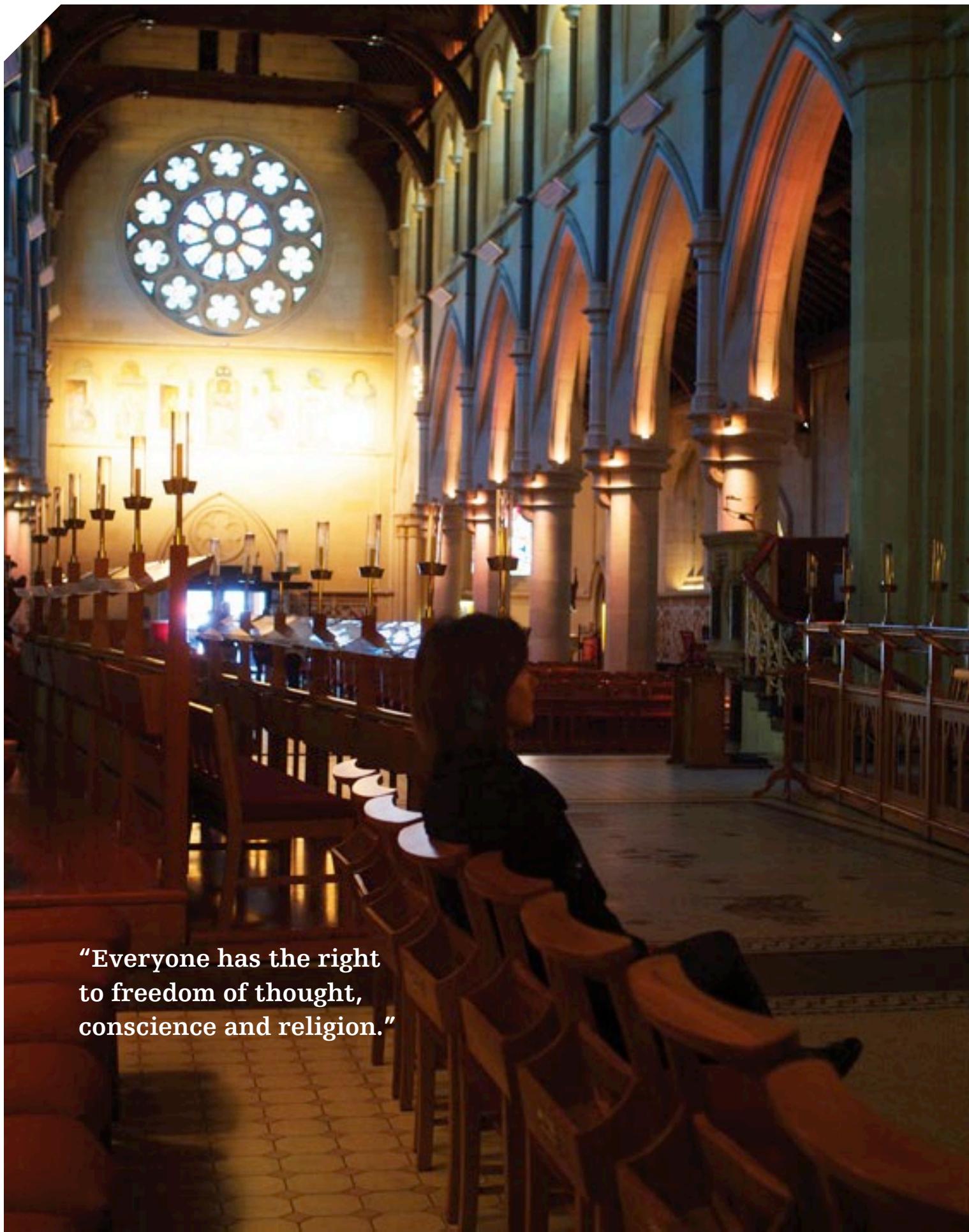


10. Freedom of Religion and Belief

Wāteatanga o te Whakapono



**“Everyone has the right
to freedom of thought,
conscience and religion.”**

Everyone has the right to freedom of thought, conscience and religion.

Universal Declaration of Human Rights (plain text version), Article 18

Introduction

Tīmatatanga

The right to freedom of religion and belief includes the rights to hold a religious or ethical belief, change one's religion or belief, express one's religion or belief, and not to hold a belief. The right to believe is not limited to religion. It also includes atheistic beliefs, as well as matters of conscience such as pacifism and conscientious objection to military service (Jayawickrama, 2002, p 653).

