

Chair

Education and Science Select Committee

RELIGIOUS INSTRUCTION AND OBSERVANCES IN STATE SCHOOLS

Purpose

1. The purpose of this paper is to respond to the Committee's request for a briefing on *'issues around teaching of religion, religious observances and the influences of religion on the ethos and life of schools'*. The paper addresses this request by discussing the legal framework within which the Boards of Trustees ("Boards") of state schools may choose to offer religious instruction and observances and the relevant constraints on their ability to do this.
2. This paper also discusses the Ministry of Education's ("the Ministry's") recent work in this area, which will assist Boards to better exercise religious neutrality when offering religious instruction and observances in the future.

Background

3. All New Zealand state schools are able to offer religious instruction and observances, however the nature and scope of these activities is limited by education and human rights legislation and varies between different schooling types and levels.

Primary and intermediate schools and "secular teaching"

4. The Education act 1964 ("EA1964") is clear in stating that teaching in all primary and intermediate schools must be *'entirely secular character'*¹. The Ministry interprets "secular" to mean "non-religious" and "non-spiritual".
5. For those Boards that wish to offer religious instruction or observances, however, limited discretion is available to do so during periods where classes or the school as a whole are considered closed. The periods where the school is used for religious instruction or observances cannot exceed either 60 minutes in any week or 20 hours in any school year and any instruction can only be led only by volunteer instructors. Any student participation in these activities is voluntary, and students may be given an exemption from participation if a parent requests this in writing.
6. In this way, the aim of educational legislation is to ensure that, if religious instruction and observances are offered they are effectively "fenced off" from the secular life of a school. The Instruction and observances should occur outside normal teaching hours, instruction should be led by voluntary

¹ Section 77

instructors only, and there should be no compulsion for students to participate.

7. It is important to note that the restrictions on the provision of religious instruction observances in no way impedes schools ability to offer education *about* religion. Neutral presentation of information *about* religion is a legitimate part of secular teaching and may be discussed in many parts of the national curriculum, including the social studies and health and physical education curricular. Conversely religious instruction and observance involve education *in* religion. Religious instruction and observances include programs based on a primary religious text, such as the Bible in schools program, the recitation of prayers and the singing of hymns. These are not neutral activities and either presuppose prior religious belief on the part of students or actively encourage this.

Secondary and composite schools and the discretion of Boards to manage as they "think fit"

8. Unlike primary and intermediate schools, secondary and composite schools are not subject to a secular teaching requirement. This means that Boards may choose to include religion in the life of a secondary or composite school through their general discretion to "*control the management of the school as it thinks fit*" provided under the education act 1989 (the "EA1989")².
9. This may extend beyond the teaching about religion through the curriculum to the inclusion of religious instruction or observances. Once again however, student participation is not compulsory and students may be excused from tuition under the EA1989 for *sincerely held religious or cultural views*³. "Tuition" includes attendance at assemblies or other whole-of-school events where religious instruction or observances may feature.

Integrated and designated character schools

10. Both integrated and designated character schools operate in accordance with an *approved special character*, which may be religious in nature thus offering parents an alternative to state "secular" education. Where a schools special character is religious in nature, it is able to offer religious instruction and observances as appropriate, but student participation in these activities remain optional as in other types of state schooling⁴.

The New Zealand Bill of Rights Act and its impact on religion in schools

11. Boards of all state schools are also subject to the New Zealand Bill of Rights Act, and must protect and promote the rights and freedoms that it contains. The Act contains five rights that have a direct application to religious instruction and observances in schools:

² Section 75

³ Section 25A

⁴ Students attending designated character schools may be exempt from participation under the EA1989, while students attending integrated schools may be exempt under section 32(2) of the Private Schools Conditional integration Act.

- *Freedom of thought conscience and religion* (section 18), by which everyone has the right to freedom of thought, conscience, religion and belief, including the right to hold opinions without interference;
 - *manifestations of religion and belief* (section 15), by which every person has the right to manifest his or her religion or belief in worship, observance, practice or teaching, either individually or in communities with others, and either in private or in public;
 - *freedom from discrimination* (section 19), by which everyone has the right to freedom from the prohibited grounds of discrimination outlined in section 21 of the Human Rights Act, including religion and the lack of a religious belief; and
 - *rights of minorities* (section 20), by which a person who belongs to an ethnic, religious or linguistic minority in New Zealand shall not be denied the right, in community with other members of that minority to enjoy the culture, or to profess and practice the religion, or to use the language of that minority.
12. State support for religion, including support at the Board of Trustees level, is not automatically a breach of the New Zealand Bill of Rights Act or of the International rights it enshrines. However where state support is offered and *school environment* it may potentially be in breach of the New Zealand Bill of Rights Act because of the risk of coercion to participate or state indoctrination given:
- the vulnerabilities of students (particularly students of primary school ages); and
 - their legal obligation to attend school.
13. On this basis, the New Zealand Bill of Rights Act does have a moderating influence on the way in which Boards may provide religious instruction and observances and creates an obligation to exercise religious neutrality. This obligation applies to the Boards of primary, intermediate, secondary and composite schools, but is perhaps of greatest import to primary and intermediate schools, which are legally required to provide secular teaching. The remainder of this briefing therefore focuses specifically on religious instruction and observances with within primary and intermediate schools.

