

# Supplementary Analysis: making religious instruction 'opt-in'

## Section 1: General information

Purpose
To support Ministers' decisions at LEG on 14 November on introducing the Education and Training Bill, including the amendment to make religious instruction 'opt-in.'
Key Limitations or Constraints on Analysis
<p>The Ministry of Education (the Ministry) has limited data available to inform the impact analysis. The Ministry does not collect data on how many State primary and intermediate schools and kura allow religious instruction, which religions are instructed, or the ways that boards are allowing religious instruction, including whether conditions are being met.</p> <p>Each year, the Ministry and the Human Rights Commission receive correspondence about religion in schools, including concerns that boards of trustees allowing religious instruction are not acting in ways that are consistent with the New Zealand Bill of Rights Act 1990 (the NZBORA).</p> <p>The Cabinet Social Wellbeing Committee, acting on behalf of Cabinet, agreed to the Minister of Education directing the Ministry of Education to partner with the Religious Diversity Centre to start a broader conversation about religion in schools. This work programme may lead to advice on whether any further changes are desirable and options for what these changes could include. The timing of this work programme has not been confirmed yet.</p> <p>The proposal to change education law so that boards of trustees of State primary schools who choose to close their school to allow religious instruction may only do so if the religious instruction is given on an opt-in basis has not been formally consulted on.</p> <p>The Ministry of Education recently consulted on and released guidelines on religious instruction in primary schools which encourage an 'opt-in' process. One recommendation in the guidelines is that schools adopt a signed consent approach to religious instruction.</p> <p>There were 100 submitters during consultation. Over half wanted a law change to increase regulation of religious instruction in schools or remove religious instruction from schools.</p> <p>Some submitters suggested that a complete removal of religious instruction from schools may not be politically feasible. Submitters suggested that, at minimum, law changes should include:</p> <ul style="list-style-type: none"><li>• making religious instruction 'opt-in';</li><li>• removing the board's ability to close the school for religious instruction, and instead only allowing religious instruction when the school is usually closed for instruction (i.e. before school, after school, and lunch times);</li><li>• making following the guidelines mandatory;</li><li>• extending the secular requirements to secondary schools; and</li><li>• requiring more government oversight of the content of religious instruction programmes, the certification of religious instruction volunteers, and the decision making processes of boards around whether, and how religious instruction is allowed to take place.</li></ul> <p>Through this submissions process, NZEI supported the Ministry's recommendation as "adopting a signed consent approach" – interpreted as 'opting in'. NZEI's policy document for their 2019 annual meeting states that "attendance of pupils at religious instruction programmes must be voluntary" and "parents or caregivers who wish their children to attend religious instruction should be required to opt into the programme in writing."<sup>1</sup></p> <p>The New Zealand School Trustees Association (the NZSTA) commented that it would now be more appropriate, and more consistent with, the secular nature of state schooling to require any</p>

1 NZEI's policy document may be found on their website:  
[https://www.nzei.org.nz/UploadedFiles/Policy/Policy\\_Document\\_for\\_Annual\\_Meeting\\_2019\\_and\\_website\\_201906.pdf](https://www.nzei.org.nz/UploadedFiles/Policy/Policy_Document_for_Annual_Meeting_2019_and_website_201906.pdf)



student wishing to participate to opt in.

The NZSTA also commented that the provisions regarding religious education in schools should be updated in their submission on the Education (Update) Amendment Bill in 2017.

Approximately one quarter of submitters expressed a preference for the status quo. Shifting the language to require religious instruction to be 'opt-in' would align with the majority of submissions received. The public will be able to have their say again on this issue during the Select Committee process.

#### Quality Assurance Reviewing Agency:

Treasury and the Ministry of Education

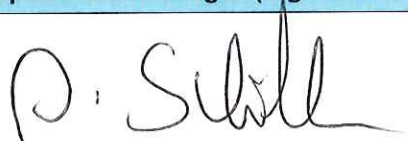
#### Quality Assurance Assessment:

A joint panel with representatives from the Regulatory Quality Team at the Treasury and the Ministry of Education has reviewed the Supplementary Analysis "Making Religious Instruction Opt-in" produced by the Ministry of Education and dated 8 November 2019. The panel considers that it meets the Quality Assurance criteria.

The Supplementary Analysis Report (SAR) is clear and concise. A convincing case has been made for changing from an opt-out to an opt-in process to help address the problem. The SAR indicates that requiring opt-in is more likely to ensure that a parent or caregiver has given consent for their child to attend religious instruction sessions consistent with the New Zealand Bill of Rights Act. Furthermore, the opt-in process is expected to have low administrative and compliance costs.

Although the Ministry has not formally consulted on the opt-in regulatory amendment, the SAR indicates that during consultation on the guidelines on religious instruction in state primary schools, the New Zealand Educational Institute and New Zealand School Trustees Association were supportive of signed consent and an opt-in process.