The United Nations' Human Rights Committee (UNHRC) views the right to freedom of thought, conscience and belief as "far reaching and profound", considering it to encompass "freedom of thought on all matters, personal conviction and the commitment to religion and belief, whether manifested individually or in community with others". The UNHRC has also stated that 'religion or belief' includes minority and non-mainstream religions and theistic, non-theistic and atheistic beliefs (general comment no. 22, 1993).

The protection of religion and belief extends to communities of interest as well as individuals. It does not preclude criticism of beliefs, but requires respect for the right of others to hold a different belief.

The right to express a religious or ethical belief encompasses a range of activities (Office of the High Commissioner for Human Rights, 1981, Article 6) including:

- to worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes
- to establish and maintain appropriate charitable or humanitarian institutions
- to make, acquire and use to an adequate extent the necessary Articles and materials related to the rites or customs of a religion or belief
- to write, issue and disseminate relevant publications in these areas

- to teach a religion or belief in places suitable for these purposes
- to solicit and receive voluntary financial and other contributions from individuals and institutions
- to train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief
- to observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief
- to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

Worshipping, observing and teaching one's beliefs can be practised in the community of interest or alone, both publicly and privately.

The UNHRC has stated that "neutral and objective" teaching of religion in public schools is permitted, although public education which includes instruction in a particular religion or belief is not permitted "unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians" (general comment no. 22, 1993). The New Zealand Human Rights Commission and Victoria University of Wellington (2009, p 7) have expanded on this, saying that "schools are free to teach about different religions and the role that religion has played in politics, culture, art, history and literature ... Schools are ... free to teach about religions so long as they teach students about beliefs rather than instruct them on what to believe."

This chapter is primarily concerned with the right to freedom of religion and belief, although it intersects particularly with the chapter on the right to freedom of opinion and expression. Where these two rights come into conflict, a 'balancing of rights' is necessary and may require legal adjudication.

LIMITATIONS

The freedom to act in accordance with one's religious or ethical belief is not as wide as the freedom to hold those beliefs. Limitations can be imposed on how religion and belief is expressed, particularly where matters of public safety or the fundamental rights and freedoms of others are affected.

◀ A contemplative moment in Christchurch Cathedral. The cathedral is a living house of prayer. It is a place of welcome, ministering to people of all faiths and those who have none.

The UNHRC has stated:

Limitations may be applied only for those purposes for which they are prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. The committee observes that the concept of morals derives from many social, philosophical and religious traditions; consequently limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition.

(general comment no. 22, 1993)

CHANGES SINCE 2004

Government engagement with faith communities has increased through participation in the ‘Alliance of Civilisations’ initiative, the Asia-Pacific regional interfaith dialogue, the Building Bridges programme and the marking of major religious festivals in Parliament.

New resources to assist understanding of religious diversity have been developed, including the New Zealand Police Practical Reference on Religious Diversity, the Funeral Directors Association’s guide to death and dying in diverse cultures, and materials to support the diversity strand in the new school curriculum.

Interfaith councils in a number of centres now meet annually in a national interfaith forum and are looking to establish a national structure to promote interfaith dialogue. The establishment of new bodies, such as the Hindu Council and the Buddhist Council, has enabled greater representation of minority religions.

The Human Rights Commission has established a religious diversity network, including a monthly e-newsletter and an annual religious-diversity forum. With the Victoria University Religious Studies Programme, the Commission has published the Statement on Religious Diversity and guidelines on religion in schools. It has also dealt with a range of complaints of discrimination on the grounds of religious and ethical belief.

A joint Islamic Studies Centre has been established at Victoria and Otago Universities, and a UNESCO chair

of interreligious understanding has been established at Victoria University.

International context

Kaupapa ā taiao

The right to freedom of religion and belief is referred to in a number of international treaties. The most significant is the International Covenant on Civil and Political Rights, which:

- affirms the right to freedom of thought, conscience and religion, and the right not to be coerced into choosing or changing a religion, and identifies situations where legal limitations may be appropriate (Article 18)
- affirms the right of parents to ensure the religious and moral education of their children in a manner consistent with their own convictions (Article 18)
- affirms the right to hold opinions without interference and the right to freedom of expression (Article 19)
- urges the prohibition by law of the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (Article 20(2))
- affirms the equality of all before the law and the right to freedom from discrimination, including on the basis of religion and political or other opinion (Article 26)
- affirms the right of ethnic, religious or linguistic minorities to enjoy their own culture, profess and practise their own religion and use their own language (Article 27).

