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Prioritising Parliament

Roadmaps to Reviving Australia's Parliaments

1 August 2020 | Tom Gerald Daly

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Summary

Key Points

This Policy Brief makes the following central points:

- (a) The sidelining of parliaments across Australia has been a central ‘blind spot’ in the nation’s largely effective and well-coordinated pandemic response, which, despite the recent rise in COVID-19 cases and deaths, has kept numbers among the lowest in the Western world.
- (b) In meeting the challenge of keeping parliaments running, valuable lessons can be learned from overseas, especially from targeted measures taken in the UK, New Zealand, and Canada. The latter show that parliaments do not hinder an effective pandemic response.
- (c) There are no material obstacles to re-opening Australia’s parliaments, with a range of options available – especially ‘hybrid’ models mixing online and face-to-face means for conducting parliamentary business. The main sticking point appears to be political resistance based on a legitimate concern that something valuable would be lost if parliament does not meet in person, and possibly a sense that fuller sittings might slow the crisis response.

Recommendations

This Policy Brief makes six recommendations:

- (a) **Prioritising Parliament:** The functioning of parliament should only be curtailed as far as is necessary to suppress the virus. It is vital to ensure that parliament can function to the greatest extent possible, especially given that the pandemic has no clear end-point.
- (b) **Making Concessions to Extraordinary Circumstances:** There is broad consensus, in Australia and worldwide, that the ideal is for parliament to meet face-to-face. However, if this is not possible, limited or altered functioning is preferable to long adjournments.
- (c) **Making Use of a Wealth of Available Guidance:** Given the wealth of guidance available, the challenge is not a lack of advice for more fully re-opening parliaments, but identifying what guidance can be tailored to the needs of Australia’s parliaments.
- (d) **Modelling and Trialling Alternative Measures:** Learning from the UK experience, where the House of Commons piloted measures on a limited and cautious basis to build operational capacity, and trust in the new system, the federal parliament’s recently-formed bipartisan working group should produce different models and conduct trials on a pilot basis.
- (e) **Future-Proofing:** Moving to a hybrid parliament would be temporary, but establishing the measures and structures needed for parliament to function more fully by alternative means would help to ‘future-proof’ Australia’s parliaments for possible future crises.
- (f) **Working Together:** Government, parliamentarians, parliaments’ research and support services, the university sector, and civil society should work together to design practical measures for restoring Australia’s parliaments to fuller functioning, and future-proof them for future crises.

Prioritising Parliament

Roadmaps to Reviving Australia's Parliaments

1. Introduction

The first policy brief in this series, issued 3 June, recommended that greater attention should be paid to ensuring Australia's parliaments can function and 'future proofing' them for any further crises, by drawing useful lessons from successful experiments overseas to keep parliament running.

Since 18 July the functioning of Parliament has returned centre-stage due to the cancellation of the federal parliament's sittings scheduled to start on 4 August, based on health advice. This policy brief canvasses key options available for re-opening parliament and seeks to examine the key obstacles to employing alternative means for parliamentary sittings, such as sitting remotely.

2. Pandemic-Hit Parliaments

The COVID-19 pandemic has had an immediate and dramatic impact on parliaments worldwide, with sittings and committees affected as the virus spread in early 2020. In April it was estimated that suspensions or restrictions of parliament across just 18 countries affected some 2 billion people.

The extent of restrictions imposed has varied widely. At one end of the spectrum, parliaments themselves have changed the way they work (e.g. limiting their sittings to pandemic-related issues, with regular review of this policy, as seen in France and Germany). In others, parliament has been

suspended or shut by government, with little clarity on when it might be re-opened.

There are evidently good reasons for suspending face-to-face sittings temporarily, including protecting MPs' and staff members' health and preventing virus outbreaks (e.g. in Spain in March, the lower house was suspended for a week after one MP was confirmed as infected).

In some states, especially less democratic states, broad suspension of parliament appears animated by a perception that command-and-control action, through executive-led responses, is the only viable way to address any crisis – especially a crisis of the scale and magnitude of this pandemic.

However, in any democracy excessive restriction or outright suspension of parliament gives rise to serious concerns given that parliament is the central mechanism for representation of the people, deliberation, production of legislation, and oversight of government.

It is striking that Australia, compared to most other Western states, has made little provision to keep parliaments functioning during the pandemic.

3. Australia's Parliaments

The sidelining of parliaments across Australia has been a central 'blind spot' in the largely effective and well-coordinated pandemic response. Despite a highly concerning rise in COVID-19 cases in

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Victoria and New South Wales, and a return to lockdown measures in Victoria, at the time of writing (31 July), the number of cases and deaths remains among the lowest in the Western world.

However, the sidelining of parliaments across Australia has compared poorly to other countries. As cases first rose in March the federal parliament set August 11 as the date for full resumption of sittings, and the first full sitting fortnight since the beginning of March took place on 10-18 June. Most state and territory parliaments announced adjournment without a set date for resuming full sittings. Only a minority set a specific date (e.g. 15 September in New South Wales, or 18 and 25 August for Tasmania's two houses of parliament).

