# Education Report: Revocation of powers under the Education Act 1989

<table>
<thead>
<tr>
<th>To:</th>
<th>Hon Chris Hipkins, Minister of Education</th>
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<tbody>
<tr>
<td>Date:</td>
<td>21 June 2018</td>
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<tr>
<td>Priority:</td>
<td>High</td>
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<tr>
<td>Security Level:</td>
<td>In Confidence</td>
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<td>METIS No:</td>
<td>1111086</td>
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<tr>
<td>Key contact and number:</td>
<td>Katrina Casey</td>
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<td>DDI:</td>
<td>S 9(2)(a) OIA</td>
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<tr>
<td>Messaging seen by Communications team:</td>
<td>No</td>
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<tr>
<td>Round robin:</td>
<td>No</td>
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## Purpose of Report

The purpose of this paper is for you to:

Agree to revoke the delegation of powers to make decisions on school closures, mergers, and other significant schooling network changes.
Recommended Actions

The Ministry of Education recommends you:

a) agree to revoke the delegations of powers to make decisions on school closures, mergers, and other significant schooling network changes;

Agree / Disagree

b) sign the attached instrument of revocation; and

c) agree that this Education Report is proactively released as per your expectation that information be released as soon as possible. Any information which may need to be withheld will be done so in line with the Official Information Act 1982.

Agree / Disagree

Iona Holst
Secretary for Education
21.06.2018

Hon Chris Hipkins
Minister of Education
4.07.18
Background

1. Under section 28 of the State Sector Act 1988, the appropriate Minister, in relation to a department, may delegate powers to the Chief Executive of that department.

2. The Education Act 1989 contains powers for the Minister to make school network decisions including establishing, closing or merging schools, changing the class (year levels) of schools and declaring schools to be boys', girls' or co-educational. The Act also places consultation requirements on the Minister, which need to be fulfilled before the network decision-making powers can be exercised.

3. Under the previous Government, a number of the Minister’s decision-making powers relating to changes to the schooling network were delegated to the Secretary for Education, and further delegated to the Deputy Secretary, Sector Enablement and Support.

4. On 17 April 2018 we provided you with a report requesting that you delegate to the Secretary the duty to consult about proposed changes to the schooling network. We considered that, based on the delegations currently in place, this change would appropriately align the requirement to consult with the powers to make decisions.

5. Following your consideration of that paper, you advised that you wanted to revoke the previous delegations of decision-making powers relating to network changes, and to retain the related consultation powers.

Revoking current delegation of powers

6. Decisions relating to closing, merging or declaring a change to a school’s legal structure or character are not made often. Removing the Ministry’s ability to make these decisions is unlikely to have a significant impact on the timeframes for decision-making processes.

7. Annex 1 provides details of the current delegations and your intended changes. To give effect to these changes, you need to sign the attached instrument of revocation.

State-integrated Schools

8. The legislative powers for network changes to state-integrated schools are separate to those for state non-integrated schools.

9. The powers to enter or cancel an integration agreement have not been delegated to the Ministry. Powers to enter a supplementary agreement, altering the terms of an integration agreement, have been delegated to the Ministry in a number of circumstances. These include changes such as updating a school’s site plan, changing a school from single-sex to co-educational, increasing/decreasing a school’s maximum roll (within set parameters) and changing the year levels a school provides for.

10. If you would like to review the current delegations relating integrated schools, the Ministry will provide advice to you separately on this.

Proactive release of this document

11. It is recommended that this Education Report is proactively released as per your expectation that information will be released as soon as possible.
12. Where appropriate, we will withhold information in line with the provisions of the Official Information Act 1982.
Instrument of Revocation

Revocation of delegations of Minister's powers

I hereby revoke the delegations of the powers set out in the attached Schedule in accordance with section 29 of the State Sector Act 1988.

Hon Chris Hipkins
Minister of Education
4/7/18
DELEGATION OF MINISTER’S POWER

EDUCATION ACT 1989

SECTION 146A(1) The power, subject to section 157 of this Act, by notice in the Gazette to declare any secondary school to be a boys’ school, a girls’ school or co-educational school.

146A(3) The power, subject to section 157(2), and having regard to subsection (4), by notice in the Gazette, to limit, in relation to a specified single sex school, the number of students of the opposite sex who may enrol at a school.

148(1) The power, subject to section 157 of this Act, by notice in the Gazette to:
   a) Designate one or more specified primary schools as normal or model schools;
   b) Designate within a specified primary school a normal or model school, or model class;
   c) Revoke any designation under this section.

149 The power, subject to section 157 of this Act, by notice in the Gazette to establish an intermediate department within a composite school that is not an integrated school or to form part of a secondary school that is not an integrated school; or to disestablish any intermediate department.

150(1) The power, subject to section 157 of this Act and to Part 33, from time to time, to determine which primary schools are to be contributing schools.

151 The power subject to section 157 of this Act and to Part 33, by written notice to the Board of a composite school, to limit the education given at the school to the syllabus for classes specified in the notice.

153(1) The power, in the Minister’s/ delegate’s absolute discretion, subject to section 157 of this Act, by notice in the Gazette, to:
a) Declare a composite school to be a primary, intermediate or secondary school
b) Declare a primary, intermediate or secondary school to be a composite school
c) Declare an intermediate school to be a primary or secondary school
d) Declare a primary or secondary school to be an intermediate school.

154(1) The power, subject to section 157 of this Act and to section 438, after consulting the Board of a state school, to be satisfied that it should be closed, and by written notice to the Board, to ask the Board if it has any arguments in favour of the school's staying open.