International Labour Organisation Convention 111 on Discrimination (Employment and Occupation) prohibits discrimination in employment on the grounds of religion or political opinion.

The Convention on the Rights of the Child makes explicit the rights and duties of parents to provide direction to the child regarding freedom of thought, conscience and religion in a manner consistent with the evolving capacities of the child. It also provides that, when a child is temporarily or permanently deprived of his or her family environment, in determining the alternative care for the child, “due regard shall be paid to the ... child's ethnic, religious, cultural and linguistic background” (Article 20(3)). It affirms the right of children who are

indigenous or belong to a religious minority group to profess and practise their own religion. Education shall be directed *inter alia* toward development of respect for human rights, his or her own values and the values of the country in which they live or originate, and preparation for responsible life in a free society "in the spirit of understanding, peace, tolerance, equality of the sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin" (Article 29).

The UN Declaration on the Rights of Indigenous Peoples (2007) affirms the right of Indigenous peoples to their spiritual and religious traditions, customs and ceremonies, as well as to access and protect sacred sites, ceremonial objects and the remains of their ancestors (Article 12). The same article provides that states have a responsibility to either return or enable access to ceremonial objects or human remains in their possession. Article 37 of the declaration affirms that Indigenous peoples have the right to the recognition, observance and enforcement of existing treaties and agreements. In affirming the foundational status of the Treaty of Waitangi, the declaration therefore upholds the rights conferred by that agreement, including protections for religions and beliefs.

New Zealand context

Kaupapa o Aotearoa

NEW ZEALAND BILL OF RIGHTS ACT 1990

The New Zealand Bill of Rights Act (BoRA):

- affirms the right to freedom of thought, conscience, religion and belief, including the right to hold and embrace views without interference
- protects the right to express religion and belief in worship, observance, teaching and practice
- affirms the right of minorities to be free from discrimination.

HUMAN RIGHTS ACT 1993

The Human Rights Act (HRA) prohibits discrimination based on religious and ethical belief (which the HRA defines as lack of a religious belief, whether in respect of a particular religion or religions or all religions) in employment; business partnerships; access to places,

vehicles and facilities, the provision of goods and services, and the provision of land, housing and accommodation. The act provides for specific exceptions for purposes of religion, for example, in relation to the employment of a principal or teacher in an integrated or private school, or of a social worker by an organisation whose members are adherents of a particular belief (section 28(2)). It also allows for educational establishments maintained wholly or principally for students of one religious belief (section 58(1)).

The exceptions in the HRA are designed to respect religious beliefs. The international human rights standards give protection to the expression of a particular religion and belief regardless of whether it embraces doctrines that contradict those standards. Within their own communities, religious groups are able to discriminate. In some churches, for example, the office of minister can be held only by men. Religious groups are also able to exclude people in same-sex relationships from official positions.

The act requires employers to accommodate the religious or ethical belief practices of an employee as long as any adjustment required "does not unreasonably disrupt the employer's activities" (section 28(3)).

EDUCATION ACT 1964

There is an important distinction between religious instruction and religious education, which applies to all schools. Education about religions (also called religious studies) in the school curriculum is a means of fostering religious understanding and tolerance and of highlighting the universal values expressed by the world's major religions. By contrast, religious instruction means teaching aspects of a particular faith in its own right. Religious instruction carries an implicit or explicit endorsement of a particular faith and/or encourages students to engage with and make decisions about accepting it at a personal level (Human Rights Commission and Victoria University of Wellington, 2009, p 4).

The Education Act 1964 sets out the secular character of primary schooling and makes provision for optional religious instruction when the school is closed. Before a school can set time aside for religious instruction, there has to be agreement from the board of trustees (Education Act 1964). Teaching in kura kaupapa Māori

must be secular in character during the hours the school is open.

Teaching in secondary schools does not have to be explicitly secular. Section 27 of the act gives boards of trustees considerable discretion regarding religious instruction. However, secondary schools are required to comply with the Bill of Rights Act, so that if they do provide religious instruction or observance, it must be in a non-discriminatory way and students must be able to opt out if they wish (Human Rights Commission and Victoria University of Wellington, 2009, p 5).

The Private Schools (Conditional Integration) Act 1975 provides for religious primary and secondary schools to receive public funding subject to certain requirements. If an integrated school established under the act has a special character provision in its charter, then the school is obliged to offer appropriate religious instruction and observance without closing the school. Parents can still choose, however, to withdraw students from such activities, on the grounds, for example, that the student is of a different faith (Human Rights Commission and Victoria University of Wellington, 2009, p 5).

