

Religion in New Zealand Schools

QUESTIONS AND CONCERNS

2009



Human Rights
Commission
Te Kāhui Tika Tangata

Human Rights Commission



Victoria University of Wellington

CONTACT THE COMMISSION

InfoLine 0800 496 877 (toll free)

Fax: 09 377 3593 (Attn: InfoLine)

Email: infoline@hrc.co.nz (for general enquiries)

Language Line, an interpreting service, is available.

An appointment with a sign language interpreter is available.

Auckland

Level 3, Zurich House, 21 Queen Street, Auckland

PO Box 6751, Wellesley Street, Auckland 1141

Ph: 09 309 0874 Fax: 09 377 3593

Wellington

Vector Building, Level 1, 44-52 The Terrace, Wellington 6144

PO Box 12411, Thorndon, Wellington 6144

Ph: 04 473 9981 Fax: 04 471 6759

Christchurch

Level 2 Moeraki Suite, Plan B Building

9 Baigent Way, Middleton, Christchurch

PO Box 1578, Christchurch 8140

Ph: 03 379 2015 Fax: 03 353 0959

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Introduction

The place of religion in New Zealand schools has been a complex issue that provides the source for a steady stream of enquiries and complaints to the Human Rights Commission and the New Zealand School Trustees Association.

These enquiries and complaints range from whether hot cross buns are allowed in schools or how schools celebrate Easter, to the question of whether children from non-religious families are discriminated against by the provision of religious instruction. People have asked how to withdraw students from religious observance and questioned the role of waiata and karakia in schools.

The Commission has prepared this resource to assist parents, whānau, teachers, trustees and students faced with these issues.

Sometimes people contacted the organisations wanting clarification on the law but frequently the enquiries and complaints were and are about the balancing of different, and sometimes competing, rights and how to accommodate the rights of others.

Religion in New Zealand Schools: Questions and Concerns sets out what the law says, but is not intended to be taken as legal advice. The aim is to provide guidance about how schools can give a place to religion that ensures security and dignity for all. It also gives details on where to go for further information and assistance. The resource is for state primary schools, but outlines principles relevant for secondary, integrated and private schools.

New Zealand is a signatory to international human rights conventions. These guarantee the freedom of religion, conscience, and belief and freedom from religious discrimination and coercion. School Boards of Trustees are not only subject to the Education Act 1964 but also the New Zealand Bill of Rights Act 1990 and Human Rights Act 1993, human rights laws which include sections specifically on religion.

Schools must not discriminate against their students on the grounds of religious belief or lack of it but there are a number of 'traps for the unwary'. This booklet has been published to help schools and their communities identify and avoid those traps.

Background

New Zealand, a secular state with no official state religion but with a formative Christian heritage, has changed considerably since the 1960s when the current legislation about religion in schools was enacted. We are now an increasingly diverse nation religiously and culturally. There has been a dramatic increase in the number of New Zealanders, now nearly a third of us, who declare ourselves to be of 'no religion' (Census 2006). There has also been notable growth in the Hindu, Buddhist and Muslim communities who now constitute one-twentieth of the population.

Approximately half of us are Christian, which is an overall decline in numbers of declared Christians, although there has been a rise in some Christian sectors. The place of religion in New Zealand schools needs to be considered in light of this new and changing context and it is likely that questions and concerns about religion in schools will increase.

This booklet *Religion in Schools: Questions and Concerns* had its origins in Auckland at the 2007 Diversity Forum, facilitated by the Human Rights Commission. Part of the race relations programme, the annual Diversity Forum allows individuals and organisations with an interest in cultural diversity to share and discuss information and ideas.

At the 2007 Forum Professor Paul Morris, Professor of Religious Studies, Victoria University, Wellington; Sylvia Bell, principal

legal and policy analyst from the Human Rights Commission; the Secretary for Education Karen Sewell and Professor Paul Rishworth, Dean of Law, University of Auckland, gave presentations on aspects of this issue. The discussion continued with a panel that included teachers and school trustees.

The discussion highlighted a number of perplexities, grey areas and unresolved issues. The participants concluded that guidelines for Boards of Trustees, principals and the wider school community would be a useful next step.

