

## Parliamentary sittings during the COVID-19 crisis

Briefing paper

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### Summary

The Australian Government's response to COVID-19 has included the adjournment of Parliament and the transfer of extensive decision making powers to individual Ministers. State Parliaments have also been adjourned, including in NSW. This heightens the risk of corruption and poor decision-making, and limits the ability of MPs to represent their constituents.

Commonwealth and State Parliaments could continue to provide scrutiny and representation by meeting online. There are examples of Parliaments adapting their procedures to fit with video conference technologies, and this could be done at a Commonwealth level in line with the requirements of the Australian Constitution:

- Constitutional requirements that Parliament sits in the "seat of government" could be met by a core group of Ministers and MPs sitting in Canberra and hosting others by video conference.
- The quorum of attendance of Parliament outlined in the Constitution could be adapted by each House to include online attendance.
- Wales, Scotland and the UK Parliaments are holding online questions and statements, and the Welsh Assembly and the European Council are trialing online voting.
- The UK hybrid model of online and in-person attendance could meet Australian Constitutional requirements and allow for greater participation of all elected representatives.

### Australian context

Parliaments around the world have continued to sit during the coronavirus pandemic.

Travel restrictions and the geographical distance between Canberra and many electorates make physical attendance difficult for many MPs. In addition social distancing makes the normal functioning of Parliament untenable.

Prime Minister Scott Morrison cited a potential "trial run" of the reconvening of Commonwealth Parliament in May 2020.<sup>1</sup> In March the Senate Standing Committee on Procedure was tasked with preparing for meetings of the Senate in alignment with social distancing and Constitutional requirements.<sup>2</sup>

Developing a model whereby state and Commonwealth Parliaments can meet with full attendance is critical for proper Parliamentary scrutiny and democratic representation. Relying on diminished attendance of MPs in person via pairing or proxy could limit the engagement of backbenchers, minor parties and the crossbench.

### **Constitutional issues**

The Australian Constitution outlines a range of requirements for Commonwealth Parliamentary sittings. Importantly, it gives the Commonwealth Parliament power to legislate with respect to "postal, telegraphic, telephonic, and other like services." This recognizes existing and future advances in technology that could not have been envisaged at the time of the drafting of the Constitution.

Professor Anne Twomey of the University of Sydney has analysed key sections of the Constitution in relation to the possibility of a virtual or online meeting of Parliament.

Professor Twomey found:<sup>3</sup>

- Section 125 of the Constitution requires that Parliament meet in the "seat of government". This requirement could be met by a small number of MPs and the Presiding Officer meeting at Parliament House in Canberra and hosting other MPs online
- Sections 20 and 38 require "attendance" of members of House and Senate. This attendance could be online attendance with the permission of each House.
- Sections 44 and 46 reference members "sitting" which could be online with the permission of each House.
- Sections 22 and 39 require the "presence of at least one-third" of senators or members "to constitute a meeting of" the Senate or the House of Representatives "for the exercise of its powers". These provisions permit parliament to "otherwise provide", in this case, to allow "online presence" of representatives.

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<sup>1</sup> Sky News, 2020, *Parliament set for trial run in May*, 17<sup>th</sup> April 2020, <https://www.msn.com/en-au/news/australia/parliament-set-for-a-trial-run-in-may/ar-BB12HJZU?li=AAaeSy5>

<sup>2</sup> Department of the Senate, *Procedural Information Bulletin for the sitting period 23 March*, [https://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/Procedural\\_Information\\_Bulletins/2020/bull\\_342](https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Procedural_Information_Bulletins/2020/bull_342)

<sup>3</sup> Twomey, 2020, *A virtual Parliament is possible – and may be needed – during coronavirus pandemic*, The Conversation 24<sup>th</sup> March 2020, <https://theconversation.com/a-virtual-australian-parliament-is-possible-and-may-be-needed-during-the-coronavirus-pandemic-134540>

## Case studies: the UK and Europe

Scotland, Wales, the UK and the EU have all developed abilities for their Parliaments to meet at least partially online. Each jurisdiction has cited the need for parliamentary scrutiny of government's responses to the coronavirus crisis.

