

Cabinet Paper material

Proactive release

Minister & portfolio Hon Chris Hipkins, Minister of Education
Name of package Progressing Religious Instruction within the Education and Training Bill
Date considered 23 October 2019
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Cabinet Paper – Progressing Religious Instruction within the Education and Training Bill

Date considered: 23 October 2019

Author: Ministry of Education

Cabinet Social Wellbeing Committee Minute – SWC-19-MIN-0156

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You can read the Official Information Act 1982 here:

<http://legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html>

In Confidence

Office of the Minister of Education

Chair, Cabinet Social Wellbeing Committee

Progressing religious instruction within the Education and Training Bill

Proposal

- 1 This paper seeks agreement to amend religious instruction and observance provisions in state schools to require an “opt-in” process within the Education and Training Bill (the E&T Bill).

Background

- 2 The E&T Bill will merge the Education Act 1964 (the 1964 Act) and the Education Act 1989. Sections 77 to 81 of the 1964 Act regulate religious instruction and observances in State primary schools (the RI&O provisions), and date back to 1877.
- 3 The 1964 Act was passed before the New Zealand Bill Of Rights Act (NZBORA) and was never vetted for consistency with our human rights obligations. This vet will occur as part of the introductory process for the E&T Bill.
- 4 The Ministry has told me that, on their face, the RI&O provisions are consistent with the NZBORA. However, there are school boards of trustees (boards) who are applying the RI&O provisions in a way that would not be consistent with the NZBORA.

How religious instruction and observances are allowed in schools

- 5 The 1964 Act requires that teaching in state primary schools be secular. Religious education, where students are taught neutrally about religions within their social, cultural or historical context, can be done by teachers as part of the National Curriculum.
- 6 Religious instruction (when a particular religion or faith is taught or given preference) and observances (the things that are done to practice a religion) are not part of the National Curriculum. The 1964 Act also gives boards of State primary and intermediate schools and kura a choice about whether or not to close their school or kura to allow religious instruction or observances under some conditions.
- 7 Boards may choose to close their school to allow religious instruction or observances to take place at any time, including during normal school hours, for up to 60 minutes per week and no more than 20 hours in a school year. Religious instruction must be led by volunteers who are not school staff. Religious observances can be led by any person that the board of trustees decides is appropriate.
- 8 Parents, caregivers and whānau have the right to withdraw their child from any religious instruction programmes or observances by writing to the principal.
- 9 The law requiring teaching in schools to be secular, and setting out the conditions which must be met before religious instruction or observances are allowed does not apply to secondary schools, state-integrated schools or private schools.

- 10 All Boards must also consider the NZBORA and the Human Rights Act 1993, which give all people in New Zealand the right to be free from discrimination based on their religious or non-religious beliefs.
- 11 Any changes to these provisions, including moving them into the E&T Bill unchanged, are likely to be controversial. Submitters will submit on religious instruction and observance matters through the Select Committee process on the E&T Bill.

We should change the law to require students who wish to attend religious instruction to “opt-in”

- 12 Section 79 of the 1964 Act says that attendance at religious instruction or observances is not compulsory. It also requires any parent or guardian of the pupil to make his or her wishes known in writing to the principal of the school if they do not wish to take part. This is often read as requiring an “opt-out” process.
- 13 In practice this is leading to some children being placed in religious instruction sessions without the full and informed consent of parents and caregivers, who are not always made aware of the religious instruction sessions occurring, or the need to write to the principal for their child to be excused. Families and whānau are not always made aware of the true nature of religious instruction sessions; and may feel pressure to allow their child to attend the sessions.
- 14 For the human rights of students and their parents or caregivers to be upheld, boards must be certain that every child attending religious instruction is doing so with the informed consent of their parent or caregivers. While boards may be using an “opt-in” process to achieve this, the legislation doesn’t require parent or caregiver consent for participation, but it does require those who do not wish for their child to take part to write to the principal.
- 15 I therefore propose to use the E&T Bill to amend the religious instruction provisions to make explicit that religious instruction must be “opt-in.” Apart from this change to opt in, I propose to carry over sections 77-81 of the 1964 Act.

The religious instruction and observances provisions are the subject of legal proceedings

- 16 The case of Hines and Jacob v Attorney General is currently before the High Court. David Hines and Tanya Jacob are seeking a declaration under section 92J of the Human Rights Act 1993 that the RI&O provisions in combination with certain provisions in the Education Act 1989 create a statutory inconsistency with the right to freedom from discrimination affirmed by section 19 of the NZBORA.

- 17 s 9(2)(g)(i)
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I intend to direct the Ministry to undertake a broader work programme about religion in schools, in conjunction with the Religious Diversity Centre

- 18 It is time for New Zealand to have a broader conversation about the place of religion in schools, to ensure the education system reflects a modern, and diverse New Zealand,

while acknowledging our history. This will be an ongoing and evolving conversation involving New Zealand's inter-faith communities.

- 19 The Religious Diversity Centre (the Centre) has offered to prepare a background paper supportive of legislative change; to prepare a report on how teaching about diverse religions happens in other countries; and to facilitate a series of hui, first with the national religious leaders and then with religious and inter-faith communities.
- 20 I intend to direct the Ministry of Education to discuss these offers with the Centre and to work in partnership with the Centre to start a conversation about religion in schools, emphasising a shift from religious instruction to religious education.

