Freedom of Religion and the impact of COVID-19 on Christian life and worship

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It was always clear that measures designed to lessen the impact of, and prevent the spread of, COVID-19, would have an impact on the usual patterns of church life. Church meetings on Sundays[2] are one of the places where many people regularly gather together physically- indeed, in an increasingly isolated and fragmented society, we may say one of the "few" places. So, the arrival of a disease which spreads through droplets that are exhaled naturally meant that large gatherings had to be put on hold temporarily in the interests of public health.

But there are always fears that a "temporary" measure may become more permanent, especially given the hostility of some parts of the community to Christianity generally. So it is worth being aware of the principles and legal protections that govern these issues, to equip ourselves to make sensible comments on the issues and to be able to make good judgements about when some push-back against the restrictions may be needed.

How did we get here?

There's no real need here to review the amazingly swift changes that have taken place in life around the world due to the onset of the coronavirus, declared to be a formal global "pandemic" on March 11, 2020. But in broad terms the swift spread of the disease, through droplets passed on by coughing or sneezing, and its potential to be fatal (even though only in a small percentage of cases), has led authorities all over the world to adopt policies requiring citizens to not gather together in large groups (initially) and then in many areas to "isolate" by staying at home.

While the disease has taken a terrible toll already, thankfully there are signs that these policies are working. In Australia the number of deaths is low compared to other places around the world. There is a federal government "road map" which suggests that "Stage 3" will allow gatherings of up to 100 people. But it seems likely that some restrictions on gathering will continue to apply for a little while yet.

Religious freedom issues

Christians, then, will need to continue to operate with restrictions on their gatherings. Are these consistent with their rights of religious freedom?

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[2] Or Saturdays for our SDA friends!

In short, the answer is: Yes, so long as these restrictions are applied in a non-discriminatory way, and for no longer than is reasonably needed to meet the important public health goals.

Australia does not have a robust over-arching legal framework of protection for religious freedom. There is strong protection for religious freedom under international law, but such laws are not binding in Australia unless implemented by local legislation. Even if we had, however, fully implemented article 18 of the I*nternational Covenant on Civil and Political Rights,* the current measures would seem to be generally consistent with that document. Article 18 relevantly provides:

> 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or **in community with others and in public** or private, to **manifest** his religion or belief in **worship**, observance, practice and teaching…
>
> 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are **prescribed by law and are necessary** to protect public safety, order, **health**, or morals or the fundamental rights and freedoms of others. (emphasis added)

As can be seen, in usual circumstances believers would have the right to "manifest" their belief in "worship", "in community with others and in public". A law that prevented all church meetings would be a bad law and contrary to the ICCPR. But art 18(3) recognises that limits may be imposed, "prescribed by law", where this is "necessary" to protect, among other things, "health".

What laws apply at the moment?

What laws are applicable to these issues in Australia at the moment? Unfortunately, a full answer to that question would require consideration of 9 different jurisdictions, as Australia's federal system gives primary responsibility for health to the 6 States and 2 Territories, and there are relevant federal laws on matters such as travel. But we can focus for our purposes on NSW.

Regulation of these matters, given the swiftly changing circumstances, has mostly taken place, not through formal Acts of Parliament or even official "Regulations" made by the Governor, but through "Public Health Orders" issued by the NSW Minister for Health under authority of s 7 of the *Public Health Act* 2010 (NSW), which empowers directions to be made "if the Minister considers on reasonable grounds that a situation has arisen that is, or is likely to be, a risk to public health".[3]

These Orders, of course, have been made locally to implement a generally co-ordinated approach recommended by the Australian Health Protection Principal Committee ("AHPPC") and the "National Cabinet". But constitutionally, responsibility for health issues is a matter for the States, not the Commonwealth, and of course different States have imposed and relaxed rules in different ways at different times.

The latest NSW rules are contained in the *Public Health (COVID-19 Restrictions on Gathering and Movement) Order (No 3)* 2020 ("RGM Order No 3"), which commenced operation on Monday 1 June 2020 and repealed and replaced the previous orders.

