
Socially Distant but Democratically Together: Towards a Virtual Parliament in NSW¹

The Hon. Jonathan O’Dea MP

Speaker of the NSW Legislative Assembly; Member for Davidson

INTRODUCTION

Over the past century, many millions of people have died defending traditional western institutions and our democratic way of life. Through two world wars, Parliaments around the globe ensured they continued to operate.

As people and organisations around the world now grapple with the increasing confines of the COVID-19 pandemic, it is imperative that our democracy continues to advocate for the interests of the people through the principal mechanism of Parliament. We should not cripple a central pillar of democracy.

A Member of a Parliament has a unique role in representing the people and making laws in the public interest. Notwithstanding constitutional and logistical challenges, a virtual Parliament should be pursued in New South Wales (NSW), as is occurring elsewhere.

Indeed, faced with the global pandemic, many jurisdictions have moved to partial or even fully digitised methods for convening parliamentary sessions and continuing the work of committees, including Australia, the United Kingdom (UK), Wales, New Zealand, Canada, the European Union (EU), Brazil and the Maldives.

BASIC PRINCIPLE: THE IMPORTANCE OF PARLIAMENT IN DEMOCRACY

Parliament is obviously central to the operation of democracy. The legislature must be able to hold the executive to account in accordance with the principle of responsible

¹ This paper was finalised on 1 May 2020.

government. Despite adverse circumstances, the Parliament should continue to make and review laws, which are implemented, enforced, interpreted and otherwise applied by other branches of government.

At the beginning of each sitting day, Members of the NSW Legislative Assembly pray that their deliberations may be directed ‘to the true welfare of Australia and the people of New South Wales’. Each Member has a duty to represent those who have elected them in the business of making and debating laws. This principal purpose can be achieved in an environment that encourages robust and orderly debate amongst Members of all backgrounds and political persuasions.

Traditionally, Members from NSW have physically gathered together to achieve this purpose in chambers located within the Parliament House on Macquarie Street, Sydney. They address various matters, ranging from laws that affect the State, questions about the actions of government, to community issues in local electorates. Laws are passed when votes are cast from the government and opposition benches. Many common terms in parliamentary parlance refer to the physicality of Parliament, such as the chamber, house, frontbench, backbench, crossbench, crossing the floor, and locking the doors.

In the rich vein of parliamentary tradition, the concrete experience of Parliament has significant value and we should not abandon it without compelling reason.

EXTRAORDINARY TIMES: PARLIAMENT IN PANDEMIC

By all accounts, the COVID-19 pandemic qualifies as sufficient reason to alter the usual methods of Parliament. At the time of writing this paper (1 May 2020), more than 3.1 million people had contracted COVID-19 and the virus had killed over 217,000 people.² With no vaccine or cure available in the near future, many governments have responded to the developing crisis by closing borders and largely shutting down economies to stop the spread of the disease. In NSW alone, over 3000 people have

² Johns Hopkins University and Medicine Coronavirus Resource Center, ‘COVID-19 Dashboard by the Center for Systems Science and Engineering (CSSE) at Johns Hopkins University’. Accessed at: <https://coronavirus.jhu.edu/map.html>

contracted coronavirus and dozens have died.³ People have been prevented from leaving their residences without a reasonable excuse, with maximum penalties of up to \$11,000 or imprisonment for six months.⁴

As a result of the pandemic, 24 March 2020 was unique in the history of the NSW Parliament. The Legislative Assembly sat with a sparsity of Members in the chamber, spaced more than 1.5 metres apart with at least four metres square of space per person, to meet social distancing requirements. Over 50 of the usual 93 Members were absent from the precinct, a situation enabled by pre-negotiated pairing arrangements. The Leader of the House moved new sessional orders and a suspension of standing orders that allowed the House to only consider emergency bills instead of its usual routine of business.⁵

The House passed three important bills: COVID-19 Legislation Amendment (Emergency Measures) Bill 2020,⁶ Treasury Legislation Amendment (COVID-19) Bill 2020,⁷ and Better Regulation and Customer Service Legislation Amendment (Bushfire Relief) Bill 2020.⁸ The sitting day was livestreamed on Facebook Live and the parliamentary website for the benefit of the public as well as Members and staff working from their electorate offices.⁹

³ New South Wales Health, 'NSW COVID-19 case statistics: As of 8pm 28 April 2020'. Accessed at: <https://www.health.nsw.gov.au/Infectious/diseases/Pages/covid-19-latest.aspx>

⁴ New South Wales Government, 'COVID-19 (coronavirus): What you can and can't do under the rules'. Accessed at: <https://www.nsw.gov.au/covid-19/what-you-can-and-cant-do-under-rules>

⁵ Hansard Reports, Parliament of New South Wales, 'Tuesday, 24 March 2020'. Accessed at: <https://api.parliament.nsw.gov.au/api/hansard/search/daily/pdf/HANSARD-1323879322-110356>

⁶ Parliament of New South Wales, 'COVID-19 Legislation Amendment (Emergency Measures) Bill 2020'. Accessed at: <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3741>.

