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Dr Anne Webster MP
Chair
Parliamentary Joint Committee on Human Rights
PO Box 6100
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Via email: religionbills@aph.gov.au

Dear Dr Webster

Submission – Inquiry into Religious Discrimination Bill 2021 and related bills

Thank you for the opportunity to provide comment on the Religious Discrimination Bill 2021, the Religious Discrimination (Consequential Amendments) Bill 2021, and the Human Rights Legislation Amendment Bill 2021 (the religious discrimination legislative package).

As Commissioner for Children and Young People in Western Australia I have a statutory responsibility under the *Commissioner for Children and Young People Act 2006 (WA)* to monitor and review draft laws affecting the wellbeing of children and young people under the age of 18 years and promote the participation of children and young people in the making of decisions that affect their lives. In performing these functions I must regard the best interests of children and young people as the paramount consideration. I am also required to have regard to the United Nations Convention on the Rights of the Child (the UNCRC), and give priority to the interests and needs of Aboriginal children and young people, and children and young people who are vulnerable or disadvantaged for any reason.

The views of children and young people

Article 12 of the UNCRC states that children and young people who are capable of forming their own views have the right to express those views freely in all matters affecting them. While the limited time available to provide a submission to this inquiry has constrained my ability to meaningfully consult with children and young people in relation to the religious discrimination legislative package, I was able to seek the views of children and young people to inform my submission to the Religious Freedom Review undertaken by the Expert Panel on Religious Freedom in 2017-18. Through two advisory committees comprised of children and young people I was informed of instances where children and young people had experienced systemic

discrimination when seeking to access education, employment, health services and safe housing due to their sexual orientation, gender identity or intersex status.

Members of the committees described to me how religious exemptions to anti-discrimination laws had impacted their personal wellbeing and aspirations:

"Having the religious exemptions in place gives a message that LGBT people are second class citizens. It makes people feel like a freak – it tells kids they are an outsider and don't belong there."

"Where I live, the only school that offered ATAR subjects was the religious school, so you had to go there if you wanted to go on to university. This means if you were excluded there you couldn't go on and continue your education and achieve your goals."

More recently, in 2021 over 16,000 children and young people shared their views and experiences with me through the Speaking Out Survey.¹ While religious beliefs and practices were not directly surveyed, many children and young people chose to share their thoughts regarding this part of their lives. A number of children and young people told me of not feeling safe in public because of their religion. One child in particular told me they "hope that people could be more nice to people of culture or someone that has a different religion." Other students shared their experiences of stress caused by having religion "forced" onto them at school, and of feeling as though not holding a religious belief while attending a religious school "stopped people from speaking their mind of a topic".

Human rights obligations

Article 2 of the UNCRC requires governments to respect and ensure the rights afforded to children and young people under the convention are upheld within their jurisdictions without discrimination of any kind. The UNCRC goes on to afford children and young people rights including:

- the right to freedom of expression (Article 13)
- the right to freedom of thought, conscience and religion (Article 14)
- the right of children and young people with disability to a full and decent life in conditions that ensure dignity, promote self-reliance and facilitate their active participation in the community (Article 23)
- the right to the highest attainable standard of health (Article 24)
- the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (Article 27)
- the right to education (Article 28)

¹ For further information see <https://www.cyp.wa.gov.au/our-work/projects/speaking-out-survey/>

- the right of indigenous children or children who are members of an ethnic, religious or linguistic minority to enjoy their own culture, practice their own religion or use their own language (Article 30).

It is an established principle of international law that human rights are indivisible and inalienable. They are afforded to all people equally and are all of equal status. The United Nations Special Rapporteur on Freedom of Religion or Belief noted this in his 2018 report, *State-Religion Relationships and their Impact on Freedom of Religion or Belief*, specifically making the statement “there is no hierarchy of human rights”². He expanded on this in the context of religious freedoms, writing “where freedom of religion clashes with the right to non-discrimination and equality, or laws of general effect, the focus should be on ensuring that all human rights are protected, including through reasonable accommodation.”³

While I recognise and support in principle the need to protect children and young people’s right to freedom of religion and protection from discrimination on the basis of their religious beliefs, these rights should not take precedence over the other rights and freedoms children and young people are entitled to under the UNCRC. It is the role of government to act as an impartial protector of all rights and freedoms and, as described above, human rights specifically afforded to children and young people must be equally respected and upheld. I am concerned the religious discrimination legislative package will disrupt the ability of governments to achieve this outcome by elevating elements of religious freedoms above other human rights in a manner that may be detrimental to children and young people, and by restricting the ability of state and territory equal opportunity and anti-discrimination laws to operate in this area.

Recommendations to the Committee

The views expressed by children and young people through the 2021 Speaking Out Survey and the 2018 advisory committees, along with the advice of the Special Rapporteur, demonstrate the importance of appropriately balancing all rights and freedoms children and young people are afforded under both the UNCRC and domestic laws. I do not believe the religious discrimination legislative package strikes the correct balance in its current form.

It is my recommendation that further work be undertaken to develop statutory protections that promote and support diversity, inclusion, and understanding for children and young people of all faiths, beliefs, identities and cultural backgrounds. This work should be informed by direct consultation with children and young people, their families and communities, and the individuals and organisations that provide them with services and supports.

² United Nations General Assembly Human Rights Council, *Report of the Special Rapporteur on freedom of religion and belief*, 18 February 2018

³ Ibid

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Colin Pettit', enclosed within a blue oval scribble.

COLIN PETTIT

Commissioner for Children and Young People WA

20 December 2021