154(2) The power, after considering all arguments, if any, received from the Board within 28 days after it got notice under subsection (1) of this section, by notice in the Gazette specifying a day on which the school will close, to close the school.

154A The power, by notice in the Gazette, and in accordance with this section and after consultation with the board of the affected school, to designate, re-designate or remove designations from schools as specified in this section.

154(2A) The power in the Minister's/ delegate's absolute discretion, to close the school, regardless of whether the consultation has been completed, in accordance with the requirements of this section.

156A(1) The power, subject to sections 156B and 157, by notice in the Gazette to merge one or more state schools that are not state integrated schools with another state school that is not a state integrated school, if satisfied that:

a) Each board of a school concerned has made reasonable efforts to consult the parents of full time students at the school, other than adult students;
b) The consultation that has taken place has been adequate in all the circumstances; and
c) The creation of a single school by the proposed merger is appropriate under the circumstances.
Annex 1
Current and Proposed Delegation of Minister's Powers under the Education Act 1989

<table>
<thead>
<tr>
<th>Section</th>
<th>Power</th>
<th>Current</th>
<th>Proposed</th>
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| 146(1) | The power, subject to section 157 of this Act and to subsection (2) of this section, by notice in the Gazette: -  
   a) Describing the place where the school is to be located; and  
   b) In the case of a secondary school, specify whether it is a girls', boys' or coeducational; and  
   c) Specifying the name for the school: to establish a new school | No delegation from Minister                  | No change                 |
| 146A(1) | The power, subject to section 157 of this Act, by notice in the Gazette to declare any secondary school to be a boys' school, a girls' school or co-educational school. | Secretary for Education Deputy Secretary     | Revoke delegation         |
| 146A(3) | The power, subject to section 157(2), and having regard to subsection (4), by notice in the Gazette, to limit, in relation to a specified single sex school, the number of students of the opposite sex who may enrol at a school. | Secretary for Education Deputy Secretary     | Revoke delegation         |
| 148(1) | The power, subject to section 157 of this Act, by notice in the Gazette to: -  
   a) Designate one or more specified primary schools as normal or model schools;  
   b) Designate within a specified primary school a normal or model school, or model class;  
   c) Revoke any designation under this section. | Secretary for Education Deputy Secretary Group Manager Director of Education | Revoke delegation         |
<p>| 149    | The power, subject to section 157 of this Act, by notice in the Gazette to establish an intermediate department within a composite school that is not an integrated school or to form part of a secondary school that is not an integrated school; or to disestablish any intermediate department. | Secretary for Education Deputy Secretary     | Revoke delegation         |
| 150(1) | The power, subject to section 157 of this Act and to Part 33, from time to time, to determine which primary schools are to be contributing schools. | Secretary for Education Deputy Secretary     | Revoke delegation         |</p>
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<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Decision Makers</th>
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<tr>
<td>151</td>
<td>The power subject to section 157 of this Act and to Part 33, by written notice to the Board of a composite school, to limit the education given at the school to the syllabus for classes specified in the notice.</td>
<td>Secretary for Education Deputy Secretary Associate Deputy Secretary Group Manager Director of Education</td>
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| 153(1) | The power, in the Minister’s/ delegate’s absolute discretion, subject to section 157 of this Act, by notice in the Gazette, to:  
  a) Declare a composite school to be a primary, intermediate or secondary school  
  b) Declare a primary, intermediate or secondary school to be a composite school  
  c) Declare an intermediate school to be a primary or secondary school  
  d) Declare a primary or secondary school to be an intermediate school. | Secretary for Education Deputy Secretary | Revoke delegation |
<p>| 154(1) | The power, subject to section 157 of this Act and to section 438, after consulting the Board of a state school, to be satisfied that it should be closed, and by written notice to the Board, to ask the Board if it has any arguments in favour of the school’s staying open. | Secretary for Education Deputy Secretary | Revoke delegation |
| 154(2) | The power, after considering all arguments, if any, received from the Board within 28 days after it got notice under subsection (1) of this section, by notice in the Gazette specifying a day on which the school will close, to close the school. | Secretary for Education Deputy Secretary | Revoke delegation |
| 154A | The power, by notice in the Gazette, and in accordance with this section and after consultation with the board of the affected school, to designate, re-designate or remove designations from schools as specified in this section. | Secretary for Education Deputy Secretary | Revoke delegation |
| 154(2A) | The power to close the school, regardless of whether the consultation has been completed, in accordance with the requirements of this section. | Secretary for Education | Revoke delegation |</p>
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Deputy Secretary</th>
<th>Revoke delegation</th>
</tr>
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<tbody>
<tr>
<td>156A(1)</td>
<td>The power, subject to sections 156B and 157, by notice in the Gazette to merge one or more state schools that are not state integrated schools with another state school that is not a state integrated school, if satisfied that: a) Each board of a school concerned has made reasonable efforts to consult the parents of full time students at the school, other than adult students; b) The consultation that has taken place has been adequate in all the circumstances; and c) The creation of a single school by the proposed merger is appropriate under the circumstances.</td>
<td>Secretary for Education Deputy Secretary</td>
<td>Revoke delegation</td>
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<td>157(2)</td>
<td>The duty to consult the Board of the school concerned before taking any action under paragraphs (a) to (g) of this subsection.</td>
<td>No delegation from Minister</td>
<td>No change</td>
</tr>
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<td>157(3)</td>
<td>The duty to consult the Boards of all state schools whose rolls might, in the opinion of the Minister, be affected if action is taken under paragraphs (a) to (g) of this subsection.</td>
<td>No delegation from Minister</td>
<td>No change</td>
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