⁷ Parliament of New South Wales, 'Treasury Legislation Amendment (COVID-19) Bill 2020'. Accessed at: <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3742>

⁸ Parliament of New South Wales, 'Better Regulation and Customer Service Legislation Amendment (Bushfire Relief) Bill 2020'. Accessed at: <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3740>

⁹ Parliament of New South Wales, 'Procedural Digest - Legislative Assembly, Fifty-Seventh Parliament, First Session, No. 3/2020: 24 March 2020'. Accessed at: <https://www.parliament.nsw.gov.au/la/proceduralpublications/Documents/Procedural%20Digest%20no%203%202020.pdf>

The House also resolved that the next sitting day would be 15 September 2020, with all Members allowed a leave of absence from 25 March until 15 September.¹⁰ Under the new Sessional Order 47A, the next scheduled sitting day could be varied or postponed in the public interest. Where the Government requests that the date of the next sitting be varied and the Speaker is satisfied it is in the public interest, he is to communicate the new sitting date and time to Members.¹¹ The new sessional orders give the House greater flexibility to navigate the extraordinary circumstances presented by the pandemic, subject to the public interest test.

This recall safeguard ensures that the House can continue to meet, as necessary in the public interest, in order to pass important legislation. It is a positive measure that promotes transparency and accountability during the COVID-19 crisis. Under these procedures, the Legislative Assembly has been recalled to sit on 12 May 2020 to pass urgent legislation related to the crisis.¹² Similar procedures have been followed in the NSW Legislative Council, which has also been recalled to sit on 12 May. However, NSW Parliament House remains closed to the public, as it has been since 30 March.

This is not the first time that a global pandemic has conspired to pause parliamentary proceedings in NSW. The 1918 flu pandemic (also known as the Spanish Flu) caused many Parliaments to have long breaks in sitting, including the Queensland Parliament (7 November 1918 to 5 August 1919), Victorian Parliament (20 December 1918 to 8 July 1919), and the Federal Parliament (20 December 2018 to 25 June 2019).

In NSW, His Excellency Sir Walter Davidson KCMG, KStJ, the Governor of NSW, prorogued the Parliament by Proclamation, ultimately from 11 December 1918 to 18 August 1919. On 19 August 1919, the Governor opened the Parliament with the following words in the Legislative Council:

The recent epidemic of influenza was the cause of profound distress throughout the State, and of deep anxiety to my advisers. Acting under the

¹⁰ Hansard Reports, Parliament of New South Wales, 'Tuesday, 24 March 2020'.

¹¹ Parliament of NSW, 'Legislative Assembly: Consolidated Standing and Sessional Orders and Resolutions of the House, 57th Parliament March 2020'. Accessed at: <https://www.parliament.nsw.gov.au/la/houseprocedures/standingorders/Documents/Consolidated%20Standing%20and%20Sessional%20Orders.pdf>.

¹² Alexandra Smith, 'NSW Parliament Recalled to Debate Rental Relief Measures'. *Sydney Morning Herald*, 21 April 2020. Accessed at: <https://www.smh.com.au/politics/nsw/nsw-parliament-recalled-to-debate-rental-relief-measures-20200420-p54lgu.html>

highest professional advice the Government of the State took all necessary steps for combating the plague.¹³

A century later, global leaders echo similar sentiments about the COVID-19 pandemic while they contend with complex challenges to public health and civic life that would be all too familiar to our democratic forebears.

What the leaders could not have known in 1919 are the rapid advances in telecommunication technologies that enable meeting in 2020 via videoconference, with parliamentary proceedings potentially streamed live to a global audience.

A WAY FORWARD: VIRTUAL PARLIAMENT IN NSW

With the technologies available to the NSW Parliament, why not consider how to stand together in democratic solidarity during this socially distanced time? It is a privilege that Members can represent their communities and advocate on their behalf, and this essential role should not be undermined by suspending Parliament during a crisis.