TREATY OF WAITANGI

Articles 2 and 3 of the Treaty of Waitangi provide protection for Māori to observe and practise their religions and beliefs. Article 2 does so by reference to taonga or “everything that is held precious” in the Māori version. Article 3 provides for Māori to have “the same rights as those of the people of England”. Although it is not part of the text of the Treaty, Lieutenant-Governor Hobson, in response to a question from Catholic Bishop Pompallier, made the following statement prior to the signing:

“The Governor says that the several faiths (beliefs) of England, of the Wesleyans, of Rome, and also Māori custom shall alike be protected” (Te Puni Kokiri, 2001, pp 40–41).

Some legislation dealing with the environment makes specific reference to Māori sacred places and spiritual beliefs. For example, both the Resource Management Act 1991 and the Hazardous Substances and New Organisms Act 1996 (HSNO) require decision-makers to take into consideration “[t]he relationship of Māori and

their culture and traditions with their ancestral lands, water, sites, wāhi tapu, valued flora and fauna, and other taonga” (HSNO, 1996, section 6(d)). The Historic Places Act 1993 also has specific provisions relating to wāhi tapu.

THE SUMMARY OFFENCES ACT 1981 AND SENTENCING ACT 2002

The Summary Offences Act 1981 contains a range of offences, including disorderly behaviour, offensive behaviour, offensive language, intimidation, assault and damage to property, that apply to instances of hate crime. Although the Summary Offences Act does not list offences that are specifically motivated by hostility towards religion or belief, the Sentencing Act 2002 makes it an aggravating factor in sentencing if the offender commits an offence partly or wholly because of hostility towards a group of persons who have an enduring common characteristic, such as race, religion or sexual orientation.

THE MENTAL HEALTH (COMPULSORY ASSESSMENT AND TREATMENT) ACT 1992

The Mental Health (Compulsory Assessment and Treatment) Act 1992 says that a person’s religious beliefs are not enough on their own to invoke the procedures and processes set out in the act.

STATEMENT ON RELIGIOUS DIVERSITY 2007

A statement on religious diversity in Aotearoa New Zealand was produced by the New Zealand Diversity Action Programme in 2007. The statement provides a framework for the recognition of New Zealand’s diverse faith communities and their harmonious interaction with each other, with the Government and with other groups in society. It has been endorsed by a range of organisations,¹ and has a foreword by the Prime Minister.

The statement comprises eight principles:

1. The State and religion

The State seeks to treat all faith communities and those who profess no religion equally before the law. New Zealand has no official or established religion.

2. The right to religion

New Zealand upholds the right to freedom of religion and

¹ Accessible online at <http://www.hrc.co.nz/home/hrc/racerelations/tengirathenzdiversityactionprogramme/statementonreligiousdiversity/statementonreligiousdiversity.php>

belief and the right to freedom from discrimination on the grounds of religious or other belief.

3. The right to safety

Faith communities and their members have a right to safety and security.

4. The right of freedom of expression

The right to freedom of expression and freedom of the media are vital for democracy but should be exercised with responsibility.

5. Recognition and accommodation

Reasonable steps should be taken in educational and work environments and in the delivery of public services to recognise and accommodate diverse religious beliefs and practices.

6. Education

Schools should teach an understanding of different religious and spiritual traditions in a manner that reflects the diversity of their national and local community.

7. Religious differences

Debate and disagreement about religious beliefs will occur but must be exercised within the rule of law and without resort to violence.

8. Cooperation and understanding

Government and faith communities have a responsibility to build and maintain positive relationships with each other, and to promote mutual respect and understanding.

The statement is used by the Human Rights Commission as a policy statement specifically with regard to interfaith and religious diversity issues, rather than to the wider right to freedom of religion and belief.

New Zealand today

Aotearoa i tēnei rā

OVERVIEW

New Zealand has no state religion, and church and state institutions are separate. In legislation and policy, the State respects freedom of thought, conscience and religion. There are few constraints on the freedom to manifest one's religion or beliefs.

Elements of New Zealand's Christian heritage are reflected in public life: for example, the Christian festivals of Easter

and Christmas are observed as public holidays, and Christian prayers often form a part of public ceremonials. There is also a degree of statutory recognition of Māori spiritual beliefs, which are inextricably connected to Maori culture.