A version of this booklet was drafted by Paul Morris and Human Rights Commission staff and presented at the Diversity Forum 2008. The initial draft was revised after consultation with the New Zealand School Trustees Association, the Ministry of Education and submissions from those who responded to the invitation to comment.

The second draft was used as the basis for further public consultation until the end of June 2009. This booklet reflects those public submissions.

Religion in Schools: Questions and Concerns is the work of Professor Paul Morris, Victoria University of Wellington, and the Human Rights Commission with the participation of the New Zealand School Trustees Association and prepared in consultation with the Ministry of Education.

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Religion in schools

Q1. What is the difference between religious observance, religious instruction and religious education?

- Religious observance involves reciting prayers, singing hymns or participating in other aspects of religious practice. Religious observance is not neutral, as it either assumes or encourages adherence to a belief. An example is if prayers are said in a school assembly.
- Religious instruction means teaching aspects of a 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 on a personal level. An example is optional classes run by voluntary groups.
- Religious education, also commonly called religious studies, refers to teaching about religion(s) as part of a broader context. An example is the role religion has played in politics, culture, art, history or literature. Religious education does not require students to engage with the religions being studied at a personal level or make choices about accepting those beliefs. Religious education can take place as part of the school curriculum.

The law and religion in schools

The law is different for primary schools and secondary schools, and for state schools, private and integrated schools (See Question 9).

Q2. Is religion in primary schools permissible under New Zealand law?

Yes. Under the Education Act 1964 primary schools can provide religious instruction and religious observance, but only under certain conditions. The New Zealand Bill of Rights Act 1990 (Bill of Rights) permits religious instruction and observance in schools as long as it is done in a way that does not discriminate against anyone who doesn't share that belief.

Providing for the range of schools

Different standards apply to state primary schools, state secondary schools, integrated schools and private schools. These guidelines are for New Zealand primary schools.

Q3. What about private and integrated schools?

Private and integrated schools are not obliged to provide a wholly secular education. If an integrated school (established under the Private Schools (Conditional Integration) Act 1975) has a special character provision in their charter that is religious in nature, then the school can offer religious instruction and observance appropriate to that religious character without closing the school. However parents can still choose to withdraw students from particular observances, on the grounds, for example, that the student is of a different faith. Within the context of some integrated and private schools the term 'religious education' refers to religious instruction (as defined above).

Q4. What about Kura Kaupapa Māori education?

Kura Kaupapa Māori are primary schools that follow Te Aho Matua, which is based on tikanga Māori. At these schools Te Reo Māori is the medium of instruction and the education is based on Māori culture and values. Although Kura Kaupapa Māori have a special character, teaching in Kura Kaupapa Māori must be secular during the hours the school is open.

The same applies for Kura-a-iwi Māori -medium schools that have not aligned themselves to Te Aho Matua or Māori immersion units in mainstream schools.

Q5. What happens in state secondary schools?

Teaching in secondary schools does not have to be explicitly secular. Under the Education Act 1989 (Section 72) Boards of Trustees are accorded considerable discretion about what they choose to do by way of providing religious instruction. However, secondary schools are required to comply with the Bill of Rights, so if they do provide religious instruction or observance then it must be in a non-discriminatory way and pupils must be able to opt out if they wish.

State primary schools

Q6. What does the Education Act say about religion in state primary schools?

The effect of the Education Act 1964 is that schools do not have to provide religious instruction or observance, but they are permitted to do so under certain conditions. Whether a school includes religion in the day-to-day life of the school or not is up to the school's Board of Trustees. If a school does provide religious instruction or observe religious customs it must be done in a way that allows students to opt out freely if they want to.

- Section 77 states that teaching must be secular during the hours a school is open for instruction
- Section 78 allows a school (or part of a school) to close for up to one hour a week up to a total of 20 hours a year for religious instruction or religious observance, to be conducted in a manner approved by the school's Board of Trustees
- Section 79 allows children to opt out if their parents do not wish them to participate in religious ceremonies or teaching.

Q7. What about the Bill of Rights?

