

# Online Parliamentary voting

Briefing paper

August 2021

*"a virus cannot bring down democracy"*<sup>1</sup>

## Summary

The COVID-19 crisis afflicting Australia's east coast has caused significant disruption to sittings of the Federal Parliament, with the ACT, New South Wales and Victoria simultaneously in lockdown and many parliamentarians unable to travel to Parliament House.

While provision has been made for parliamentarians to contribute remotely to parliamentary proceedings, neither the standing orders of the House of Representatives nor the standing orders of the Senate currently provide for online voting and to date, no motion proposing amendment to the orders to facilitate this in response to the ongoing COVID-19 crisis has been considered.

In contrast, Parliaments large and small around the world have adapted their procedures to permit remote voting using a variety of teleconferencing and videoconferencing technologies. These include the EU Parliament,<sup>2</sup> the UK,<sup>3</sup> Wales,<sup>4</sup> Belgium,<sup>5</sup> the Isle of

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<sup>1</sup> David Sassoli quoted in European Parliament, "Remote voting in the European Parliament and national parliaments" [https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/649348/EPRS\\_ATA\(2020\)649348\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/649348/EPRS_ATA(2020)649348_EN.pdf) accessed 18 August 2021.

<sup>2</sup> European Parliament, "How will the debate technically work?" <https://www.europarl.europa.eu/news/en/press-room/20200325BKG75805/q-a-on-extraordinary-remote-participation-procedure/0/how-will-the-debate-technically-work> accessed 21 August 2020.

<sup>3</sup> Inter-Parliamentary Union, "Country compilation of parliamentary responses to the pandemic" <https://www.ipu.org/country-compilation-parliamentary-responses-pandemic> accessed 21 August 2020.

<sup>4</sup> Senedd Research Service, "Coronavirus: Senedd procedure" <https://seneddresearch.blog> accessed 25 August 2020.

<sup>5</sup> Inter-Parliamentary Union, "Country compilation of parliamentary responses to the pandemic" <https://www.ipu.org/country-compilation-parliamentary-responses-pandemic> accessed 21 August 2020.

Man,<sup>6</sup> Spain,<sup>7</sup> Luxembourg,<sup>8</sup> Romania,<sup>9</sup> Latvia,<sup>10</sup> Brazil,<sup>11</sup> Argentina,<sup>12</sup> Chile,<sup>13</sup> Tunisia,<sup>14</sup> the Philippines<sup>15</sup> and the Maldives.<sup>16</sup> In the US, half of State legislatures authorised remote voting or meetings in response to the pandemic.<sup>17</sup>

Presuming that numerous parliamentarians will be prevented from attending upcoming sittings of the Federal Parliament, its ability to legislate will effectively be conditional upon the unofficial practice of 'pairing' of physically present members being used to maintain parties' relative voting strengths. Continuing to rely on an unofficial practice that is not available to non-aligned Members is an unsatisfactory way for the Parliament to fulfil its constitutional legislative function. In circumstances where the COVID-19 crisis risks protracted disruption to parliamentary proceedings, provision must urgently be made for remote voting: as European Parliament President David Sassoli observed in adopting procedures to enable that Parliament to function remotely, "the European Parliament must remain open, because a virus cannot bring down democracy".<sup>18</sup>

## Existing Commonwealth Parliament arrangements

A number of arrangements have been made to facilitate participation of physically absent members in parliamentary proceedings.

### *House of Representatives*

On 23 March 2020 the House of Representatives adopted a resolution allowing it to meet "*in a manner and form not otherwise provided in the standing orders with the agreement of the Leader of the House and the Manager of Opposition Business, with the manner in which*

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<sup>6</sup> Electoral Reform Society, "Isle of Man: World's oldest Parliament goes online" <https://www.electoral-reform.org.uk/isle-of-man-worlds-oldest-parliament-goes-online/> accessed 24 August 2020.

<sup>7</sup> Spain has permitted its parliamentarians to vote remotely in special circumstances since 2012, and has widened the scheme's application: Inter-Parliamentary Union, "Country compilation of parliamentary responses to the pandemic" <https://www.ipu.org/country-compilation-parliamentary-responses-pandemic> accessed 21 August 2020.

<sup>8</sup> Inter-Parliamentary Union, "Country compilation of parliamentary responses to the pandemic" <https://www.ipu.org/country-compilation-parliamentary-responses-pandemic> accessed 21 August 2020.

<sup>9</sup> In the case of Romania, the Senate's Standing Orders were amended in order to provide for the holding of remote meetings in exceptional situations; remote plenary sittings are broadcast live and voting conducted over the phone by roll call: Inter-Parliamentary Union, "Country compilation of parliamentary responses to the pandemic" <https://www.ipu.org/country-compilation-parliamentary-responses-pandemic> accessed 21 August 2020.