Any group based on either religious or ethical belief can set up and operate in New Zealand without legal constraints or state interference, while still required to conform to the law like everyone else. Like other groups in society, those based on religious or ethical belief have the right to publicly influence the political process and societal norms in light of their values, within the bounds of the law. Parents are free to direct the religious and moral education of their children, and religious minorities are able to profess and practise their own religion.

AFFILIATION

The religion with the most adherents in New Zealand is Christianity. The decrease in affiliation with Christian denominations has, however, continued since the 1991 Census, when 67 per cent of the population identified as Christian. This decreased to 59 per cent in 1996, 55 per cent in 2001 and 51 per cent in 2006.

There was an increase in people affiliating with non-Christian religions. The number of Sikhs increased by 83 per cent to 9507 between 2001 and 2006; the number affiliated with Hinduism rose by 62 per cent, from 39,798 to 64,392; and the number affiliated with Islam increased by 53 per cent, from 23,631 to 36,072.

The proportion of the population indicating that they had no religion continued to rise: from 20 per cent in 1991 to 24 per cent in 1996, 28 per cent in 2001 and 32 per cent in 2006.

TRENDS

Religion and belief continue to impact on and form part of public and political discussion. This is due to a range of factors, including:

- the emergence of a more religiously diverse New Zealand, with an increased presence of Muslims, Buddhists, Hindus, and other religious communities whose religious practice sometimes challenges current public policies
- the shift away from mainstream Christianity and the rise of newer forms of Christianity

- the rise in those reporting having no religion
- the growing interface between science, its actual and potential discoveries and traditions of belief, especially in regard to ethical dilemmas
- the emergence of issues related to accommodation and dissent in pluralist societies, including internal religious debates, questions around cultural diversity, respect for difference and human rights
- the growing acknowledgement of the contribution that religious communities make to the social capital of a nation, through activities such as volunteering.

The practice of religion is sometimes seen as limiting individual freedoms. At times, it has focussed on issues of individual rights relating to gender or sexual orientation, or the discrimination against individual members of religious groups by members of differing belief systems.

Many religious groups, however, have also played a positive role in civil society. They have been a source of support for human rights initiatives, education in constructive values of society, and the championing of those vulnerable groups and individuals who experience discrimination.

THE STATE AND FREEDOM OF RELIGION AND BELIEF

New Zealand law does not discriminate on the basis of religion and belief. There are, however, some practices that have caused concern among parts of the community:

Public displays of religion in official ceremonies

Public displays of religion in state, government and local authority ceremonies and activities have prompted some people to complain about official religious expression or Christian observance, which they consider exclusive and potentially discriminatory. The issue of being able to use sacred texts other than the Bible for the swearing of oaths has also been raised, although there is already considerable flexibility provided for in the Oaths and Declarations Act 1957. This act was the subject of a review by the Ministry of Justice in 2004, which led to the introduction

of an Oaths Modernisation Bill. The select committee considering the bill was unable to reach agreement on whether it should be passed. In June 2010 it was discharged as an order of the day for second reading.

Parliament has traditionally opened its sittings with a prayer. In 2003, a petition was submitted to amend the wording to make it no longer specifically Christian in nature. MPs were surveyed in 2007 and said they generally wished to retain the prayer in its current form, though some did not agree or identify with the prayer. The Speaker of the House recommended that the prayer remain unchanged.²

Education

Schools face a number of issues in respecting the diversity of their pupils' beliefs. These range from wearing religious attire or other symbols (for example, Muslim headscarves, Sikh turbans, Jewish yarmulke, Christian crosses, taonga Māori) to the content of the curriculum and classes, and particularly the issue of religious instruction in schools. The Commission, in conjunction with the Victoria University Religious Studies Programme, published *Religion in New Zealand Schools: Questions and Concerns* in 2009 to provide guidance to school boards of trustees, teachers and parents dealing with these issues. It sets out the legal framework for religious observance, education and instruction, and explains the provisions that enable parents and students to 'opt out' of religious instruction or observance in a way that provides dignity and security for all.

Promotion of interfaith initiatives

Parliament has held an official reception to mark Diwali, the Hindu Festival of Lights, since 2003³ and the Islamic festival Eid-ul-Fitr, which marks the end of Ramadan, since 2005. The Jewish festival of Rosh Hashanah has also been marked.

