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(Inc.) ESTABLISHED 1927**

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**STATE ENDORSED RELIGIOUS DISCRIMINATION IN NEW
ZEALAND STATE PRIMARY SCHOOLS**

**SUBMISSION TO UNITED NATIONS
COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

February 2018

STATE ENDORSED RELIGIOUS DISCRIMINATION IN NEW ZEALAND STATE PRIMARY SCHOOLS

BACKGROUND

New Zealand established the education as universal, free and secular in the Education Act of 1877. This was essentially to give all children a good education regardless of which denomination their parents belonged to.

However, in 1912 there was a push back against secularism with the establishment of the 'Bible in Schools League' which promoted Christianity in public schools. This took the form of the 'Nelson' model, where Christian doctrine would be taught to children after formal school hours.

The National Council for Churches cooperated with the Bible in Schools League to form the NZ Council for Christian Education in 1949.

The Education Act of 1964 introduced the Nelson model of religious instruction into legislation, making special provision in the Act to permit regional Department of Education regions to authorize religious instruction within primary schools.

The Churches Education Commission (CEC) was formed as the successor to the NZ Council for Christian Education in 1973.

In 1990 New Zealand passed the Bill of Rights into law, and in 1993 the Human Rights Act. The 1964 Education Act is now interpreted to mean that School Boards have the power to authorize religious instruction classes in state primary schools. As of a survey in 2013 and from information from the CEC there were approximately 700 primary schools running religious instruction classes.

The practice of religious instruction has long been contentious, with regular complaints from parents. The Human Rights Commission has a long history of complains of religious instruction going back to it's formation. The New Zealand Association of Rationalists and Humanists (NZARH) have detailed a far longer history discrimination extending back to their formation in 1929.

In this submission we are not simply detailing the nature of religious instruction in state schools, but also detailing how the Human Rights Commission, the organisation tasked with ensuring human rights are protected in New Zealand, has fundamentally failed in it's mission, and how the New Zealand Government continues to permit open religious discrimination in New Zealand Schools.

RELIGIOUS INSTRUCTION CONDUCTED IN CONTRAVENTION OF THE HUMAN RIGHTS ACT

In New Zealand local school boards have been given the authority by the Education Act 1964 to permit religious representatives without formal qualifications to enter their schools and instruct children without the informed consent of parents. Approximately 40% of state primary schools ran religious instruction as of 2012.

Independent analysisⁱ of religious instruction syllabus by Paul Morris, Professor of Religious Studies at Victoria University concluded that

- a) He does not consider that the CEC's CRE teaching materials examined are at all suitable for non-Christian, non-evangelical students.
- b) He does not consider that the assurances to parents and trustees are sufficient to make the content clear or honestly reflect their minority viewpoints.
- c) He does not view the CEC's selectivity in relation to the New Zealand curriculum's competencies and values to validate the claim that Life Choices does support the National Curriculum and it might well be at odds with it, particularly by excluding diversity and critical textual learning.

In a 2001 the Ministry of Education prepared a documentⁱⁱ detailing inconsistencies between the Education Act and the Human Rights Act 1993. In this document they identify section 78 and 78A Education Act 1964 on the basis of discrimination on the grounds of religious belief.

In a 2006 a Ministry of Education document was prepared for the Education and Science Select Committee which identified a range of problems that have emerged in recent years. These include:

- a) confusion about whether it is legally acceptable to provide access to voluntary groups to run lunch-time Bible clubs in schools;
- b) 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.
- c) teachers and principals teaching religious observances, thereby creating the impression that student participation is not voluntary.
- d) embarrassment and inappropriate alternative care arrangements for students who do opt out of participation in religious instruction and observances.
- e) proselytising activity within schools carried out by school-based chaplains.
- f) 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.