<sup>10</sup> Inter-Parliamentary Union, "Country compilation of parliamentary responses to the pandemic" <https://www.ipu.org/country-compilation-parliamentary-responses-pandemic> accessed 21 August 2020.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> In the Maldives, sittings have been held with only the Speaker present in the People's Majlis and parliamentarians being able to take part in debates and cast votes online: Microsoft, "Keeping legislative wheels turning during COVID-19" <https://news.microsoft.com/apac/2020/04/14/keeping-legislative-wheels-turning-during-COVID-19/> accessed 21 August 2020.

<sup>17</sup> House of Commons Library, "Coronavirus: How are parliaments worldwide working during the pandemic?" <https://commonslibrary.parliament.uk/parliament-and-elections/coronavirus-how-are-parliaments-worldwide-working-during-the-pandemic/> accessed 24 August 2020; National Conference of State Legislatures, "COVID-19: State actions related to legislative operations" <https://www.ncsl.org/research/about-state-legislatures/COVID-19-state-actions-related-to-legislative-operations.aspx> accessed 25 August 2020.

<sup>18</sup> Above n 1.

Members may be present (including for the purposes of achieving a quorum) to be determined by the Speaker".<sup>19</sup>

Pursuant to this, a number of relevant agreements have been made – most recently, on 3 August 2021, it was agreed that Members could contribute remotely proceedings for the sittings from 3 August to 2 September 2021; it has also been agreed that crossbenchers' voting intentions will be tabled.

#### Agreement for Members to contribute remotely via video facility

Under this 3 August 2021 Agreement, members who are unable to attend Parliament for reasons related to the pandemic can participate remotely (only via the official parliamentary video facility, and from an Electorate Office of Commonwealth Parliament Office).<sup>20</sup>

The Agreement limits participation via video facility to making a speech, or asking or answering questions during Question Time. Voting is explicitly excluded, as is moving or seconding any Motion or amendment to a Motion or Bill, or proposing or supporting a proposal to discuss a Matter of Public Importance.

#### Recording of voting intentions

The Leader of the House and Manager of Opposition Business have agreed to the tabling of records provided by crossbenchers indicating how they would have voted during proceedings in which they have been unable to vote.<sup>21</sup>

This practice has been utilised on at least four occasions to date.

### **Senate**

#### Revised Senate Rules

The Senate has also adopted revised rules for remote participation in Senate proceedings.<sup>22</sup> Under these rules, Senators can only participate from an electorate office

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<sup>19</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 23 March 2020, 834 (Christian Porter, Leader of the House).

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fvotes%2Fa8862a7a-ba99-4d05-9a82-gbc4de4b9493%2F0017%22> accessed 17 August 2021.

<sup>20</sup> This Agreement applies to the sittings from 3 August to 2 September 2021.

<sup>21</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 9 August 2021, 151 (Tony Burke, Manager of Opposition Business)

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22chamber%2Fhansard%2F008878e2-702c-4017-beac-g7696e5ca1d0%2F0345%22> accessed 17 August 2021; Commonwealth,

*Parliamentary Debates*, House of Representatives, 12 August 2021, 67 (Tony Burke, Manager of Opposition Business)

[https://www.aph.gov.au/Parliamentary\\_Business/Hansard/Hansard\\_Display?bid=chamber/hansardr/f83fb22e-3b2c-4cf2-9b21-0feg97d5f77a7/&sid=0144](https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber/hansardr/f83fb22e-3b2c-4cf2-9b21-0feg97d5f77a7/&sid=0144) accessed 17 September 2021; ; Commonwealth,

*Parliamentary Debates*, House of Representatives, 12 August 2021, 67 (Tony Burke Manager of Opposition Business)

[https://www.aph.gov.au/Parliamentary\\_Business/Hansard/Hansard\\_Display?bid=chamber/hansardr/f83fb22e-3b2c-4cf2-9b21-0feg97d5f77a7/&sid=0143](https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber/hansardr/f83fb22e-3b2c-4cf2-9b21-0feg97d5f77a7/&sid=0143) accessed 17 September 2021.

<sup>22</sup> Senate Journal No 99, 13 May 2021 at 3502

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fjournals%2F611ecda1-470b-4dd8-86d3-bfe03adef47b%2F0035%22> accessed 17 September 2021.

or Commonwealth Parliamentary Office (unless the President and Deputy President determine that the requirement should be waived because of COVID-related travel restrictions, quarantine requirements or health advice); amongst other limitations, they may not participate in a division, move motions or amendments, or propose or be counted in support of a proposal to discuss a Matter of Public Importance or Urgency Motion.