The Office of Ethnic Affairs, in association with the Federation of Islamic Associations of New Zealand and New Zealand's Muslim communities, has delivered the Building Bridges programme since 2005. The programme

² 'MPs vote to retain prayer', press release, Office of the Speaker, New Zealand Parliament, 15 June 2007. Accessed 5 November 2009 from <http://www.parliament.nz/en-NZ/AboutParl/HowPWorks/Speaker/PressReleases/6/1/b/61b20eda0d2847aa8ca98bfa6ebfea44.htm>

³ Henry Johnson and Guil Figgins, 'Diwali Downunder: Transforming and Performing Indian Tradition in Aotearoa / New Zealand', *New Zealand Journal of Media Studies*, 9:1. Accessed 5 November 2009 from <http://www.nzetc.org/tm/scholarly/tei-Sch091JMS-t1-g1-t5.html>

aims to demystify Islam and promote participation by Muslims in New Zealand society. This is done through a series of training workshops, forums and visibility activities.⁴

The Government adopted a national implementation plan in 2008 for the United Nations Alliance of Civilisations initiative, established to improve understanding and relations among religions and cultures and to promote intercultural dialogue. The plan drew on existing initiatives such as Building Bridges and the Diversity Action Programme. It also outlined new initiatives, including an Islamic studies centre, a media literacy and standards programme, strengthening the focus on religions and cultures in the school curriculum, and scholarships to promote religious understanding in the Asia-Pacific region.⁵ The Office of Ethnic Affairs is now responsible for the 'Alliance of Civilisations' work and interfaith dialogue.

Immigration policy for religious workers

A number of religious organisations, including the Federation of Islamic Associations of New Zealand, the Auckland Sikh Society, the New Zealand Indian Central Association and the New Zealand Buddhist Council, have raised the issue of the barriers ministers of religion face in obtaining permanent residency and work visas. They consider that ministers' applications for permanent residency are being declined due to the evaluation criteria under the 'general skills' category, which fails to take account of the nature of religious ministry. This issue also impacts on religious communities in New Zealand that are seeking to retain appropriate spiritual leadership within this country.

In June 2010 the Department of Labour announced a review of immigration policies available to religious workers. The review was initiated in response to the issues raised above. It aims to ensure that visa pathways are relevant and appropriate to the needs of New Zealand and its religious communities, and problems identified with existing policies, along with potential risks, are well-managed.⁶

Policing

In 2009 the New Zealand Police launched the second edition of *A Practical Reference to Religious Diversity*. Covering seven major religious faiths, the guide provides information to help front-line police officers gain basic understanding and awareness of religious diversity, and explains how religious beliefs and customs may impact on their role as police officers. Also in 2009, a specialised workshop on Islam was held at the Police College and a memorandum of understanding was signed with the Federation of Islamic Associations of New Zealand.

DISCRIMINATION

Of the 1508 discrimination complaints and enquiries received by the Human Rights Commission in 2009, only 82 (3.6 per cent) claimed discrimination on the basis of religious or ethical belief. Almost a quarter of these complaints and enquiries were in the area of employment (24 per cent); 21 per cent related to government activity; and 20 per cent related to the provision of goods and services. The main issues raised by these complaints were personal allegations of discrimination relating to specific religions; matters of appearance (such as the wearing of turbans or burqas); accommodation of prayer and holy days; accommodation of religious diet (particularly in prisons); the saying of karakia or prayers in schools and workplaces; and the practice of religious instruction in schools.

MĀORI SPIRITUALITY – WAIRUATANGA

While aspects of Māori beliefs were suppressed in the past, some Māori spiritual practices, such as karakia, occupy a visible place in public ceremonies today. Those who object to Christian prayers in public ceremonies on the grounds of their belief raise similar objections to Christian prayers in Māori, or any recognition of spiritual beliefs at all in such ceremonies.

Māori spirituality is an inherent part of tikanga Māori, linking mana atua, mana whenua and mana tangata. In accordance with international human rights standards

4 Office of Ethnic Affairs, 'Building Bridges'. Accessed 5 November 2009 from http://www.ethnicaffairs.govt.nz/oeawebsite.nsf/wpg_URL/Resources-Ethnic-Affairs-Publications-Leadership-Development?OpenDocument

5 Human Rights Commission (2009), *Tūi Tūi Tuituiā–Race Relations in 2008* (Auckland: Human Rights Commission)

6 Department of Labour, *Review of Immigration policies available to religious workers*. Accessed 21 June 2010 from <http://www.dol.govt.nz/consultation/religious-workers/consultation.asp>

DISCRIMINATION COMPLAINTS AND ENQUIRIES

Year	2005	2006	2007	2008	2009 ⁷
Number of discrimination enquiries and complaints	1981	1886	1486	1518	1508
Number of ethical or religious belief complaints and enquiries	89	95	81	65	82
Percentage of ethical or religious belief complaints and enquiries	4.5%	5.0%	5.5%	4.3%	5.4%

⁷ The figure for 2009 excludes 752 complaints and enquiries relating to a single incident.

and the Treaty of Waitangi, Māori spiritual beliefs cannot therefore be separated from the recognition and protection of tikanga Māori.