A virtual Parliament would help uphold robust democracy in NSW, as courts continue to operate under COVID-19 restrictions and executive government gains significant powers to impose restrictions on citizens.

It is in the public interest that the NSW Parliament continues to sit during each scheduled sitting week, including virtually when it is otherwise not feasible. Indeed, the emergence of the vile COVID-19 pandemic prompts an obligation to seriously consider implementing alternative methods of meeting.

Modern technology allows each person in an assembly or meeting to see each other via videoconference and to see and potentially hear any comments being made in real time via video, audio and/or chat functions. The Speaker of the NSW Legislative Assembly would continue to uphold order in the House, and act as a discussion moderator. For example, given the technology constraints, all microphones might be muted by default until a Member is called upon by the Speaker, so that one person could be heard at a time.

¹³ Hansard Reports, Parliament of New South Wales, 'Tuesday, 19 August 1919'. Accessed at: <https://api.parliament.nsw.gov.au/api/hansard/search/daily/searchablepdf/HANSARD-290296563-7592>

Even if the Parliament sat with a modified routine of business, restricted hours and adapted procedures, the symbolism of Parliament continuing to fulfil its role is powerfully vital in such exceptional times.

Parliament sitting virtually enables the Government to pass any emergency or urgent legislation without the administrative burden and public health risk of recalling Members for a special physical sitting of Parliament. The Opposition also retains the opportunity to ask challenging questions and hold the Government to account for its actions.

Question Time is the prime example of democratic dialogue at work. As a central feature of parliamentary business, having Question Time at least one day each sitting week conveys the enduring value of parliamentary debate and deliberation to the public.

In her report, *How Could a Virtual Parliament Work?*, Dr Hannah White, Deputy Director of the Institute of Government and former House of Commons clerk, underscores the significant role of the House of Commons in the UK's constitutional democracy:

The government needs to be able to pass legislation, and MPs and peers need to be able to hold ministers to account for the decisions they are making on behalf of citizens. Crucially, parliament needs to be seen by the public to be doing these things

Perhaps most fundamentally of all, the House of Commons needs to be capable of sitting and voting to demonstrate its confidence in the government, were that ever to be called into question. That is why innovations that will enable parliament to continue sitting, even if remotely, and operating as normally as possible are so important.¹⁴

In this respect, the historically derivative Parliament of NSW has the same prerogative as the House of Commons. The reality is that convening Parliament through videoconference or teleconference is comparable to assembling in person. While some

¹⁴ Dr Hannah White, *How Could a Virtual Parliament Work?*. London: Institute for Government, 9 April 2020, p. 2. Accessed at: <https://www.instituteforgovernment.org.uk/sites/default/files/publications/virtual-parliament.pdf>

shortcomings of a virtual meeting must be acknowledged, it is surely a better alternative than not meeting at all.

If it were adopted by the NSW Legislative Assembly, a virtual Parliament would testify to Members' ongoing commitment to their constituents and determination to preserve democratic debate. Some Members have communicated support for the House to consider a virtual Parliament, and there have been relevant exchanges with the Premier's office.

As the independent and impartial representative of the NSW Legislative Assembly, the Speaker directed the staff of the Legislative Assembly and Department of Parliamentary Services to prepare possible parliamentary practices and procedures necessary to support a virtual sitting of Parliament. Groundwork has also been laid for the possibility of remote or electronic voting, with the Legislative Assembly recently introducing a new e-divisions application whereby the Whips use devices to electronically tally and verify Members' votes. These are then seamlessly transferred to parliamentary records.

Some parliamentary committees, comprised of Members from across party lines, have continued their work with remote participation. Standing Order 295(2) allows committee proceedings by electronic communication so long as there is a quorum of Members, and Members and witnesses are able to speak and hear each other contemporaneously.¹⁵

From the last term of Parliament, committee chairs have held videoconference meetings, virtual public hearings and even divisions by teleconference with the support of committee staff. Since the COVID-19 pandemic, 28 committees continue to be active across 38 inquiries. Many committees have opted for deliberative meetings via teleconference and videoconference to date, including the Committees for Investment, Industry and Regional Development, Staysafe (Road Safety), Community Services, Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission and Legislation Review.

¹⁵ Parliament of New South Wales, 'Consolidated Standing and Sessional Orders—New South Wales Legislative Assembly', p. 78. Accessed at: <https://www.parliament.nsw.gov.au/la/houseprocedures/standingorders/Documents/Consolidated%20Standing%20and%20Sessional%20Orders.pdf>.