The purpose of the Order, of course, is to continue contain the spread of COVID-19 in the community by limiting "up close" physical interactions, while loosening up the previous tight limits so far as this can be done safely. These limits have had a range of serious impacts on different sectors of the economy, but in particular have led to radical changes in the way

[3] Confusingly, there is a thing called a "public health order" under the Act, but that term as defined in the Act derives from another provision, s 62, and is not relevant to the general restrictions imposed by the *RGM Order*. Still, since the instrument calls itself an "Order" I will do so here.

that churches operate. Regular Sunday services have mostly been cancelled and often replaced by online video content, either "live-streamed" or pre-recorded or a mix of both. Small bible study and fellowship groups, or evangelistic or training course, have often moved to being conducted over Zoom or other video-conferencing options.

The latest Order opens up the possibility for more face-to-face meetings but needs to be read carefully. There are also a number of issues that are not directly addressed in the Order itself, which have been covered by a "checklist" issued by the government (such as the question of whether congregational singing can resume in church services, as to which see this interesting discussion). See reported comments of the NSW Chief Medical Officer:

> NSW Chief Health Officer Dr Kerry Chant said while people would be familiar with many general measures in the plan, others are more specific to places of worship.
>
> "Places of worship will be asked to find alternatives to practices that might spread the virus like singing, sharing books and even passing around the collection plate to reduce infection risks," Dr Chant said.
>
> "Communal singing and chanting should not occur because of the high risk of transmission of the virus. Instead, measures such as one singer standing at least three metres away from others would be safer."[4]

I will note some issues with the "checklist" below.

The RGM Order No 3

In broad terms, the latest Order now contains:

- Restrictions on **gatherings** and **use of premises** (Part 2)
- Requirements for **keeping of records** (Part 3).

Unlike the initial version of the Order, it no longer imposes formal restrictions on "movement", in the sense that there is no longer any requirement (as there was previously) that someone have a "reasonable excuse" for leaving their home. But it does restrict the circumstances in which persons can *gather* together, and it imposes limits on how *premises* can be used. In other words, even though people are free to leave home, there are still a number of limits on what they can do in the company of other persons once they have left home!

I will spell out these limits as they apply to common church and church-related activities.

1. Church services

One of the most obvious manifestations of the local church is the regular weekly gathering, most commonly on Sunday for Christian churches. The rules here have been eased up but the situation is still far from "normal".

(a) Meeting in "church buildings"

One of the factors that becomes relevant is whether a church service is held in an official church building. The formal terminology used in the Order is "place of public worship". This term is defined for the purposes of the Order (see the Note to cl 3(2)) as follows:

> ***Place of public worship*** means a building or place used for the purpose of religious worship by a congregation or religious group, whether or not the building or place is also used for counselling, social events, instruction or religious training.

This definition is taken from the local planning provisions, so the intent seems to be that if something is classified as a "place of public worship" for town planning purposes, it will be so treated under the *RGM Order No 3*.

Under cl 5(1), limits on the use of the premises referred to are imposed, referring to specific limits for different types of premises set out in detail in Schedule 1. (Not all premises

[4] NSW Health Department website as of 29 May 2020.

are covered by Sched 1). In Sched 1, column 1 lists the type of premises, column 2 the maximum number of persons who may be present, and column 3 any other conditions that are imposed on the use. Clause 5(1)(b) imposes an additional requirement which will be noted below, but as we will see it is not directly relevant to most church services.

"Places of public worship" are listed as item 18 in Schedule 1:

Column 1: **Premises**	Column 2: **Limitation on number of persons on premises**	Column 3: **Restrictions or conditions**
18. Places of public worship	For a ***wedding, funeral, memorial or religious service***—as per clause 11(1). For ***private worship***, the lesser of— (a) 50 persons, or (b) the total number of persons calculated by allowing 4 square metres of space for each person on the premises.	(a) may be open to the public only for a wedding, funeral, memorial or religious service or for private worship (b) for a wedding, funeral, memorial or religious service—as per clause 11(2)

This somewhat enigmatic content can, I think, be unpacked as follows:

1. For a traditional "church service" on a Sunday, or for a wedding, funeral, or "memorial" service, the limit on numbers is that contained in clause 11(1). While clause 11 imposes obligations on "participants" in religious gatherings, the intent seems to be that the numbers used there also apply to govern those who control the use of the premises.
2. For a ***Sunday service***, cl 11(1)(c) imposes a maximum attendance of "***50 persons***, excluding the persons necessary for the conduct of, or assisting in the conduct of, the service". (Depending on the religious tradition, this would seem to allow a minister, service leader, "servers", music group, and "AV team" organising sound or visuals or video recording or live streaming not to be counted as part of the 50.)
3. For a ***wedding***, cl 11(1)(a) allows a maximum of ***20 persons***, but this applies also to a gathering immediately after a wedding service (presumably the "reception"), and excludes from the 20-person count—"(i) the persons being married, and (ii) the persons necessary for the conduct of, or assisting in the conduct of, the service or gathering, and (iii) one photographer and one videographer."
4. For a ***funeral or memorial service***, cl 11(1)(b) (which also applies to a "gathering immediately after", so what some would call the "wake") allows up to ***50 persons***, "excluding the persons necessary for the conduct of, or assisting in the conduct of, the service or gathering, including, for example—(i) the funeral celebrant or minister of religion, and (ii) the funeral directors".
5. There is then what seems to be an odd category of "***private worship***". This is not a term with a generally recognised legal meaning, as far as I can tell. However, I think in the context, where it is contrasted to some extent with "public worship", that it may refer to the practice of allowing individuals to come into a church building and sit there quietly on their own while praying. The Order then recognises that a church building may be open for this purpose, but it imposes a numerical limit again on the number of such persons who may come into the building for this reason: the smaller of either 50

or "the total number of persons calculated by allowing 4 square metres of space for each person on the premises".

6. In addition to these numerical limits, there are two conditions attached to the use of a place of public worship in column 3. Condition (a) states that, apart from the permitted use for weddings, funerals, religious services or private workshop, the premises ***must not be open*** to the public. Condition (b) is even more enigmatic at first glance, but its meaning seems to be: for a wedding, funeral, memorial or religious service, the ***record-keeping*** requirements of clause 11(2) must be observed. Under cl 11(2)(a) persons attending such events must "provide the person's name and contact details, including a telephone number or email address, to the relevant person", and that person must record these details. But lest it be thought that this is a move towards some oppressive regulation of churchgoers, cl 12 notes that the information need only be kept for 4 weeks and is only to be provided on request to the Chief Health Officer (for COVID-19 contact tracing).

To come back to cl 5(1)(b)- in addition to the limits spelled out in Sched 1, the clause says that, for premises listed in Sched 1, there is a "condition that no person may be on the premises as part of an individual group of more than 10 persons". But then immediately cl 5(2)(b) says that this provision does not apply to the sort of church services mentioned above, and all they have to do is to comply with the cl 11 limits. It seems that the purpose of cl 5(1)(b) is to prevent large "table groups" at cafes and restaurants, and it will not impact how many worshippers can sit on a pew.

Are there other constraints on church services in a church building, then? Sched 1 does not on its own terms impose a "4 square metre" ("4m2") limit on churches, nor does it officially impose a "social distancing" limit of 1.5 meters between persons. While cl 8(1)(c) at first glance imposes a 4m2 limit on indoor gatherings, cl 8(2)(b) says that this limit does not apply to "premises referred to in Schedule 1, unless otherwise specified in that Schedule".

Unfortunately, at this point the "Guidance" note issued by the NSW Government is inconsistent with the Public Health Order. The Government on of 31 May put up online guidance on how "Places of Worship" should be managed. This contains a link to what is called a "COVID-19 Safety Plan" for churches.

While the guidance is generally very helpful, there are unfortunately some inconsistencies between the linked guidance and the Order. It is this Order (not the website "guidance") that provides legally binding obligations on NSW citizens, being an order made under section 7 of the *Public Health Act* 2010 (NSW), breach of which amounts to a criminal offence under s 10 of that Act.

There are **two inconsistencies**. The **first** is that the linked guidance on "Places of Worship" asserts, under the heading "Physical Distancing", that

> Capacity must not exceed, to a maximum of one person per 4 square metres,
>
> - 50 visitors for a religious service or private worship
> - 50 guests for a funeral service, excluding the persons involved in conducting the service
> - 20 guests for a wedding service, excluding the couple, the persons involved in conducting the service and the photographer and the videographer.

The assertion that the "one person per 4 square metres" rule applies to all religious services conducted in a place of public worship is incorrect. As noted above, this "4m2" limit is imposed where there are a number of "private worshippers" in a church building, but Sched 1, item 18 does ***not*** impose the rule on other uses of a place of public worship.

