



Absolute discretion around schooling provision

The Education Act 1989 (the Act) now makes it clear that the Minister of Education has absolute discretion to make all decisions around schooling provision. Absolute discretion is used when there are no set criteria in the legislation for a Minister to apply when making a decision. This allows a Minister to respond to a wide range of different circumstances.

The Minister has always had absolute discretion to make all of the decisions around schooling provision, but the Act was only explicit about a few of them.

The purpose of these changes is to update aspects of the law that have become outmoded and inefficient.

What's the change?

The Act now states that the Minister has absolute discretion when making the following decisions:

- » establishing a school
- » changing the class of a school
- » specifying the class levels that a school can provide
- » closing a school
- » merging a school.

Does this change give the Minister any additional power?

No. This change does not give the Minister any additional power, or affect any of the legal requirements the Minister must meet before making a final decision. It also does not stop a challenge to the Minister's decision through judicial review.

What does the legislation now say?

Section 146(1A) gives the Minister absolute discretion when making a decision on establishing a school.

Section 153(1B) gives the Minister absolute discretion when making a decision on changing the class of a school.

Section 154(2B) gives the Minister absolute discretion when making a decision on closing a school.

Section 156(1A) gives the Minister absolute discretion when making a decision on merging a school.

When do the changes take effect?

The provisions take effect from 19 May 2017.