The first virtual Legislative Assembly committee hearing is scheduled for 5 May 2020 via the videoconferencing platform, Cisco Webex. The Committee for Industry, Investment and Regional Development will meet and hear from witnesses. The Committee has already held a virtual roundtable with a range of stakeholders from Guyra to discuss issues relating to the drought-affected community. A manual for virtual committee proceedings is now available to Members and staff to guide them in transitioning to virtual meetings.

COMPARING APPROACHES: EXAMINING DOMESTIC AND INTERNATIONAL JURISDICTIONS

It is useful to survey the stances of other Australian jurisdictions towards virtual Parliaments to better inform how NSW might pursue its vision of a virtual Parliament. For public health and community safety reasons, many jurisdictions have closed or restricted access to their parliamentary precincts. At this stage, only Queensland has announced their plans to implement a hybrid model of a virtual Parliament, while other States and Territories have not stated whether they intend to implement reforms to allow virtual parliamentary sittings.

STATE AND TERRITORY JURISDICTIONS

Queensland

In Queensland, Parliament has been suspended until as late as 17 September, although the Speaker is able to call back Parliament at any time under the advice of the Palaszczuk Government. All functions and events in the precinct have been postponed or cancelled until 30 June 2020.¹⁶

Effective from 23 April 2020, special sessional orders in the Queensland Legislative Assembly currently take precedence over other standing and sessional orders until the COVID-19 Emergency Response Bill 2020 lapses or the House is dissolved. These

¹⁶ M. Doyle, 'Queensland Government Decision to Suspend Parliament Amid Coronavirus Crisis Sparks Criticism', *7News.com.au*, 19 March 2020. Accessed at: <https://7news.com.au/lifestyle/health-wellbeing/virus-fears-prompt-qld-to-halt-parliament-c-752205>.

include the Speaker's power to approve the use of telephone, video or other electronic technology for meetings of the Legislative Assembly, so long as it facilitates continuous and contemporaneous communication between Members. The Committee of the Legislative Assembly can approve modified rules of debate adapted to meetings using approved technology.¹⁷

The Parliament is next expected to sit on 19 May in a 'hybrid sitting', with the potential to sit for 3 days. A maximum of 20 Members will be physically present and sit socially distanced from one another in a room located in the Parliament's Annexe building. The Speaker will preside over debate from his electorate, with the ability to remotely mute Members' microphones. The room will feature screens that show a live feed of Members who have video-conferenced into the meeting, and Members will be able to vote electronically or via proxy.¹⁸

Victoria

The Victorian Parliament sat on 23 April 2020 with a contingent of no more than 26 Members to discuss a revised order of business including emergency legislation related to COVID-19. The Leader of the House moved that the House may meet in a manner and form not otherwise provided for in their motion or the standing and sessional orders, with the agreement of the Leader of the House, the Manager of Opposition Business and the Speaker, or their representatives, and following consultation with representatives from other parties and the Independents.¹⁹ Parliamentary committees remain operational in Victoria, where inquiries have continued, although public hearings have been postponed.²⁰

As of 27 April 2020, sitting dates in May were cancelled and the next sitting day was scheduled for 2 June 2020. This may change if Parliament needs to sit sooner or if the

¹⁷ Queensland Legislative Assembly, 'Sessional Orders of the Legislative Assembly 57th Parliament (First Session) – amended 22 April 2020, effective 23 April 2020).

¹⁸ Lydia Lynch, 'The Last Time Parliament Sat Here, the Chamber was Wrapped in a Tent', *The Brisbane Times*, 29 April 2020. Accessed at: <https://www.brisbanetimes.com.au/politics/queensland/the-last-time-parliament-sat-here-the-chamber-was-wrapped-in-a-tent-20200429-p54o8f.html>.

¹⁹ Legislative Assembly of Victoria, Votes and Proceedings No 63 – Thursday 23 April 2020.