The **second** inconsistency is that the "guidance" asserts in general terms that: "Under Public Health Orders, you must have a COVID-19 Safety Plan for how you will keep

staff, volunteers and visitors safe", and links to such a form. But examination of the RGM Order No 3 will show that, while other activities are required in Schedule 1 to provide a "COVID-19 safety plan" (such as "aquariums" in item 2), ***no*** such requirement is imposed on "places of public worship" under item 18. Clause 5(3) only imposes the obligation to prepare and hold such a plan if that obligation is spelled out in a "condition" in Schedule 1. There is no such condition attached to places of public worship.

Let me be clear. The suggestions made in the guidance are not unreasonable. But they should be seen for what they are, suggestions, and not be presented as legal obligations incurring a criminal penalty, which they are not. If the "rule of law" in our community means anything, it means that public servants cannot impose legal obligations on citizens without using the formal processes our society has put in place for such.

How should churches respond? That is a matter for consideration for each congregation. Some might take the view that, since it seems these additional requirements are desired by public servants, and since the law in this area can be changed by the Minister for Health issuing an amendment to his Public Health Order at short notice, it may be best to comply with these elements of the guidance even if they are not part of the law. But others may hold off unless and until the law is actually changed.

Those organising church services, however, will want to carefully consider any guidance and other medical advice about what safe practices are to follow in church services. And of course, there would always be a danger of a civil damages claim of some sort in the future if a church did not follow government "best practice" advice and this led to someone acquiring COVID-19 and suffering harm.

One particular item from the "Guidance" (which is not mandated by the Public Health Order but is not contrary to the Order) is the previously flagged advice about singing. The Guidance provides:

> Avoid group singing or chanting and wind instruments (such as flute, oboe or clarinet). Solo singers should maintain at least 3 metres physical distance from other people.

This will be of particular concern to many Christians, who love to sing with others in Sunday services. It is also a matter that continues to be debated from a scientific point of view, as while there seem to be examples of COVID-19 "hot spots" occurring after choirs have sung, it is not yet settled whether it was the singing or some other feature of those meetings that led to the spread of the virus.[5]

(b) Church meetings in other premises

What about church meetings held elsewhere, outside "church buildings"? Many churches do not have their own dedicated premises, and so rent or use other public buildings. Putting to one side for the moment any condition that may be imposed by the owners of such buildings (which will of course always have to be taken into account), what rules will apply to church services for those churches? (It will be assumed here that such premises do not fall within the categories of premises listed in Schedule 1.)

The limits on use of "places of public worship" in Sched 1 will not apply, but there are still relevant rules which need to be considered.

1. Under cl 8, indoor premises must not be used by more than an absolute maximum of 100 persons at a time. In addition, the 4m2 rule **will** apply to church services not held in a "place of public worship".
2. There is a general prohibition under cl 10 against "public gatherings" of more than 10 persons. But under cl 10(c) this prohibition does not apply to "participating in a

[5] See https://www.lawandreligionuk.com/2020/06/05/music-musicians-and-the-congregation/ (5 June 2020) for a review of some of the conflicting studies in the UK.

gathering for a wedding, funeral, memorial or religious service, or a gathering immediately after a wedding, funeral or memorial service, at which no more than the number of persons permitted at the service or gathering under clause 11 are on the premises". These limits, referred to above, are 50 persons for religious services (on top of those needed to conduct the service), 50 for funerals and 20 for weddings. Under cl 11(2) appropriate records of all those attending must be kept by the organisers. Clearly the lower 50-person limit will apply to church services, rather than the more generous 100-person upper limit under cl 8 noted above, on the legal principle that a more specific rule over-rides the more general.

To sum up, the rules that apply to churches meeting in rented premises are in effect the same as those that apply to those running services in "church buildings", with the additional requirement that services in rented premises must comply with the 4m2 space rule. Just to be clear, however, this rule does **not** mean that every single person in the building must be seated in a 2m x 2m "bubble" apart from everyone else. The rule, in cl 8(1)(c), simply requires that "the size of the premises is insufficient to ensure there is 4 square metres of space for each person on the premises". It is a rule about the **overall siz**e of the premises and the number of persons at the meeting; while it assumes that good faith efforts will be made to ensure social distancing, it does not impose the more onerous "bubble" rule.

2. Small groups

How do the rules apply to small bible study or other groups?

(a) Meetings in private homes

There is a specific clause of the Order, cl 7, which applies to "residential premises". The primary rule is that only a maximum of 5 "visitors" may be allowed in private homes at the moment.