#### Responsible Manager (signature and date):



Dr. Andrea Schöllmann  
Deputy Secretary  
Education System Policy  
Ministry of Education

## Section 2: Problem definition and objectives

### 2.1 What is the policy problem or opportunity?

Section 77 of the Education Act 1964 requires teaching in State primary schools to be secular. Under section 78 of the Education Act 1964, boards of trustees of state primary schools can choose to close their schools for up to an hour a week and up to a maximum of 20 hours a year at any time of day to allow volunteers to give religious instruction.

Section 79 says that attendance at religious instruction or observances is not compulsory. It requires parents or caregivers to write to the principal of the school if they do not wish for their child to take part.

The Ministry of Education believes the religious instruction provisions are consistent in principle with the NZ Bill of Rights Act (NZBORA). However, there are school boards who are applying the provisions in a way that would not be consistent with the NZBORA.

The provisions do not specify which religion(s) can be instructed in. A board could choose to provide religious instruction or observances in any religion(s). This means that the provisions do



not explicitly favour one religion over another.

The Ministry does not collect data on how many schools have religious instruction, which religions are instructed, or the ways that boards are allowing religious instruction. However, the Ministry is aware that some schools have a long-standing tradition of offering religious instruction and that most religious instruction in State schools is Christian.

The largest provider of religious instruction is the Churches Education Commission (the CEC). The CEC have said that in 2016, they were operating in about a third of all State primary schools (650). This decreased to about a quarter (520) of State primary schools in 2018.

The CEC's submission on the guidelines on religious instruction noted support for a signed consent approach to religious instruction, but noted they leave this process to schools to manage as they see fit.<sup>2</sup>

There are also other providers of religious instruction. These providers may not support a signed consent approach to religious instruction.

The Ministry is aware of one State primary school that allows Islamic religious instruction. This suggests that in practice, students of different religious, or non-religious, backgrounds may not have the same opportunities to be instructed in or observe their religious or ethical beliefs at school as Christians.

School boards can presume that applying the section 79 requirement on an 'opt-out' basis, where the default is that students are opted in to religious instruction unless their family deliberately writes to the principal, meets all of their legal obligations.

In practice allowing religious instruction on an 'opt-out' basis is leading to some children being placed in religious instruction sessions without the full and informed consent of parents or caregivers.

It is possible that boards running an explicit 'opt-out' process are not applying the law in a way that meets all of their obligations.

The proposal to introduce a requirement that boards of trustees who wish to close their school to allow religious instruction must use an 'opt in' process is more likely to ensure that a parent or caregiver has given consent for their child to attend religious instruction sessions, consistent with the NZBORA.

## Section 3: The proposal

### 3.1 Making religious instruction opt-in

Section 77 and 78 of the Education Act 1964 will be drafted into the Education and Training Bill unchanged.

Section 79 of the Education Act 1964 will be restructured so that religious instruction and religious observances are treated differently:

- for religious instruction, a new provision will be inserted that states that a student enrolled at a State primary school may only attend or take part in religious instruction at the school if the parent or caregiver of the student confirms in writing to the principal that they wish the student to take part or attend; and
- if a parent or caregiver does not wish for their child to take part in religious observances, they will still need to have written to the principal.

This change aligns with the Guidelines on religious instruction in State primary and intermediate schools and kura, which recommend that religious instruction is held on a signed consent approach, and parents' or caregivers' wishes are made clear in writing before a child is placed in a religious instruction session.

These guidelines were consulted on for ten weeks between September and December 2018. The guidelines were updated following consultation before being published in May 2019.

2 The CEC's submission may be found at: <https://www.education.govt.nz/our-work/information-releases/responses-to-official-information-act-requests/>.



### 3.2 Who will it impact and how will it impact them?

**State primary and intermediate schools or kura which have boards that currently choose to allow religious instruction on an opt-out basis** will need to change their administrative processes for religious instruction from being opt-out to opt-in.

**Children at affected schools** which need to change their practice will no longer be able to attend religious instruction sessions without a parent or caregiver's consent.

**Parents or caregivers of children at affected schools** can be more confident that their child will not be attending religious instruction without their consent. Some parents and caregivers will now have to write to the principal if their board chooses to close to allow religious instruction and they wish for their child to attend. Other parents and caregivers will no longer have to write to the principal for their child to be excused from religious instruction sessions.

**Providers of religious instruction** will continue to be able to provide religious instruction at State primary and intermediate schools.

The **Ministry of Education** will continue to implement the religious instruction provisions, however on an opt-in basis.

The **Human Rights Commission** will continue to be a source of advice, information and mediation if a parent or caregiver wishes to make an enquiry or complaint about religious instruction in their schools. The Commission will need to update its advice to reflect the change.

