce or remove any existing legislation.

Monitoring, evaluation and review

96. The contract for charter schools will be monitored by the Ministry of Education. A poorly performing charter school will have its contract terminated or be the subject of other interventions such as:

- a direction to comply with the terms of the contract or provisions in the law (for an obvious breach)
- a direction to submit an action plan to be approved by the Secretary, and then implement it (for more ongoing problems such as poor teaching)
- the ability for a Crown appointee to sit on the governing body (for strengthening governance issues)
- financial penalties to be paid by the sponsor out of non-charter school money
- the ability of the Ministry/Secretary to take over the governance and/or management of the school in prescribed circumstances (step-in rights).

97. Charter schools will also be subject of evaluation by the Education Review Office.

98. The first charter schools to be set up are to be a pilot. They are likely to open in 2014. An evaluation process will be set up for the pilot. It is likely to first evaluate the processes for choosing and establishing charter schools, looking to see how these can be improved. Evaluation of the student outcomes from charter schools

will need to wait until the schools have been established for several years. Overseas research³ indicates that students in their second and third years do better than in their first year.

Released by Associate Minister of Education

³ For example, "Multiple Choice: Charter School Performance in 16 States" CREDO Stanford 2009