Interestingly this rule is waived in cl 7(2)(b)(v) to allow "participat[ion] in a gathering for a wedding or funeral or memorial service or a gathering immediately after the service at which no more than the number of persons permitted at the service or gathering under clause 11 are on the premises". But this does not apply to "religious services" in general. So, while one can have 20 people to a wedding in one's house and a reception afterwards, or 50 to a morning tea after a funeral, the RGM Order No 3 will still not allow regular meetings in a private house for church services or bible study groups.

Still, there is some leeway in cl 7. There are exceptions for "childcare" in cl 7(2)(b)(ii) and for someone present "for the purpose of engaging in work" under cl 7(2)(b)(i). If a group decided to meet in someone's house, they could arrange for child-care helpers to look after children while the group of 6 (host plus 5 group members) attended. If a church engaged someone as a part-time pastoral assistant or ministry apprentice (even voluntarily, as under cl 3(1) "***work*** includes work done as a volunteer or for a charitable organisation") they could come to the house and conduct a study group along with the residents of the house and 5 others. (This would also apply, clearly, to one of the full-time paid staff.)

But there is no general provision in NSW yet for a small group of 10, say, to regularly gather in a private home.

(b) Group meeting in another building

The rules however may allow a small group to meet in another building for bible study.

Suppose a group of 11. Could this group meet in the "**church building**" if there is one? Under Sched 1 a "place of public worship" has to be closed except for the specified purposes. It may be that a small bible study group could be regarded as being engaged in a "religious service". While this might not be the natural characterisation of the event, the term is not a

"technical term", and so it could be plausibly argued that a bible study group was such a service. Alternatively, it could be argued that when Sched 1 item 18 refers to "private worship", it includes not just individuals quietly praying on their own, but a small group interacting with each other. This might be suggested by the fact that "private worship" is said to have a limit of 50 persons (or less under the 4m2 rule). The interesting difference between these two characterisations would be that if the bible study meeting in the church building was a "religious service", then records would have to be kept of attendance under cl 11(2), whereas if it were regarded as "private worship" no such records would have to be kept.

Suppose the church does not have a formal church building, but **rents** other premises for mid-week activities? Assume these premises are not listed in Schedule 1. Then the 4m2 rule under cl 8(1)(c) would apply, and the gathering (if regarded as being "in public") cannot be more than 10 persons, under cl 10(1). However, there is an exception here for someone "engaged in work" under cl 10(2)(a), so again a pastoral worker could lead the group and not have to be counted in the group of 10.

The "engaged in work" exception under cl 10(2)(a), incidentally, would seem to apply so as to allow those who gather to work mid-week to provide a video recording or live stream as part of church activities, not to be counted in the limit of 10 who can gather in public.

If, however, small group activities meeting in rented premises were *not* regarded as being "in public" (in that they are restricted to those invited to attend by a group leader or organiser), then arguably there would be very few restrictions- they would not be "religious services" in the commonly understood meaning of the term and so not subject to cl 11, they would not be in a "public place" under cl 10, and the only limits would be those imposed under cl 8, that there could be no more than 100 persons, and also that the number of persons meet the "4m2" rule (so whichever the lesser amount is of those two numbers.)[6]

Avenues to challenge restrictions

As many have commented, those of us used to the privilege of meeting with fellow believers in large and small groups and face-to-face are finding it hard that these things can't happen at the moment.

But Christians are people who love our neighbours (*Matthew* 22:39) and submit to the authorities that God has provided for our good (*Romans* 13:5). In this unprecedented time of pandemic, and in submission to the laws enacted by the government for this limited time, most of us accept that for the moment we should not be physically meeting together, but instead "gathering" online and in other ways. But as the impact of the coronavirus lessens, many will be urging the government to ease up these restrictions. And if "urging" is not enough, what options are then available?

There have been legal challenges in other countries to restrictive rules, and while some have failed, some have been successful. For example, two cases before the German Federal Constitutional Court illustrate that different legal responses may be appropriate as the conditions on the ground change.[7] On April 10, 2020 the court rejected a challenge to the church closure laws in place at the time:

> The justices conceded that the regulation constituted an "extremely serious infringement of religious liberty" … all the more so since the ban encompassed Holy Week, including Good Friday and Easter, the liturgical climax of the Christian calendar. But even such a serious infringement was justified, the Court concluded, by the imperative need to constrain the plague in the early stages of the Corona pandemic.