These adjournments have been criticized as hampering scrutiny of government pandemic measures, to which the establishment in April of a Select Committee on COVID-19 in the federal Senate, and the activities of other committees in both the federal parliament and other parliaments is only a partial response. For instance, Tasmania's Subordinate Legislation Committee has been viewed as providing insufficient scrutiny.

4. Guidance Developed to Date

Since the pandemic hit in January 2020, organisations in Australia and overseas have been producing guidance and collecting case-studies on how to keep parliament running during the crisis.

Within Australia, the federal Parliament's research service published information as early as 2 April on measures taken in the UK, Canada, New Zealand, and the USA to maintain the continued operation of parliament. A wealth of guidance has also been produced by individual scholars (e.g. Prof. Anne Twomey) as early as March.

At the international level, useful guidance has been produced by national parliaments (e.g. the House of Commons in the UK) and by international organisations such as the International Institute for Democracy and Electoral Assistance (IDEA), the Commonwealth Parliamentary Association (CPA), the Inter-Parliamentary Union (IPU), and the Westminster Foundation for Democracy (WFD). This guidance has been incrementally updated based on lessons learned from different countries.

There is now a wide range of useful and practical guidance available. The challenge, therefore, is not a lack of advice, but identifying what guidance can be tailored to the needs of Australia's parliaments.

Since 18 July this issue has returned to centre-stage due to the federal government's decision, based on public health advice, to cancel a 2-week sitting of the federal parliament scheduled to commence on 4 August. The federal parliament will next meet on 24 August but, as discussed below, sitting remotely has been ruled out.

Strong criticism has been levelled at the perceived marginalisation of parliament, from across the political spectrum: critics have offered that the lack of any plan for sitting by alternative means treats parliament as "surplus to requirements"; and is "baffling" given successful measures adopted in comparable Western states, including Canada, the UK, and across the EU.

In short, there is now a wide range of useful and practical guidance available for considering options to ensure Australia's parliaments can sit. The challenge, therefore, is not a lack of advice, but rather, identifying what advice might be useful to Australia's diverse contexts. Indeed, Australia is in the position to 'leap-frog' to best practice through careful analysis of overseas experiences.

This guidance can be divided into two categories:

- (i) **Overarching principles:** Core principles for maintaining parliamentary functioning can be gleaned from existing guidance, including:
 - *Avoiding Blanket Suspension:* Parliament should only be curtailed as far as is necessary to suppress the virus. There is

no justification for blanket suspension of parliament.

- *Immediacy*: Occasional, partial, or post-hoc scrutiny of government measures, by parliamentary committees, or judicial or quasi-judicial mechanisms, cannot fully meet the need for ongoing scrutiny of government measures in real time, especially as the pandemic continues with no clear end-point.
 - *Clarity*: The measures taken to modify parliament's functioning and sittings should be clearly set out for both parliamentarians and the wider public.
 - *Transparency*: Insofar as is possible, measures should be taken to ensure that parliamentary business remains open to the public, even if this is by alternative means (e.g. livestreaming sittings).
 - *Review*: Measures adopted should be regularly reviewed, both by parliament itself and by the government.
- (ii) **Practical Advice**: Available guidance also provides extensive detail on practical measures taken globally to ensure that parliament can continue to function, including addressing constitutional and legal impediments, amending procedure (e.g. quorum rules), available technology, and security issues.

5. Australia and Comparators

Practical guidance on how to keep parliament running, produced by experts in both Australia and overseas, has focused on: (i) modified face-to-face sittings; (ii) fully online sittings; and (iii) 'hybrid' models mixing online and face-to-face means. Parliaments in key comparator countries, such as the UK, have generally opted for a hybrid model.

In the UK, the House of Commons was fitted with screens and on 22 April, the House made history when a new system mixing in-person and remote attendance was trialled for the first time. As the Speaker, Sir Lindsay Hoyle, has explained, a cautious pilot approach was followed, by starting with a hybrid House for two hours at the beginning of each sitting day. This allowed parliamentarians and staff to adapt to the new format, iron out kinks, and build trust in the new system.

Canada followed suit on 27 May, its hybrid House of Commons opening with the Speaker's words: "OK, let's make history". A Committee of the Whole (similar in ways to New Zealand's Epidemic Response Committee) was also established for pre-legislation scrutiny, with the ability to convert to a House when voting is required.

In Australia, the establishment of the Senate Select Committee on COVID-19, the resumption of normal sittings by some committees, and continued remote sittings for others, have provided some scrutiny. However, as widely observed, the ongoing adjournment of parliament is concerning, especially given that there appear to be no insurmountable obstacles to hybrid sittings:

Constitutional: Prof. Anne Twomey has suggested that the constitutional requirement that the federal parliament sit in the "seat of government" could be met by hosting remote meetings at Parliament House, with key office-holders present (e.g. presiding officers and perhaps a designated minister), mirroring the UK approach.