Scotland convened a virtual question time on 9<sup>th</sup> April 2020 where members were able to put questions to the Ministers most closely involved in the government's response to the Corona 19 crisis, including the First Minister and four Cabinet Secretaries. The session was made public via online streaming and was broadcast via the BBC.<sup>4</sup>

The Scottish Parliament already uses an electronic voting system. MPs insert their identity cards into the console on their desk in the chamber. The MP has 30 seconds to vote, and votes overall take about one minute each. This system could easily be adapted to online remote voting.<sup>5,6</sup>

Wales has held two virtual assemblies including statements and question time to the First Minister and the Environment Minister. On the 8<sup>th</sup> April the Assembly held its first vote online, with leaders of each party voting on behalf of their members, followed by independents. Proceedings were broadcast live.<sup>7</sup>

The UK Parliament has established a hybrid model where questions and statements are able to be put by members both in person and via Zoom. The Commons Chamber can accommodate 50 members in person while respecting social distancing requirements. Up to 120 members are able to attend online. The Chamber is fitted with screens to allow for equality of participation for those online. The scheduling of questions and statements is organised by the Speaker and the government two days prior.<sup>8</sup>

The UK Speaker and the Procedure Committee are planning to extend this hybrid model to government motions, the consideration of legislation, and voting on divisions. Currently divisions are held in person but with consideration for social distancing. The Parliamentary Digital Team is tasked with developing a model for online voting on legislation.<sup>9</sup>

The European Union has also begun to adapt. The EU College of Commissioners are meeting weekly by teleconference. The 27 heads of state on the European Council met via video conference on the 26<sup>th</sup> March, temporarily allowing electronic voting by email until 31<sup>st</sup> July.<sup>10</sup>

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<sup>4</sup> The Scottish Parliament, 2020, *Scottish Parliament to hold Leaders' Virtual Question Time*, 8<sup>th</sup> April 2020, <https://www.parliament.scot/newsandmediacentre/114963.aspx>

<sup>5</sup> Scottish Parliament, *Standing Orders of the Scottish Parliament – Decisions and Voting*, accessed 21<sup>st</sup> April 2020, <https://www.parliament.scot/parliamentarybusiness/26509.aspx>

<sup>6</sup> BBC, 2016, *How does Holyrood's electronic voting system work?*, 23<sup>rd</sup> September 2016, <https://www.bbc.com/news/uk-scotland-scotland-politics-37450323>

<sup>7</sup> National Assembly for Wales, 2020, *First vote cast at virtual Plenary as National Assembly for Wales meets online*, 8<sup>th</sup> April 2020, <https://www.assembly.wales/en/newhome/pages/newsitem.aspx?itemid=2093>

<sup>8</sup> UK House of Commons, 2020, *Procedure under coronavirus restrictions: proposals for remote participation*, Procedure Committee report 21<sup>st</sup> April 2020.

<sup>9</sup> UK House of Commons, 2020, *Procedure under coronavirus restrictions: proposals for remote participation*, Procedure Committee report 21<sup>st</sup> April 2020.

<sup>10</sup> Electoral Reform <https://www.electoral-reform.org.uk/how-other-parliaments-are-handling-the-coronavirus-outbreak/>

## **Way forward**

Commonwealth and State Parliaments should continue to sit during the COVID-19 crisis. The scrutiny of legislation in public view is crucial to our democratic process, particularly at time of increased government intervention and public spending.

Commonwealth Parliament could adopt a similar hybrid model to that of the UK. This would meet both the requirements of the Australian Constitution and social distancing:

- A limited number meeting at Parliament House in Canberra to meet Constitutional requirements;
- The remainder joining via video conferencing to allow for full representation;
- Equality of participation of online and in person attendants to ensure engagement from backbenchers, minor parties and the crossbench;
- The order of questions and statements agreed beforehand and facilitated by the Speaker;
- Government motions and bills to be considered;
- Investigation of Scottish, EU and Welsh models of online voting.

## **About The Centre for Public Integrity**

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