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6 There may also be some groups that would satisfy the description of "counselling and support group services" under cl 6.

7 See J Collings "Religious Liberty and the Corona Crisis before the German Constitutional Court" (May 15, 2020) https://talkabout.iclrs.org/2020/05/15/religious-liberty-and-the-corona-crisis-before-the-german-constitutional-court/ .

> The justices were reinforced in their conclusion by the fact that the heightened risk of infection associated with religious gatherings was not limited to believers who voluntarily took part. It was borne also by third parties who had no choice in the matter.

Yet on 29 April 2020 the court upheld a later challenge:

> the Court ruled that, in the current stage of the Corona crisis, religious gatherings could **no longer be categorically banned**. During a transitional phase, authorities needed to allow the **possibility of exceptions** in individual cases.

As Collings notes, this seems a sensible and pragmatic approach which recognises the serious issues of religious freedom at stake, even in a public health crisis.

Even in France, notorious as an avidly "secular" country, there has been a successful challenge to blanket law forbidding religious gatherings.[8]

> The judgment recalls that freedom of worship, which is a fundamental freedom, also includes among its essential components the right to participate collectively in ceremonies, in particular in places of worship – but it must be reconciled with the constitutional value of the protection of health. The judgment notes that **less stringent supervisory measures are possible than the ban on all gatherings in places of worship provided for by the decree of 11 May 2020** – in particular given that the same decree allows for gatherings of fewer than ten people in other places open to the public.
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> The judgment concludes that the general and absolute prohibition is disproportionate in regard to the objective pursued – that of preserving public health – and therefore constitutes a serious and manifestly unlawful interference with freedom of worship.

In the United States, there have also been some successful challenges to local church closure rules, while some have failed. One helpful survey noted (as of May 12, 2020):

> So far, the lawsuits have achieved mixed results. Federal district courts in California and New Mexico, for example, have rejected challenges and ruled that the bans in those states are constitutional. Federal district courts in Kansas and Kentucky, by contrast, have ruled that the bans in those states do violate the First Amendment. This past weekend, the Sixth Circuit agreed, holding that Kentucky's ban on church services violates the Free Exercise Clause.[9]

Yet in the only such claim to the reach the US Supreme Court, the challenge failed (at least for the moment). Churches in California had, at the time, limits on attendance of the lower of 25% capacity or 100 persons (these had recently been increased from more onerous closure rules). One church challenged this under First Amendment as discriminating against religious groups and sought an urgent injunction. By 5-4 the US Supreme Court rejected the application. Roberts CJ was a key "swing" vote- he agreed there would have been a breach of the US First Amendment "free exercise clause" if the rules applied to churches when they did not apply to other "comparable" institutions, but held that the other places with more generous rules were relevantly different from churches where people gather in close proximity for longish periods of time and sing loudly.[10]

There has been also been at least one attempt to frame the restrictive rules closing churches in the UK as a breach of the law.[11] The statement of claim asserts (among other things) that:

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8 See https://www.lawandreligionuk.com/2020/05/19/conseil-detat-orders-easing-of-french-ban-on-public-worship/ (19 May 2020).

9 M Movsesian, "Religious Liberty in COVID-19's Wake" (May 12, 2020) https://lawliberty.org/religious-liberty-in-covid-19s-wake/ .

10 See *South Bay United Pentecostal Church v. Gavin Newsom, Governor of California* 590 U. S. ____ (2020) (May 29, 2020). Discussed in E Volokh, "Supreme Court (by 5-4 Vote) Rejects Free Exercise Clause Objection to California Occupancy Cap for Churches" (30 May 2020) https://reason.com/2020/05/30/supreme-court-by-5-4-vote-rejects-free-exercise-clause-objection-to-california-occupancy-cap-for-churches/ .

11 See the statement of claim lodged by Christian Concern on behalf of a number of church leaders on 28 May 2020, at https://christianconcern.com/wp-content/uploads/2018/10/CC-Resource-Misc-Judicial-Review-Opening-Churches-200529.pdf .

