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Getting it wrong on rights

Mark Fowler is right: freedom of religion is not adequately protected under Australian law and more needs to be done to ensure Australia's compliance with international human rights law (The Australian, 30/6/17). However, Mr Fowler is mistaken to suggest that ACT laws for the protection of religious freedom fall short of international standards.

The absence of an Australian charter of rights means that our human rights remain poorly protected at the national level. However, here in the ACT the story is different. The *ACT Human Rights Act 2004* expressly protects a range of fundamental human rights that are guaranteed under international law, including the right to freedom of religion.

All the rights in the ACT HR Act were drafted with the specific intention of being applied consistently with - and to give effect to – our international human rights obligations. The distinction that Mr Fowler seeks to draw between international treaties and domestic human rights protections is based on a misconception of the operation of the relevant limitation provisions.

The International Covenant on Civil and Political Rights and the ACT HR Act both use 'proportionality' as a key to unlocking whether a limitation on rights is permissible. This means that the limitation must be necessary to achieve a legitimate objective, and be no more restrictive than what is required to achieve that objective. A limitation that does not meet those criteria will not be permissible under the ICCPR – and by the same standard, it will not be considered 'reasonable' under the ACT HR Act.

Thanks to the HR Act, the ACT has clear and explicit protection of religious freedom. Government action that encroaches on religious freedom must be rigorously justified and victims of a breach of freedom of religion can vindicate their rights in the ACT courts. It's time for the rest of Australia to follow the ACT example and put the human right to religious freedom on an equal footing with other fundamental rights – as required by international law.

Regards,

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President and Human Rights Commissioner,
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