Four provisions in the Bill of Rights are relevant to religious instruction and observance in schools. The Bill of Rights does not override a Board's right to close for religious instruction under the Education Act, but it can exert a moderating influence on how religious instruction is provided.

- Section 13 states that everyone has the right to freedom of thought, conscience, religion and belief, including the right to hold opinions without interference
- Section 15 states that everyone has the right to manifest his or her religion or belief in worship, observance, practice or teaching either individually or in community with others, privately and in public
- Section 19 provides that everyone has the right to freedom from discrimination on the grounds in the Human Rights Act, including religious and ethical belief (including lack of a belief)
- Section 20 relates to the rights of minorities and provides that anyone belonging to an ethnic, religious or linguistic minority in New Zealand shall not be denied the right to enjoy their culture, practice their religion or use their language with others of their community.

Q8. What does the Human Rights Act mean for primary schools?

It is up to the Board of Trustees to decide how their school implements the requirements of the Education Act. The actions of all schools and their Boards of Trustees fall within the Human Rights Act 1993 (Part 1A). This means that a Board of Trustees and the school(s) they govern may not infringe the right to freedom from discrimination that all New Zealanders have under the Bill of Rights (Section 19). In other words, schools may not discriminate against their students on the grounds of their religious belief or lack of it.

Q9. Can a school teach about religion?

Yes. Schools are free to teach about different religions and the role that religion has played in politics, culture, art, history and literature.

The New Zealand Curriculum is based on principles that say the curriculum should be forward-looking and inclusive, should reflect the Treaty of Waitangi and New Zealand's cultural diversity and value the traditions of all its people. Among the things that the Curriculum encourages

students to value are inquiry and curiosity, diversity, community and respect¹.

Knowing about, and understanding, the beliefs of others are an important part of this. Schools are therefore free to teach about religions, so long as they teach students about beliefs rather than instruct² them on what to believe.

Q10. Isn't education in New Zealand meant to be secular?

Yes, the Education Act 1964 (Section 77) affirms that teaching in primary schools is to be secular. However, education about religion is compatible with this requirement.

A secular education should not favour any one particular religious belief. It should be possible to attend the school quite happily even if you don't hold those particular religious beliefs. This does not have to mean that religious teaching is banned completely. Schools need to be sensitive about how their actions are likely to impact on students holding different beliefs. This means ensuring that everyone's beliefs are treated with respect and all views are valued.

¹ The New Zealand Curriculum, 2007 Pages 9-10.

² See the definition of "religious instruction" at the start of this document.

Example 1:

Teaching creationism as science would be a breach of the need to be secular.

Example 2:

Teaching the social or political facts about the history of a religious tradition or including religious terminology in spelling tests would not.

Q11. How can a school comply with the legal requirements?

There is potentially a tension between the right of religious communities or individuals to manifest their religion or religious belief, and the right they and the other members of the community have not to be discriminated against on the grounds of religious belief, or lack of it.

Boards need to develop practical solutions to ensure that students and staff who wish to observe religious practices at school are able to do so, within reason and without infringing the rights of others who do not wish to join in.

It is important for Boards to communicate clearly with their community about religious observance and instruction that may occur at the school and the rationale the Board and staff have used to decide how their school handles religious observance or instruction. Consultation with the wider school community may be a useful way of establishing 'ground rules' for the school that can be understood by everyone.

Q12. Can we have prayers or karakia at assembly?

The Education Act 1964 requires that all teaching in primary schools must be secular (Section 77). The next two sections (78, 79) outline the conditions under which religious observance can be undertaken. Religious observance can only take place when the school is closed

and not at any time that the Ministry of Education is responsible for.

Usually, having prayers at assembly will be lawful as long as your school

- allows students to opt out
- observes the relevant time constraints and
- makes sure prayers take place during a period when that part of the school is closed for instruction. (See Question 17)

Even if a school does all this, feelings can still run high in some communities. Case law from countries such as the United States and Canada suggests that holding prayers in a school environment can amount to coercion. The implicit pressure students feel to take part will not always be counteracted by their ability to opt out.