²⁰ Parliament of Victoria, 'Update on Parliamentary Committee Inquiries'. Accessed at: <https://www.parliament.vic.gov.au/about/news/4484-update-on-parliamentary-committee-inquiries>.

sitting needs to be delayed on the basis of health advice.²¹ While public galleries are closed and public tours and community events will not be held at Parliament House for the foreseeable future,²² members of the public are able virtually to tour Parliament House.²³

Western Australia

On 19 March 2020, the Western Australian Legislative Assembly adopted a temporary order that if, following agreement with party leaders, the Premier advises the House that it is necessary to pass urgent legislation or undertake immediate business related to COVID-19, standing orders are suspended to effect any changes to the passage of bills, routine of business and speaking time limits.²⁴

On 31 March, the Premier advised that this temporary order would apply to Legislative Assembly proceedings.²⁵ The Assembly sat as scheduled on 31 March, 1 April,²⁶ and 2 April,²⁷ and the Speaker exercised his discretion to dispense with various items of business. From 6 April, Parliament House in Western Australia was closed to visitors

²¹ Parliament of Victoria, '2020 Sitting Dates—Updated 27 April 2020'. Accessed at: https://www.parliament.vic.gov.au/images/stories/documents/assembly/2020_Sitting_dates.pdf.

²² Parliament of Victoria, 'Statement from the Presiding Officers'. Accessed at: <https://www.parliament.vic.gov.au/about/news/4473-statement-from-the-victorian-parliament-s-presiding-officers>.

²³ Parliament of Victoria, 'Virtual Tours'. Accessed at: <https://www.parliament.vic.gov.au/visit/virtual-tour>.

²⁴ The Legislative Assembly of the Parliament of Western Australia, 'Standing Orders of the Legislative Assembly of the Parliament of Western Australia – Temporary Order in relation to COVID-19 Adopted by the Assembly on 19 March 2020'.

²⁵ Parliament of Western Australia, 'Legislative Assembly of Western Australia, Votes and Proceedings No 186 – First Session of the Fortieth Parliament, Tuesday 31 March 2020'. Accessed at: [https://www.parliament.wa.gov.au/Parliament/sitsched.nsf/AllDocs/CB68F158ACA46416482584870021B3B3/\\$file/AV401186.pdf?OpenElement](https://www.parliament.wa.gov.au/Parliament/sitsched.nsf/AllDocs/CB68F158ACA46416482584870021B3B3/$file/AV401186.pdf?OpenElement).

²⁶ Parliament of Western Australia, 'Legislative Assembly of Western Australia, Votes and Proceedings No 186 – First Session of the Fortieth Parliament, Wednesday 1 April 2020'. Accessed at: [https://www.parliament.wa.gov.au/Parliament/sitsched.nsf/AllDocs/F810E20BDD5086AF482584870021CCF4/\\$file/av401187.pdf?OpenElement](https://www.parliament.wa.gov.au/Parliament/sitsched.nsf/AllDocs/F810E20BDD5086AF482584870021CCF4/$file/av401187.pdf?OpenElement).

²⁷ Parliament of Western Australia, 'Legislative Assembly of Western Australia, Votes and Proceedings No 186 – First Session of the Fortieth Parliament, Thursday 2 April 2020'. Accessed at: [https://www.parliament.wa.gov.au/Parliament/sitsched.nsf/AllDocs/E8C7551299BCE731482584870021DD6D/\\$file/av401188.pdf?OpenElement](https://www.parliament.wa.gov.au/Parliament/sitsched.nsf/AllDocs/E8C7551299BCE731482584870021DD6D/$file/av401188.pdf?OpenElement).

until further notice.²⁸ The Legislative Assembly had adjourned from 2 April for a 5 week recess; however, it was recalled to sit on 15, 16 and 20 April to debate urgent COVID-19 legislation.²⁹

Australian Capital Territory

As part of the Legislative Assembly for the Australian Capital Territory's duty of care to Members, staff, and the public, the Parliament's building was closed to the public from 8 April. Previously scheduled sitting dates of 31 March and 1 April were cancelled, while the sitting calendar has been revised for the Assembly to sit on selected Thursdays.³⁰

A Select Committee on the COVID-19 pandemic response has been formed to enquire into the ACT's health and financial response, as well as other issues related to the pandemic.³¹ Committees are able to meet via videoconference as a result of a motion varying the Assembly's standing orders.³²

South Australia

In the South Australian Parliament, all public tours and school visits were cancelled, and public galleries closed, due to the pandemic.³³ On 8 April 2020, the Government successfully moved to adjourn Parliament until 12 May, relying on the Speaker's casting vote to pass the motion. The Legislative Council resolved to establish the COVID-19 Response Committee on the same day, with the task of monitoring and scrutinising the

²⁸ Parliament of Western Australia, 'Home Page'. Accessed at: <https://www.parliament.wa.gov.au/WebCMS/WebCMS.nsf/index>.