## Pairing

The practice of 'pairing', whereby a Member on one side of the House is absent from a vote or abstains from voting when a member from the other side is to be absent from that vote (thereby maintaining the parties' relative voting strengths) has also been utilised in response to Member absences caused by the pandemic.<sup>23</sup>

While the practice may be available to Members belonging to the major parties, it is unsatisfactory for the Parliament's legislative function to be dependent upon an unofficial practice (that is not available to non-aligned Members). Furthermore, *House of Representatives Practice* notes that "*The closer the relative strength of the parties the more crucial the pairing arrangements have become. In these circumstances disputations on pairing arrangements are more likely to occur, especially on vital votes, and have been the cause of protracted disorderly proceedings.*"<sup>24</sup>

In the context of parliamentarians' physical attendance being likely to continue to be substantially disrupted for the foreseeable future, something more than an unofficial arrangement is required.

## Comparable jurisdictions

### United Kingdom

The UK provides a model of how online voting has been implemented for a comparable (though substantially larger) Parliament.

On 12 May 2020 the UK's House of Commons voted remotely for the first time,<sup>25</sup> using their existing online MemberHub. This system, which was built by the Parliamentary Digital Service, requires multifactor authentication and single sign on to ensure it is secure, and the National Cyber Security Council is satisfied with the information security protocols in place under it.

Provision is made for a Member's vote to be recorded in an alternative manner when technical difficulties prevent them from being able to vote online, and the Speaker has power to interrupt and suspend remote divisions, as well as declare a result void and order a re-run in the case of technical problems.

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<sup>23</sup> Above n 21.

<sup>24</sup> Parliament of Australia, "*House of Representatives Practice*" [https://www.aph.gov.au/About\\_Parliament/House\\_of\\_Representatives/Powers\\_practice\\_and\\_procedure/Practice6/Practice6HTML?file=Chapter8&section=09](https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice6/Practice6HTML?file=Chapter8&section=09) accessed 17 August 2021.

<sup>25</sup> UK Parliament, "*MPs cast first ever remote vote in Commons Chamber*" <https://www.parliament.uk/business/news/2020/may/mps-cast-first-ever-remote-votes-in-commons-chamber/> accessed 21 August 2020.

A comprehensive overview of the model can be found in our paper "*Remote voting procedures adopted in the UK Parliament*"

## European Parliament

In March 2020, the Bureau of the European Parliament determined that upon a decision by the President, voting methods could be varied – permitting an alternative electronic voting method – in the context of the pandemic.

The designated method involves Members receiving a voting paper via email, indicating their vote and signing it, then scanning or photographing it and emailing it back from their European Parliament email account to a specific European Parliament mailbox. The result of a vote is established by the President, with the assistance of the Parliament's Secretariat.<sup>26</sup>

## Spain

The Spanish Parliament has permitted remote voting in plenary sessions by members of Congress since 2011, and by Senators since 2013.

The cases in which a parliamentarian may be permitted to vote remotely include pregnancy, serious illness and during periods of parental leave. All parliamentarians were permitted to vote remotely in the plenary sessions held during the pandemic.<sup>27</sup>

## Constitutional requirements

The relevant clauses in the Constitution provide:

**23. Voting in the Senate** *Questions arising in the Senate shall be determined by a majority of votes, and each senator shall have one vote. The President shall in all cases be entitled to a vote; and when the votes are equal the question shall pass in the negative.*<sup>28</sup>

**40. Voting in House of Representatives** *Questions arising in the House of Representatives shall be determined by a majority of votes other than that of the Speaker. The Speaker shall not vote unless the numbers are equal, and then he shall have a casting vote.*<sup>29</sup>

It has been suggested that s 39 of the Constitution may prevent a barrier to online voting, insofar as the requirement of a quorum being "present" in the House of Representatives before the House can exercise its powers has previously been interpreted (as a matter of House interpretive practice) to require a physical presence. We note that the issue of what "presence" requires has not been the subject of judicial interpretation, however, even if it were to in fact require the physical presence of a percentage of the House, there is nothing to stop online voting being extended to members who are unable to be physically present in the House once the quorum requirement is met.

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<sup>26</sup> Above n 1.

<sup>27</sup> Above n 1.

<sup>28</sup> Australian Constitution, Part II The Senate, Section 23, <https://www.aph.gov.au/constitution>

<sup>29</sup> Australian Constitution, Part III The House of Representatives, Section 40, <https://www.aph.gov.au/constitution>

How a vote is to be taken is otherwise a matter for the rules of Parliament. There seems to be no Constitutional impediment to Parliament providing for online voting, as they have done in regards to online participation.

## **Conclusion**

While the Agreements made to date and existing practices go some way to facilitating remote participation in parliamentary proceedings, some of the most important functions of our elected representatives are limited or precluded entirely by the failure to adopt online voting.

Appropriate measures must be urgently implemented to ensure that this defect is remedied in time for upcoming parliamentary sittings.

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