Consultation

- 21 The Treasury, Ministry of Social Development, Office of Disability Issues, Ministry for Women, Te Puni Kōiri, Ministry for Pacific Peoples, Oranga Tamariki–Ministry for Children, and Ministry of Justice were consulted on this paper. The State Services Commission and the Department of the Prime Minister and Cabinet were informed.
- 22 I met with the Centre while this paper was under development to seek their thoughts about the place of religion in schools under the current regulatory framework.

Financial Implications

- 23 There are no additional resources required to implement this legislative change. Any costs of working with the Centre will be met from baselines.

Legislative Implications

- 24 I will use the E&T Bill to implement the shift to opt-in for religious instruction. The E&T Bill has a place on the 2019 Legislation Programme, with a s 9(2)(f)(iv) [REDACTED] The E&T Bill will bind the Crown.

Impact Analysis

- 25 s 9(2)(g)(i) [REDACTED]

Human Rights

- 26 The Ministry views the current RI&O provisions as being prima facie consistent with the NZBORA. However, some boards are applying them in ways that are not. Amending the law to require parents to opt their child in to religious instruction is likely to lead to an increase in compliance with the NZBORA because it will make boards' human rights obligations clearer.

Gender Implications

- 27 There are no gender implications arising from this paper.

Disability Perspective

28 There are no disability implications arising from this paper.

Publicity

- 29 The Ministry of Education recently consulted on and released guidelines on religious instruction in primary schools which encourage an “opt-in” process. 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. 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.
- 30 I intend to proceed with a shift to “opt-in” language in the E&T Bill without further public consultation as there has already been significant consultation on this issue. The public will be able to have their say again on this issue during the Select Committee process.
- 31 Communications material will be prepared on why we are amending the law to require an opt-in process to ensure parental consent for the introduction of the E&T Bill.

Proactive Release

32 I propose that proactive release of this paper is delayed until the introduction of the E&T Bill.

Recommendations

- 33 The Minister of Education recommends that the Committee:
- 1 **agree** to use the Education and Training Bill to carry over sections 77-81 of the Education Act 1964, but to amend these provisions to make explicit that religious instruction must be “opt in”
 - 2 **agree** to the Ministry of Education undertaking a broader work programme, in conjunction with the Religious Diversity Centre, to start a conversation about religion in schools, emphasising a shift from religious instruction to religious education
 - 3 **note** that this broader work programme will not be completed before the introduction of the Education and Training Bill
 - 4 **invite** the Minister of Education to issue drafting instructions to require school boards of trustees who wish to allow religious instruction to do so on an “opt-in” basis
 - 5 **authorise** the Minister of Education to make decisions on any issues of detail that may arise during the drafting process without further reference to Cabinet, subject to the decisions being consistent with the policy decisions in this paper
 - 6 **note** that the recommendations with drafting implications are subject to Parliamentary Counsel’s discretion as to how best to express these in legislation.

Authorised for lodgement
Hon Chris Hipkins
Minister of Education

Proactively Released by the Minister of Education



Cabinet Social Wellbeing Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Progressing Religious Instruction within the Education and Training Bill

Portfolio **Education**

On 23 October 2019, the Cabinet Social Wellbeing Committee, having been authorised by Cabinet to have Power to Act [CAB-19-MIN-0534]:

- 1 **agreed** to use the Education and Training Bill to carry over sections 77-81 of the Education Act 1964, but to amend these provisions to make explicit that religious instruction must be “opt-in”;
- 2 **agreed** to the Ministry of Education undertaking a broader work programme, in conjunction with the Religious Diversity Centre, to start a conversation about religion in schools, emphasising a shift from religious instruction to religious education;
- 3 **noted** that this broader work programme will not be completed before the introduction of the Education and Training Bill (the Bill);
- 4 **noted** that the Minister of Education will:
 - 4.1 write to the Associate Minister of Finance (Hon James Shaw) noting that an exemption has been sought for the provision of a Regulatory Impact Analysis, as the proposal has minor impacts on entities;
 - 4.2 provide a copy of the Regulatory Impact Analysis with the paper seeking approval for introduction of the Bill from the Cabinet Legislation Committee;
- 5 **invited** the Minister of Education to issue drafting instructions to require school boards of trustees who wish to allow religious instruction to do so on an “opt-in” basis;
- 6 **authorised** the Minister of Education to make decisions on any issues of detail that may arise during the drafting process without further reference to Cabinet, subject to the decisions being consistent with the policy decisions in the paper under SWC-19-SUB-0156.

Vivien Meek
Committee Secretary

Secretary's note: This minute has been revised to include Power to Act authorised by Cabinet.

Hard-copy distribution: (see over)

Present:

Rt Hon Jacinda Ardern
Hon Kelvin Davis
Hon Grant Robertson
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Andrew Little
Hon Carmel Sepuloni (Chair)
Hon Dr David Clark
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Jenny Salesa
Hon Kris Faafoi
Hon Tracey Martin
Hon Willie Jackson
Hon Poto Williams
Hon Julie Anne Genter
Jan Logie, MP

Hard-copy distribution:

Minister of Education

Officials present from:

Office of the Prime Minister
Officials Committee for SWC
Office of the SWC Chair