References to Māori spirituality in environmental legislation have attracted some criticism, either on the grounds that Māori spirituality should not have special recognition if other spiritual beliefs are not recognised, or that no spiritual beliefs of any sort have a place in environmental legislation. While the Resource Management Act provides explicitly for Māori spiritual beliefs only, it does provide for ‘historic heritage’ generally as a matter of national significance. This definition does not specifically include spiritual significance. But the act, in defining historic places, includes reference to places or areas that possess “spiritual significance or value”, and these factors must be considered under the Resource Management Act.

In balancing Māori spirituality with scientific and commercial concerns (particularly if no explicit alternative exists), the weighting is towards scientific and commercial concern (Adhar, 2003). For example, in the approval process to conduct bioengineering trials that sought to fuse a human gene with that of a cow, a local hapū expressed opposition on the basis of their kaitiaki status, as identified in the legislation (Adhar, 2003). The concerns of the local Māori were not upheld in that case.

FREEDOM OF EXPRESSION

Generally, New Zealand does well in balancing the right to freedom of expression and the right to freedom of religion and belief. There have, however, been flashpoints

when these two rights have publicly come into conflict. One such example was the unease about media representation of Muslims, which reached a peak with the publication of caricatures of the Prophet Muhammad in the New Zealand media in 2006, in the context of a worldwide controversy. At a meeting between media and faith community representatives, convened by the Race Relations Commissioner, parties agreed that New Zealand’s increased diversity of cultures and faiths raised new challenges for the media and the New Zealand community. They affirmed the importance of freedom of the media, but noted that such freedom was not absolute. It included responsibilities to be sensitive to diverse cultures and beliefs and the diversity within cultures and beliefs, to inform the community about diverse cultures and beliefs, and to provide dialogue and channels of communication between the media and faith communities.

In 2006 the Broadcasting Standards Authority considered a complaint about an episode of the television cartoon series *Southpark* that contained images of the Virgin Mary deemed offensive by many Christians. The authority found that airing the episode was not in breach of broadcasting standards, because “showing disrespect does not amount to the sort of vicious or vitriolic attack normally associated with the denigration standard”. They also said that the episode was “of such a farcical, absurd and unrealistic nature that it did not breach standards of good taste and decency in the context in which it was offered”.

In 2009 and 2010, there was controversy over a Christmas billboard by St Matthew-in-the-City which depicted Mary and Joseph in bed together,⁸ and the Atheist Bus Campaign, whose proposed advertising campaign was initially turned down by the New Zealand Bus company on the grounds that it might be offensive.⁹ The Broadcasting Standards Authority considered but did not uphold two complaints concerning religion: the first related to comments on the *Paul Holmes Breakfast Show* about Muslims and terrorism in the context of the Mumbai attacks; the second related to a Radio Tarana programme alleged to ridicule Hinduism while promoting Christianity.¹⁰

RECOGNITION AND ACCOMMODATION

An employer is required by the Human Rights Act to accommodate the religious or ethical belief practices of an employee as long as any adjustment required "does not unreasonably disrupt the employer's activities" (section 28(3) HRA). In one case, following a complaint to the Commission, a shift worker and his employer reached an agreement to enable the employee's shifts to be adjusted so that he could honour his religion's sacred day. The Commission, in conjunction with the Victoria University Religious Studies Programme, is preparing guidelines on religious diversity in the workplace for employers and employees. These were initiated after the topic was addressed at the annual Religious Diversity Forum in 2009.

Observance of holy days

The manifestation of belief can include the observance of days of religious significance, including ceremonies and festivities. In New Zealand, although some public holidays observe major Christian festivals, there are no public holidays covering festivals of equal significance for other religious groups. Some employment agreements do make provision for the observance of these holidays, either

through special leave or the option of taking alternative days to the Christian public holidays.