REAL MANIFEST HARMS OF RELIGIOUS INSTRUCTION

The NZARH often fielded calls from concerned parents prior to 2012 about religious instruction in state primary schools. In 2012 as a result of multiple reports of open discrimination against parents and children it was decided to establish a network to help provide support and advice to parents through the aid of social media. The result was an immediate flood of parents relating their experiences. This is not the venue to detail all the different cases, but the following are some common reported experiences:

Punishments:

Some schools gave children who opted out of religious instruction tasks such as picking up rubbish in the school grounds, washing teachers dishes in the school staff room or stacking chairs in the hall. Some children are placed in areas usually set aside for detention and given no engaging activities.

Social Exclusion:

Children who are opted out can be identified as different and are bullied, especially in communities of high religiosity. At the very least being taken out of class and excluded at a young vulnerable age can be damaging. Parents who opt their children out of religious instruction have been excluded from school activities. When they have volunteered to participate in school events they have been told their aid is not required.

Parents wishes Ignored:

Often children will be included in religious instruction despite clear written instruction being provided to the school. Usually the school will claim a administrative error was the cause. Schools may demand that written opt out must be provided every year, every term, or on one reported case every week.

Pressure applied to children:

Children who have opted out have been questioned by teachers, asking them to explain why their parents have opted them out.

Lack of informed consent:

Many schools include children in religious instruction by default without any express parental permission. They may mention it in a school newsletter and depend on parents writing to the school to opt children out. Other schools misrepresent religious instruction as 'values classes' with little or no mention of religion, and ask parents to approve of these values classes.

Excluding Minority Religions

Immigrants with religions outside Christianity with poor English skills will not wish to bring further discrimination, and allow religious instruction of their children due to social pressure to conform.

FAILURE OF THE HUMAN RIGHTS COMMISSION TO ADDRESS DISCRIMINATION

Over the last four years the parents that belonged to the support network followed the established process for complaints, first trying to address their complaints with school boards before finally taking their complaints to the Human Rights Commission. Once taken to the HRC there may be mediation, depending on whether the school agrees. What should happen if mediation is unable to resolve the issue would be for a case with the Human Rights Tribunal to be filed.

The reality for parents is that by the time they follow the process through dealing with the school and going through HRC mediation their children have left the school. The approach of trying to resolve individual cases is not simply ineffective. Their lack of public statements supporting religious instruction or on providing guidance to schools, as they promised years ago, together with the way they obligate complainants to silence meant that they have discouraged public discourse and pressure for law change.

In 2016 the NZARH filed a Human Rights Complaintⁱⁱⁱ against the HRC itself. In this complaint we contended that:

Our complaint is that the Human Rights Commission has not executed its responsibilities under the Human Rights Act. The practises of the Human Rights Commission have had the effect of minimizing complaints and isolating complainants while allowing the practices at the root of the discrimination to continue.

In this detailed complaint we identified the ways the HRC has undermined religious freedom in state schools.

Confidentiality

The HRC insists on confidentiality. Once parents make a complaint to the HRC they are obligated not to discuss the issue in public or the media. The HRC measures itself on the basis of 'successful' mediation. However, the definition of success does not involve any follow up to ensure that schools address systemic discrimination. In fact often mediation outcomes are limited to the specific details of that situation and do not address the systemic causes of discrimination at all.

Isolation

Parents joining our support group often talk about the isolation they felt prior to joining, that schools and later the HRC process did not connect them with any form of support. Schools attempt to address individual complaints quietly. Everything is designed to minimize the concerns of parents and make them feel isolated and powerless. As a result no complaint has ever been raised with the Human Rights Tribunal in relation to religious instruction despite the large and constant flow of complaints.

Asymmetric Relationships

The relationship between parent and school is not symmetric. Many parents who would like to complain do not feel able to because of the potential harm such a complaint might bring to

their child. Many parents do not opt their children out, such as immigrants who do not wish to be seen as any different than necessary and not cause trouble. When complaints are made children are often the ones affected, with teachers acting in a hostile way. Parents are at the mercy of the school and teachers, having little choice in giving the school care of their children. Going as far as a HRC complaint requires a huge commitment from a parent, not only in terms of the work required to prepare evidence and appearing in mediation, but also the social risk they face when schools threaten to make their names public in dominantly religious communities, which can manifestly harm parents financially.