Factors that may affect whether students feel coerced to join in religious observances like prayers or karakia at assembly are:

- the fact that it is compulsory for a child to attend primary school
- the influence of teachers
- peer pressure
- how partisan the religious observance is (e.g. whether it uses exclusive or inclusive language; whether the activities are explained or whether it is assumed everyone knows what's happening and what the significance is).

Q13. What about karakia and tikanga Māori?

Boards of Trustees are required to develop policies and practices that reflect New Zealand's cultural diversity and the unique position of Māori culture.

The line between tikanga Māori and religious observance is not always clear. For example, observing tikanga Māori may also include the expression of explicitly religious messages if karakia are said. The context is relevant.

The prudent approach is for schools to treat the teaching of tikanga as a special case. Caregivers and whānau should be informed about any religious aspects of tikanga Māori being practised at the school, and given the option of joining in or not.

An example:

Reciting the Lord's Prayer in te reo Māori at school assemblies might be harder to justify than karakia being said in the context of a powhiri.

Other issues

Q14. What is discrimination on the grounds of religious or ethical belief?

Whether the provision of religious instruction or observance amounts to discrimination will depend on how a school goes about it. Under the Bill of Rights (Section 19) discrimination occurs if:

- a pupil is treated differently because of their belief;
- and
- they are disadvantaged as a result;
- and
- the school's actions cannot be justified under the Bill of Rights (Section 5, justified limitations - the right to be free from discrimination can be restricted if

the limitation is sufficiently important to warrant overriding the right and the means chosen is no greater than is reasonably necessary to achieve the objective).

The issue of what constitutes discrimination on the grounds of religious or ethical belief, has not been decided by the New Zealand courts, but the principal issue is that students are treated at all times with dignity in a safe environment. Boards facing this issue are advised to seek legal advice.

An example:

A student's parents request that their child stay out of assembly because the Lord's Prayer is recited. The student's class sits together at the front of the hall. She asks to be excused from the whole assembly, or to be given a seat at the back, but is refused, so she has to walk the length of the School Hall to reach the exit, and then walk back to her seat at the conclusion of the prayer. The student feels stigmatised as a result, and complains that the other students tease her about it afterwards. The student and her parents claim they are being discriminated against because they are atheists.

The school's defence is that its actions are justified as reasonable in "a free and democratic society" under the Bill of Rights (section 5).

In deciding whether a Board's action is justified it will be considered whether:

- the restriction on the student's rights is sufficiently important to warrant overriding them
- the Board's actions are in proportion to the objective.

Q15. Does this only apply to Christianity?

No, the provisions of the legislation apply to all religions. A school should accept or refuse offers to provide instruction by representatives of any religious community, based on a process that can be seen to be non-discriminatory by being consistent and open to scrutiny. Boards have the right to decline anyone that they deem unacceptable. However, these decisions must be made in a fair and consistent way.

Q16. Can a school celebrate religious festivals and holy days?

Yes, a school can reflect the dominant culture of its community by celebrating cultural or religious events, as long as it is done in a way that is not exclusionary or discriminatory. The key to this is to also provide respectful and valid options for those who do not want to join in. A school with a large number of Christians might decide to mark Easter or Christmas, a school with a strong Jewish community might celebrate Hanukkah or a school with Hindu students might celebrate Diwali, as long as it is done in a way that is not exclusionary or discriminatory.

A school may also choose to undertake some themed activities such as making Hot Cross Buns for Easter or lights for Diwali as part of learning about different religious beliefs and practices. In both examples it is important to maintain the distinction between studying what people believe and teaching a student what to believe.

Q17. When is a school “closed”?

A school is legally closed when it is not open for instruction. A school is open for instruction when some kind of educational activity is taking place for the students enrolled at the school, such as regular classroom activities, school camp, or school athletics day. Every school must be open for instruction for a certain number of half-days each year. A half-day is defined as two hours before noon (midday), or two hours after noon. Closure cannot exceed 60 minutes a week or 20 hours over the school year.

The Education Act 1964 (Section 78) allows Boards to permit religious instruction or observance during periods when a school is closed for instruction. Allowing religious instruction or observance to take place outside normal teaching hours when the school is closed for instruction is considered to be consistent with providing a secular education.