Areas of concern

14. The education legislation that provides primary and intermediate schools with a framework for offering religious instruction and observances predates the introduction of the New Zealand Bill of Rights Act by some 26 years. To date no comprehensive advice has been issued to Boards about how to offer religious instruction and observances in a way that is consistent with modern human rights legislation and many Boards may currently lack an understanding of the obligations in this area.
15. The ministry does not collect any central data about the number of schools that choose to offer religious instruction and observances, however we are aware of a range of problems that have emerged in recent years. These include:
 - confusion about whether it is legally acceptable to provide access to voluntary groups to run lunch-time Bible clubs in schools;
 - religion creeping into the secular life of schools through the use of prayers, religious readings or hymns in assemblies and other whole-of-school events at times when schools cannot be considered “closed” for the purpose of secular teaching;
 - teachers and principals teaching religious observances, thereby creating the impression that student participation is not voluntary;
 - embarrassment and inappropriate alternative care arrangements for students who do opt out of participation in religious instruction and observances;
 - proselytising activity within schools carried out by school-based chaplains; and
 - a lack of transparency in the decision-making process of Boards about which religious groups to allow access to, with a tendency in some cases to admit Christian groups only.

A balanced way forward

16. In recognition of the need for greater guidance in this area, the Ministry is currently preparing advice for all primary and intermediate schools about how to offer religious instruction and observances in a manner that is consistent with the New Zealand Bill of Rights Act. This advice also aims to encourage good practice in a multicultural and multi-faith society - and to protect and promote the rights of students and parents whose choice is to hold no religious belief.

17. This will be issued in the form of the circular and will provide practical advice about how to ensure that religious neutrality is maintained at all times by Boards. This is built on two central principles:
- that student participation in religious instruction and observances should be truly voluntary, with no direct or indirect pressure to participate; and
 - that the ability to offer religious instruction and observances should cater for diversity of belief, reflect the range of religions that are important in today's New Zealand, and promote tolerance of multiple religious beliefs or none.
18. This rights-consistent approach to religious instruction and observances does involve a "narrowing down" of the discretion afforded to Boards in the EA1964, We highlight those areas where our advice represents a change in current practice in the following section of the paper, and also explain in more detail why this is necessary.

Truly voluntary participation

19. Truly voluntary participation means the avoidance of all direct and indirect pressure to participate in religious instruction and observance. In this context the obligation of religious neutrality requires Boards to neither encourage nor discourage student participation in religious instruction or observance and to be alert to any practices that could be considered coercive.
20. To limit the indirect pressure that students may feel to participate the Ministry will recommend that:
- **both instruction *and* observance are provided only by voluntary instructors**

because instruction or observance led by school staff, including teachers and principals may suggest to students that participation is not voluntary.
 - **All whole-of-school instruction or observance are discontinued or avoided**

because students may feel indirect pressure to participate though embarrassment or peer influence in these circumstances.
 - **Instruction and observances are provided in a separate, voluntary class during only the following times:**
 - before the school day begins
 - at lunchtime;
 - after school; or
 - teaching period assigned for optional activities

because a clear demarcation is required between the parts of the school day that would normally be set aside the secular teaching and periods when the school can be considered “closed” for the purpose of secular teaching.

- An “opt-in” system is used in preference to an “opt-out” system and that parents are:
 - notified about any religious instruction or observance before it occurs;
 - given the opportunity to actively consider whether they wish their children to participate or not, and
 - required to give written consent

because the ability to opt out of attendance or participation may be insufficient to avoid the appearance of coercion, and may expose students to undue embarrassment or attention.

21. The Ministry will also recommend that, if a Board chooses to close a class for religious instruction or observances during a time that is normally set aside for secular teaching, any students who are not participating are provided with alternative supervision or instruction that is of clear educational benefit.

Catering for diversity

22. Plurality of religious belief exists not just in wider society, but within schools as well. In this context, religious neutrality requires Boards to be even-handed in their decisions about which voluntary instructors to approve or decline for the purpose of religious instruction and observances. It also requires Boards to be alert to the range of religions that may be important within the school community.
23. To encourage transparency and decision-making, that:
 - **Boards develop generic criteria that can be applied to all requests from religious groups for access to the students. These criteria will allow each request access to be determined objectively and on a case-by-case basis.**
This will reduce the risk of Boards been seen to act a partisan way and approving the access to some groups while declining access for others

Other considerations

Tikanga Maori

24. All Boards are compelled by education Legislation to develop *policies and practices that reflect New Zealand's cultural diversity and the unique position of Maori culture*⁵.

⁵ EA1989, Section 61

25. The ministry recognises that meaningful and culturally appropriate inclusion of tikanga Maori does not always allow for a split between secular and spiritual or religious content to be observed in the manner envisaged by the EA1964. Further, we believe that tikanga should have an active role in the life of schools and not be "fenced off" in the same way as religious instruction and observances because it may contain elements that are religious or spiritual or both, such as karakia.
26. On this basis, we recommend only that Boards inform parents in advance if they are planning activities to relate to Maori language and culture that may include spiritual religious elements. This provides an opportunity to inform parents of the purpose and significance of these activities and to advise of their right to have their child excused from tuition for any sincerely held religious or cultural views.
27. These steps will reduce the risk of students been exposed to spiritual or religious content that some parents may object to during periods that are set aside for secular teaching. They will also help to promote broader understanding of Maori language and culture within schools wider communities.
28. The Ministry will recommend that Kura Kaupapa Maori also apply this advice in relation to any spiritual or religious elements of the teaching.

Manifestations of religion and belief

29. The planned advice to Boards will also emphasise that the New Zealand Bill of Rights Act obligation to uphold students' rights for the manifestation of religion and belief applies irrespective of whether they offer religious instruction and observances or not.
30. This obligation may have broad ranging implications and must be considered for instance, when sitting board policies about uniform or school attire as these policies applied to religious symbols and items of dress. It may also be necessary for Boards to accommodate the religious observances needs of individual students during the school day, if satisfied that these are required by the student's religious belief.