## Section 4: Cost of compliance

### 4.1 Summary table of costs and benefits

Affected parties	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact
Additional costs of proposed approach, compared to taking no action		
Regulated parties	<p><b>Affected school boards</b> will need to change their administrative processes for religious instruction from being opt-out to opt-in.</p> <p>This will involve updating either enrolment forms or permission slips to require written consent for students to attend religious instruction.</p> <p>These schools should provide alternatives for children who do not attend religious instruction. This could be done in several ways, some of which will have no cost.</p>	Low
Regulators	<p>The <b>Ministry</b> will communicate about the changes to schools, and provide advice on how they can comply, including in instances where school boards are not complying.</p> <p>This is consistent with how the provisions are already being implemented so should have low costs.</p>	Low
Wider government	<p>The <b>Human Rights Commission</b> will need to update their advice for parents or caregivers who make enquiries or complaints about religious instruction at their school.</p>	Low

Other parties	<p><b>Children</b> who wish to attend but do not have parental consent will be unable to receive instruction.</p> <p><b>Parents and caregivers</b> who do wish for their child to attend religious instruction will need to give written consent for their child to attend.</p> <p><b>Religious instruction providers</b> may experience lower demand for their sessions at the student or school level, which could in turn decrease demand for volunteers.</p>	Low
Total Monetised Cost		N/A
Non-monetised Cost		Low

Expected benefits of proposed approach, compared to taking no action		
Regulated parties	<b>Affected school boards</b> are more likely to comply with the NZBORA. This will reduce the risk of legal proceedings, such as the <i>McClintock v Attorney-General</i> case, which Red Beach school was added to as a co-defendant.	Low
Regulators	The <b>Ministry</b> will be able to more clearly and simply explain to school boards what their legal obligations are when they are deciding whether and how to allow religious instruction. There is a lower risk that the provisions will be able to be interpreted and applied in multiple ways.	Low
Wider government	The <b>Human Rights Commission</b> may experience a lower number of enquiries and complaints as children are less likely to be placed in religious instruction without their consent.	Low
Other parties	<p><b>Children</b> are less likely to be placed in religious instruction sessions without their parent or caregiver's consent, which could unintentionally discriminate against them based on their religious or non-religious beliefs.</p> <p><b>Parents and caregivers</b> who do not wish for their child to attend religious instruction will no longer need to write to the principal for their child to attend.</p> <p><b>The New Zealand School Trustees Association</b> will be able to give clearer advice to boards on how to allow religious instruction in a way that complies with the NZBORA</p>	Low–Medium
Total Monetised Benefit		N/A
Non-monetised Benefits		Low–Medium



#### 4.3 What assumptions underpin this analysis?

- Opt-in will lower the risk that school boards allow religious instruction in a way that is inconsistent with the NZBORA.
- A relatively small number of schools will be impacted by the change to opt-in.
- The change to opt-in is administrative in nature and should have low compliance costs.
- Opt-in models tend to have lower uptake than opt-out models.

## Section 5: Implementation and operation

#### 5.1 How will the new arrangements be given effect?

The proposed changes will be given effect through the Education and Training Bill. The Bill has a place on the 2019 Legislation Programme, with a priority four categorisation, to be referred to Select Committee in the year. The Bill will bind the Crown.

The Ministry will develop a communications plan to communicate with schools about the changes. Communications would be timed to align with the Education and Training Bill's introduction to the House. All of the Ministry's standard communication vehicles will be used. The Ministry will also ask for some stakeholders, for example the New Zealand School Trustees Association, to share communications material with their members.

The Ministry will partner with the Religious Diversity Centre to start a conversation about religion in schools with religious and interfaith communities. This conversation will also be used to share information about the proposed changes.

School boards of trustees first received guidance about the Ministry's recommendation to take a signed consent approach in May 2019, when the *Guidelines on religious instruction in State primary and intermediate schools and kura* were finalised and published. The proposed changes come into force after the Education and Training Bill has passed its third reading and comes into force. This will not be until 2020. This will allow for sufficient preparation time for regulated parties.

Once implemented, the Ministry will be responsible for ongoing operation and enforcement of the new arrangements. The Ministry has not identified any concerns about its ability to do this. The Ministry currently acts on a case-by-case basis following a concern identified through correspondence, or the Ministry's complaints process. The only change will be that an opt-in process for religious instruction must be met following implementation.

## Section 6: Monitoring, evaluation and review

#### 6.1 How will the impact of the new arrangements be monitored?

No system-level data is currently collected about religious instruction in schools. This means that it will be difficult to determine the full impact of making any religious instruction opt-in when compared to the status quo.

Members of the public, mostly parents or caregivers, will continue to write to the Ministry of Education about their concerns with how religious instruction is being allowed in their school. We will use this correspondence to assess the impact of the new arrangements.

# Section 7: Gap analysis

7.1 How will gaps in the analysis be addressed to give effect to the new arrangements?
<p>The Ministry does not propose collecting system-level data on how religious instruction is being allowed at this time as it would add to the administrative burden for schools. This is consistent with how the current provisions are operated and enforced.</p> <p>The Ministry will use correspondence about the new arrangements, and what we hear through the conversation about religion in schools to inform any further steps or actions to be taken.</p>