A Board may choose to close a part of the school (e.g. the classroom where religious instruction is taking place) and keep another part open for teaching. In this case, the time can be accounted for on a pro-rata basis. It is understood that a school is closed at lunchtime.

An example:

The Board of a three-room school closes Room 1 from 8:30am to 9:30am, Room 2 from 9:30am – 10:30am, and Room 3 from 11 am – 12am on Thursday for religious instruction. The school has effectively been closed for an hour.

Boards need to use common sense when deciding whether their school/s are closed for instruction. Boards could consider permitting religious instruction when the school is already closed for instruction: before school, after school or during the lunch break.

An example:

Students are required to be at school by 8:30am for assembly. They then opt out of the school assembly during a prayer or a hymn but have to return when the prayer or hymn is finished. It is unlikely that the school could claim to be closed for instruction for the duration of the prayer or hymn.

Q18. What is “opting out”?

The Education Act 1964 (Section 79) requires student participation in religious instruction or observance to be voluntary. This is achieved by allowing pupils to opt out, that is to not be present at the place and time when observance or instruction is taking place. Offering the ability to opt out will not always guarantee participation that is truly voluntary. The process of opting out provided by the school must ensure the dignity and safety of all students in order to avoid unwilling participation.

As a general guide, the school should try to make sure that all students (and parents, caregivers and whānau) have been clearly told that they may opt out; can do so with a minimum of disruption to themselves and those who are remaining; have a specific arrangement with the school and their caregivers about where they will be for the duration of the religious observation or instruction; and know what arrangements have been made for their supervision and safety during that time.

An example:

The Year 2 teacher Whaea Tania and the Year 8 teacher Matua Iosefa both start their morning routine with Christian karakia. Matua Iosefa has two Muslim students in his class. Whaea Tania does not know of any other faiths among students in her class.

Matua Iosefa’s class discussed this at the start of the year when they drew up their class contract in consultation with parents and caregivers. By agreement the two Muslim students in his class go to the office to see if there are any notices to take around at the start of the day, and return to the classroom after the karakia have been said.

One of the girls in Whaea Tania’s class mentions the karakia to her parents a few weeks into Term 1. They are horrified and complain to the principal. They explain that the mother has broken away from a religious sect that the child’s grandparents and uncle still belong to. The break has caused a serious rift in the family and they are now vigorously opposed to religious “indoctrination” of any kind for their daughter.

In Matua Iosefa’s class, a process had been developed that takes the students’ circumstances into account; in Whaea Tania’s classroom there is a need to establish a process to make a decision on this issue.

Q19. Is the school required to supervise students who opt out?

Yes. A school still has a duty of care for its students before and after school and during normal school hours. Schools need to ensure that appropriate supervision and instruction is provided for children when the school is closed for religious purposes.

Q20. What does a school have to do to accommodate religious belief?

Since schools are subject to the Bill of Rights they are required to respect students' right to manifest their religion in practice and observance. If a Board wishes to prevent a pupil wearing an item such as a headscarf, kirpan, crucifix, taonga or Magen David, it will need to establish that the restriction is justified.

An example:

A school usually takes responsibility for students on the school grounds from 8:30 am to 4:30 pm. On Tuesday morning they have a whole-school assembly from 8:45 am to 9:15 am that includes prayers, hymns, and a Bible reading. The school has a duty to provide adequate supervision and instruction for the students who opt out of the assembly for religious reasons.

Although the school may claim that it is closed for instruction and that it therefore does not have responsibility for students who are opting out, the Board still has a responsibility of care to all students.

Boards need to be fair and reasonable, for example, regarding organised school transport where it would not be reasonable to expect parents to make alternative arrangements on a regular basis.

Religious instruction or observance

Q21. Should the group or individual offering religious instruction be voluntary?

Yes. With the permission of the Board of Trustees, voluntary groups or individuals can offer religious instruction when the school is closed for instruction. Groups such as Bible Clubs have no automatic right to be allowed to do so and Boards should be consistent in accepting one group and rejecting another.

Q22. Does the Ministry of Education endorse these groups?