Legislative/Regulatory: Both houses of parliament have amended their standing orders to permit meetings by alternative means. Legislation could place measures on a sound footing.

IT infrastructure and security: Many issues have been addressed, and the federal parliament's new 6-member bipartisan working group is examining ways to meet safely, including the UK model.

"We know how important it is for the Parliament to meet and to sit. (...) That is an important part of how our Parliament functions."

— Prime Minister Scott Morrison, 20 July

6. Meeting Face-to-Face

The main impediment to a solution involving remote attendance expressed to date appears to be a legitimate concern that physical presence is central to how parliamentary business is conducted and would be degraded without it.

Regarding the federal parliament, Prime Minister Scott Morrison stated on 20 July: “We know how important it is for the Parliament to meet and to sit. And... there is also somewhat of a consensus across certainly the major parties that it’s important that it sit in person. That is an important part of how our Parliament functions.” Opposition figures have echoed this sentiment.

However, as noted by other commentators, what precisely would be missing in a move to remote sittings has not been specified. One can surmise that it relates to issues including: the immediacy of communication; the constraints placed on collective communication within a physical chamber (including the rough-and-tumble of interaction); and a sense that remote sittings lack the necessary gravitas for state business. These concerns are possibly exacerbated by terms such as ‘virtual parliament’, suggesting that a hybrid model would somehow not be a ‘real’ parliament.

There is certainly a broad consensus, in Australia and worldwide, that the ideal is for parliament to meet face-to-face. For instance, the National Assembly in France has prioritised conducting business face-face due to concerns that working remotely would diminish the “ceremonial” dimension of deliberating in person.

Yet, most Western states have accepted that, as regards keeping parliament running, “the best is the enemy of the good”. Perhaps most striking is the UK Parliament’s willingness to re-think how parliament works, given its venerable pedigree as the ‘mother of parliaments’ and one where the physical setting, pomp and ceremony is so central that parliamentarians resist talk of moving it to another location even for much-needed repairs to the houses at Westminster.

7. Impeding the Response?

Beyond concerns regarding the deficiencies of parliament meeting remotely, there may also be concerns that a greater focus on parliament, and return to fuller parliamentary sittings, may

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needlessly slow down the pandemic response. After all, the National Cabinet has achieved a rapid and targeted response to the pandemic, with sufficient flexibility allowed for tailored measures across the states and territories.

In this connection, it is important to emphasise that Canada and New Zealand have managed to *both* keep parliament functioning more broadly and achieve an effective pandemic response.

8. Conclusion

Australia’s governments have done well to address the COVID-19 pandemic. This is reflected in the low number of cases and deaths by international standards, and new research showing that public trust in government has risen significantly. However, the pandemic response has a hole at its centre so long as parliament remains sidelined. This concern will become only more acute over time, given that there is no clear end in sight to the COVID-19 crisis.

This policy brief has identified political resistance, based on legitimate concerns, as the main impediment to more fully restoring Parliament. However, ultimately, this is not a political choice or a luxury that can be ill-afforded during times of crisis. It is, rather, a democratic imperative to ensure a legitimate and accountable response to the ongoing pandemic crisis. Hybrid sitting would not be a permanent step, but putting in place the structures needed for parliament to function by alternative means would help to ‘future-proof’ Australia’s parliaments for possible future crises.

Learning from the UK experience, the federal parliament’s new bipartisan working group should conduct trials on a pilot basis. As observed in Canada, a hybrid parliament is “complicated, limited, and imperfect”, but it’s “the best of not-great options to keep Parliament working”.

Fig 1 The UK's Hybrid Parliament

The UK's House of Commons was a world leader in making reforms to its procedures and sittings. On 22 April, the House made history when a new system mixing in-person and remote attendance was trialled for the first time. In the photo the overall layout is clear, with a smaller number of MPs in attendance, sitting according to physical distancing protocols, and with additional MPs attending remotely. The House of Commons took a cautious pilot approach to trialling this 'hybrid' model, which allowed MPs and staff to adapt to, and build trust in, the new (temporary) system.



References

Note: A variety of references in this text are provided as hyperlinks within the text. This references section lists selected texts. A small number of these texts are not linked in the text but provide useful background reading.

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Governing During Crises Series

Governing During Crises is a research theme established by the School of Government at the University of Melbourne. The series seeks to develop our understanding of governing in the face of different types of crisis, at a time when Australia has recently faced the bushfire crisis, is currently addressing the COVID-19 pandemic, and faces even larger and longer-term challenges including climate change.

This Policy Brief series aims to distil academic research into policy analysis and clear recommendations, drawing on the cutting-edge research taking place at the School of Government and the University of Melbourne more broadly, as well as the School of Government's extensive global networks. Selected briefs will be produced in collaboration with the COVID-DEM project (www.democratic-decay.org), which examines how the pandemic is affecting democracy in Australia and worldwide.



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