Our Recommendation

Our recommendation to the HRC was the following:

That the Human Rights Commission live up to it's charter, to become energetic, enthusiastic supporters of freedom of belief, to publicly endorse an education system that is safe and welcoming to all children, and to actively take an interest in ensuring schools observe the Human Rights Act and do not discriminate against children on the basis of religion. The HRC needs to work with and support those striving for better human rights rather than maintaining cold, silent, objective detachment.

HRC Response

The HRC did not agree with this recommendation. We were sent a letter^{iv} from Chief Executive Cynthia Brophy saying in part,

The Commission acknowledges the Association's concerns regarding the practice of religious instruction in state schools. While the Commission does not agree with the characterisations and assertions made by the Association as regards the Commission's performance of its role and functions, it notes the Association's opinions.... **The Commission does not have any current plans to undertake planned activities in this area** [religious discrimination in state schools] at present but will consider whether to do so when developing future workplans and will identify appropriate opportunities to advocate on related issues as they arise.

According to our reading of New Zealand law, specifically the Human Rights Act, the Human Rights Commission is given statutory responsibility for Human Rights in New Zealand. Saying that they do not have any current plans to address religious instruction in state schools in the face of constant complaints is an abrogation of their responsibilities.

UNDER RESOUCED HUMAN RIGHT TRIBUNAL

The NZARH has helped fund a independent case in the Human Rights Tribunal to challenge the legality of public state primary schools endorsing specific religions and having exclusive access arrangements with religious organisations. This has been despite receiving no support from the HRC, moral or financial.

To date this effort has not even been able to arrange a pre-hearing meeting to determine the schedule for the hearing as there is a backlog of cases extending more than three years.

The only way we have been able to bring this to a hearing is through combining the cases of multiple parents into a single hearing. Parents and supporters have also committed significant funds and time into this case. But with the current logjam of cases before the HRT there is little chance there will be a hearing in the near future.

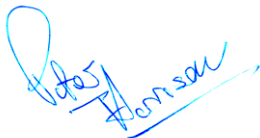
It should be noted that our own interests around religious instruction are hardly the only cases affected by this breakdown. At a meeting discussing peoples experiences with the HRC people with disabilities who are discriminated against in New Zealand schools were also finding it impossible to get support and faced the same logjam at the HRT. The cited the same systemic issue around confidentiality and isolation.

CONCLUSION

While the HRC has conducted campaigns around racism which are laudable, in the area of religious discrimination in state primary schools it appears utterly unwilling to tackle the issue, preferring to suppress parents who complain.

The evaluations the HRC uses, such as the percentage of successful mediations, is disconnected from the actual outcomes which leave parents disillusioned and feeling powerless. As you can see from the HRC response to our complaint it is unwilling to accept the lived experiences of those being discriminated against.

We feel that the UN should not give the New Zealand Human Rights a positive review. We would like to see the HRC implored to address religious discrimination in New Zealand.



Peter Harrison
President

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Review of Christian Education Commission teaching materials, June 2015
<https://religiouseducation.co.nz/wp-content/uploads/2015/08/PAUL-MORRIS-RtREVIEWS-2-CEC-SYLLABUSES.pdf>

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- ii Compliance with Human Rights Act 1993 – Ministry of Education Legislation and Policy S00/1561
<https://religiouseducation.co.nz/wp-content/uploads/2016/05/MOE-document-from-2001.pdf>
 - iii Human Rights Complaint, N.Z ASSOCIATION OF RATIONALISTS AND HUMANISTS, 28 November 2016
 - iv Letter from Cynthia Brophy, Chief Executive HRC to Peter Harrison, Chair NZARH, February 2, 2017