The Ministry of Education does not endorse any providers of religious instruction or observance. It has no role in approving or formulating any programmes of religious instruction. This is usually done by the voluntary group itself, or the religious body that it is affiliated with. The Ministry of Education requires people in regular contact with students to be vetted by the police.

Q23. Can our teachers or principal lead prayers or other religious observances in the school?

Yes, but in a state primary school only if they can do so without their role as teacher or principal implying that the school endorses or requires compliance with the religious content. Because it is difficult in practice for students to separate “Mrs Jones the teacher” from “Mrs Jones the person” it is best avoided.

Q24. Are school chaplains exempt from these restrictions?

No. The rules define a standard of behaviour that is required from everyone. A school chaplain must make sure they don't make students feel unsafe or discriminated against, just like anyone else.

Avoiding and resolving conflict

Q25. How do we avoid this becoming a problem?

The role of religious observance or instruction in a school will be guided by the school's charter and the school culture defined in its other core documents, such as vision and mission statements, or school values.

The best way to avoid difficulties is for a school to have an explicit policy on religion in the school which is based on the principle of dignity and safety for all, alongside clear complaints procedures and processes for the resolution of conflicts. In these matters it is often a question of a school being aware of different religious (or non-religious) concerns, such as the faith of minority communities, so that they can acknowledge and attempt to balance the rights of all.

If there is not already a clear position on how the school will manage the place of religion in the school, the Board of Trustees will need to consult with their school community either formally or informally to develop one. Under National Administrative Guideline 1 (Curriculum Requirements and Student Achievement) the Board is specifically required to consult with the school's Māori community.

Any formal position statement, policy or procedure adopted by the Board of Trustees will need to be noted in the minutes of the Board meeting along with the reasoning behind the decision. How best to communicate this result to the school community is a matter for the Board and the Principal to decide.

Q26. What do we do if we have a problem?

Each school will have its own processes for dealing with issues of concern.

As a general rule:

- I. Parents or whānau should first raise their concerns with their classroom teacher.
- II. If the issue cannot be resolved at that level, it should go to the syndicate leader or Principal and then,
- III. If unresolved by the Principal, then application needs to be made to the Board of Trustees.
- IV. Advice can be sought by the Board of Trustees from the New Zealand School Trustees Association.
- V. Enquiries and complaints that cannot be resolved at school level can also be made to the Human Rights Commission:

In writing:

Auckland

Level 4, Tower Centre,
45 Queen Street,
Auckland
PO Box 6751,
Wellesley Street,
Auckland 1141

Wellington

Vector Building, Level 1,
44-52 The Terrace,
Wellington 6144
PO Box 12411, Thorndon,
Wellington 6144

Christchurch

Level 3, The Guardian Assurance Building
79-83 Hereford Street,
Christchurch
PO Box 1578,
Christchurch 8140

Email: infoline@hrc.co.nz
Tel: 0800 496 877 (toll free)

New Zealand School Trustees Association

Te Whakaroputanga Kaitiaki Kura O Aotearoa
Level 3, Aurora Chambers,
66-68 The Terrace,
PO Box 5123,
Wellington

Email: admin@nzsta.org.nz
Tel: 04 473 4955
Fax: 04 473 4706

Appendix

We were very appreciative of the large number of thoughtful and well-considered submissions received and where we could we have incorporated these suggestions, comments and recommendations.

The responses were generally very positive about the need for and value of this resource. The consultative process attracted many public submissions that went beyond the brief of this resource and the intention to offer practical guidelines to the current legislation. A number of submissions raised the issue of replacing the 'opt out' clause with an 'opt in' one as a means of ensuring greater awareness of the nature and content of activities offered to pupils in primary schools.

Others want schools to be wholly and consistently secular and religious instruction and observances not offered on the school grounds. Several submissions emphasised the Treaty of Waitangi commitments in school charters and the implications this might have for practices and teaching in these schools. A number of submissions highlighted the role that Christianity has played in our history, often seeing this as the necessary context for understanding the value of voluntary Christian religious instruction in primary schools.

Some respondents expressed the view that only a Christian education could ensure that the next generation would have moral values. Many respondents desired further teaching about the different religions.



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