In 2009, a review of the Holidays Act 2003 asked the public for their views on whether the act should provide employees with the option of transferring current public holidays for other days of religious observance. The resulting Holidays Amendment Bill, introduced to Parliament in August 2010, will enable employers and employees to agree to transfer the observance of public holidays to another (identified) working day. The change is intended to "better reflect that New Zealand is a multi-cultural society and some employees may prefer to work a current public holiday in exchange for being granted a day off on a day that has special significance to their culture or religion that would otherwise be a normal working day".¹¹

Clothing and religious symbols

Some groups manifest their belief by wearing particular clothing or other symbols, for example headscarf, turban, cross, taonga or dreadlocks. Some people who have been denied access to goods and services or employment because of their religious attire have complained to the Commission. Health and safety requirements may in some circumstances constitute a justification for removing such attire.

Medical treatment

Some groups object to medical treatment as a breach of their religion or belief. The BoRA allows adults, in line with their religious belief, to refuse health care, unless they are legally unfit to make their own decisions. This is not the case for children, as the State has a responsibility to protect the lives of children and can enforce healthcare over the religious concerns of parents and guardians (Rishworth, Huscroft, Optican & Mahoney, 2003). Concerns have also been raised about the marginal pastoral-care provision in relation to medical treatment for people from non-Christian backgrounds.

8 Lincoln Tan, "Church scraps billboard after attack", *New Zealand Herald*, 19 December 2009. Accessed 24 June 2010 from http://www.nzherald.co.nz/religion-and-beliefs/news/article.cfm?c_id=301&objectid=10616487

9 For more information on the controversy and the campaign, visit the campaign website at <http://www.nogod.org.nz/>

10 For further details of the two BSA cases, see the summaries in Human Rights Commission (2010), *Tū Tāi Tuituā: Race Relations in New Zealand in 2009* (Auckland: Human Rights Commission), p 75. Accessible online at http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/08-Mar-2010_14-17-15_HRC_RR_Report_2009web.pdf

11 New Zealand Parliament, <http://www.parliament.nz/en-NZ/PB/Legislation/Bills/BillsDigests/c/6/e/49PLLawBD17981-Holidays-Amendment-Bill-2010-Bills-Digest-No-1798.htm>

EMPLOYMENT OF CLERGY AND RELIGIOUS OFFICERS

There has been contention over the employment of clergy and religious officers. For example, where employment as a religious officer is refused because of the applicant's sex, sexual orientation or marital status, this discrimination breaches the applicant's human rights. In 2003, the Human Rights Commission sought the opinion of four experts on the question of the employment of gay and lesbian clergy. A key question is whether clergy are employed at all. Three of the experts were of the view that they are not, and that the prohibition on employment does not apply. This view is supported by a 1998 decision of the New Zealand Court of Appeal that, for the purposes of the Employment Contracts Act and in relation to the situation prevailing in the Methodist Church, the relationship between clergy and the Church is not an employment relationship. According to this view, the question of whether the discrimination exception provision for churches in the HRA (section 28) is applicable does not arise, because the parties are not in an employment relationship in the first place.

A different view, under the HRA rather than the Employment Contracts Act, was that clergy are in an employment relationship with their church authorities, and that this is why section 28 exists and discrimination is therefore lawful. All the opinions lead to the same conclusion: that the HRA allows churches to discriminate on grounds of sex (including sexual orientation) with respect to the engagement of clergy.

SAFETY

There continue to be instances of hate crimes, such as the vandalising of mosques and temples, desecration of Jewish graves, and verbal abuse or threatening behaviour towards people wearing religious attire, such as a hijab or turban.

Conclusion **Whakamutunga**

The right to freedom of religion and belief is incorporated in New Zealand law, and New Zealand generally complies with and exceeds international standards. Some challenges remain in relation to accommodation of differences in religion and belief in practice, particularly

in balancing the right to freedom of expression with the right to freedom of religion and belief, as reflected in a number of high-profile incidents. Maintaining respect for all religions and beliefs and all rights-holders requires continual work, particularly in developing relationships of mutual respect and recognising that there is an equal right to religion and ethical belief.

The Commission consulted with interested stakeholders and members of the public on a draft of this chapter. The Commission has identified the following areas for action to advance the freedom of religion and belief:

Guidelines

Developing guidelines for respecting diversity of religion and belief in domains such as the workplace, media, universities, health services and the criminal justice system

Teacher training and support

Providing training and support for teachers, and further educational resources about religion and belief to support the school curriculum, as well as information to aid public understanding

Immigration policy

Amending immigration policy to enable leaders of religious groups to take up or retain their positions with their communities in New Zealand

Lines of communication

Establishing clear lines of communication between government and communities of religious and ethical belief at the national and local level, and appropriate structures to support them.