> In the circumstances where the Church has responded adequately to the public health threat, there was no lawful basis for the state to interfere with its rights and liberties in this drastic fashion. If it was necessary to supplement the Church self-regulation with any degree of state regulation, that interference had to be proportionate, and confined to exercising the powers which have a proper basis in law. A blanket ban imposed by the state on all church activities (with three prescribed exceptions) does not meet those requirements.

Would there be avenues for challenges of this sort in Australia? And would there come a point where disobedience to the law was necessary?

It should first be repeated that in general Christians should be happy to obey the laws laid down by duly constituted government authority, as Paul exhorts in Romans 13:

> **13** Let everyone be subject to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God. 2 Consequently, whoever rebels against the authority is rebelling against what God has instituted, and those who do so will bring judgment on themselves. (NIV)

But seeking to challenge an unjust law, or an unjust outcome, using the structures of the legal system, is not an ungodly response. Indeed, it is clear that the apostle Paul was more than ready to use appeal to the Roman legal system to allow him to escape unjust persecution and to continue preaching the gospel.[12]

Having said that, in NSW at the moment there would seem to be no basis for a legal challenge to highly restrictive and unnecessary church-closure laws, should such be put in place or remain in place. The protections provided to religious freedom by s 116 of our federal Constitution do not apply to the actions of State legislatures. There is no law in NSW forbidding "discrimination" on the grounds of religious belief, nor any general legal protection of religious freedom. This fact is one of the reasons I support the enactment of the proposed Federal *Religious Discrimination Bill*, which has been through various exposure drafts and was on the verge of being debated in Federal Parliament when the coronavirus arrived. A federal law preventing unjust religious discrimination would be one possible avenue to challenge a State or Territory law which, for example, opened up cinemas and football matches but continued to close churches.[13]

At what point then, if it is not possible to challenge the validity of the law in the courts, or to persuade politicians to change the laws, should Christians decide not to obey the law?

The principle laid down by the apostles in Acts seems to be that disobedience to the law is only justified where the authorities command that something should *not* be done, which Jesus has commanded *should* be done:

> **18** Then they called them in again and commanded them not to speak or teach at all in the name of Jesus. **19** But Peter and John replied, "**Which is right in God's eyes: to listen to you, or to him**? You be the judges! **20** As for us, we cannot help speaking about what we have seen and heard." (Acts 4:18-20)…
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> **27** The apostles were brought in and made to appear before the Sanhedrin to be questioned by the high priest. **28** "We gave you strict orders not to teach in this name," he said. "Yet you have filled Jerusalem with your teaching and are determined to make us guilty of this man's blood." **29** Peter and the other apostles replied: "**We must obey God rather than human beings**!" (Acts 5:27-29) (NIV)

There are injunctions in the New Testament to meet with God's people regularly. The most obvious is from Hebrews 10:

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12 See his refusal to be illegally imprisoned in Acts 16, and later appeals to his status as a Roman citizen and his right to appeal to Caesar at the end of Acts.

13 For my last submission on the *Religious Discrimination Bill*, see https://lawandreligionaustralia.blog/2020/01/28/submission-on-second-draft-of-religious-discrimination-bill/ . I do note there at para [13] that the current draft exempts anything which is unlawful under State and Territory law from being protected "religious belief or activity". I recommend this be changed to only exclude things that are serious criminal offences. If this were done, then State and Territory public health orders closing churches would still be able to be challenged as discriminatory.

> 24 And let us consider how we may spur one another on toward love and good deeds, 25 **not giving up meeting together**, as some are in the habit of doing, but encouraging one another—and all the more as you see the Day approaching. (NIV)

Yet "meeting together" is not always "meeting in person in large groups on Sundays". Churches have managed to "meet" online during the COVID-19 crisis, in both small and larger groups. In my view we cannot say that Christians have been disobedient by conducting meetings in these ways when health regulations have made it unlawful to meet in person. Indeed, there may well be believers in countries overseas which forbid Christian gatherings altogether who have been meeting in such ways previously.

It is hard to say whether we would reach a point where limitations on physical gatherings would be so severe, and so prolonged, that disobedience would be mandated. Perhaps if we were in a situation where all electronic "gatherings" were being monitored by a hostile government, we may well reach such a place. But it has to be said that we are nowhere near such a point in Australia at the moment. For the present, we can be grateful that the traditions of religious freedom remain strong in our culture, and pray for our leaders making these tricky decisions "that we may live peaceful and quiet lives in all godliness and holiness" (1 Tim 2:2).