²⁹ Michael Traill, 'WA Parliament to be Recalled Amid COVID-19 Crisis', *The Albany Advertiser*, 7 April 2020. Accessed at: <https://www.albanyadvertiser.com.au/news/albany-advertiser/wa-parliament-to-be-recalled-amid-covid-19-crisis-ng-b881512990z>.

³⁰ Legislative Assembly for the Australian Capital Territory, 'COVID-19—Temporary Changes to Operations'. Accessed at: <https://www.parliament.act.gov.au/covid-19>.

³¹ Legislative Assembly for the Australian Capital Territory, 'Select Committee on the COVID-19 pandemic response'. Accessed at: https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees/select_committees/select-committee-on-the-covid-19-response.

³² Legislative Assembly for the Australian Capital Territory, 'COVID-19—Temporary Changes to Operations'.

³³ Parliament of South Australia, 'Visit Parliament'. Accessed at: <https://www.parliament.sa.gov.au/How-Do-I/Access-Parliament>.

Government's management of the COVID-19 response.³⁴ However, following advice from the Speaker, the House sat on 28 April, the original scheduled date for Parliament's next sitting, and debated a normal legislative agenda.³⁵

Northern Territory

The Legislative Assembly of the Northern Territory was indefinitely adjourned from 24 March 2020, with public galleries closed for the last foreseeable sitting day.³⁶ During an emergency sitting on 24 April 2020 called to debate COVID-19 legislation, the Government came under criticism from the Opposition and Independents for dispensing with Question Time.³⁷ Voting procedures on the day were varied to help achieve social distancing, such that Members stood in their seats to vote affirmatively for a motion and sat in their seats to vote negatively against a motion.³⁸

Tasmania

From 26 March, the Tasmanian Parliament was suspended for five months until 18 August due to the coronavirus crisis.³⁹ Calls from the Opposition for a tri-partisan

³⁴ Parliament of South Australia, 'Committees'. Accessed at: <https://www.parliament.sa.gov.au/Committees/Committees-Detail>.

³⁵ David Washington, 'Crisis averted? Back to normal for State Parliament', *IN Daily*, 22 April 2020. Accessed at: <https://indaily.com.au/news/2020/04/22/crisis-averted-back-to-normal-for-state-parliament/>.

³⁶ Northern Territory Assembly, 'Minutes of Proceedings: Meeting Number 112', 24 March 2020. Accessed at: <https://www.territorystories.nt.gov.au/jspui/bitstream/10070/756715/5/Draft%20-%20Minutes%20of%20Proceedings%20for%20Meeting%20112%20on%20Tuesday%2024%20March%202020.pdf>.

³⁷ Steve Vivian and Jacqueline Breen, 'Government Accused of Shutting Down Debate in Extraordinary NT Parliament Session', *ABC News*, 25 April 2020. Accessed at: <https://www.abc.net.au/news/2020-04-24/nt-government-suspends-question-time-coronavirus-legislation/12180748>.

³⁸ Northern Territory Assembly, 'Draft Daily Hansard – 24 April 2020', 24 April 2020. <https://www.territorystories.nt.gov.au/jspui/bitstream/10070/787608/2/Draft%20Daily%20Hansard%20-%20Friday%2024%20April%202020%20to%20end%20of%20day.pdf>.

³⁹ David Killick, 'Tasmanian Parliament Suspended for Five Months', *The Mercury*, 26 March 2020. Accessed at: <https://www.themercury.com.au/news/politics/tasmanian-parliament-suspended-for-five-months/news-story/842a5d23d6130b64c953fa3d8730ee4a>.

COVID-19 committee did not eventuate in any new committees.⁴⁰ The Parliament was recalled on 30 April to discuss legislation related to the pandemic.⁴¹

COMMONWEALTH PARLIAMENT

At the Federal level, the Parliament had planned not to sit from 24 March until 11 August 2020 and the May budget has been postponed to October. However the Leader of the House also moved that, if the Leader of the House and Manager of Opposition Business agreed, the House may meet in a manner and form not otherwise provided in the standing orders, with the Speaker determining the manner in which Members may be present.⁴² Consequently Federal Parliament will return to sit for three days from 12 May 2020.⁴³

As of 23 March 2020, any committee hearings held in Federal Parliament were no longer open to the public. The Presiding Officers recommended that committees use videoconference or teleconference technologies and only call witnesses in person if necessary.⁴⁴ A meeting of the Joint Standing Committee on Migration was subsequently convened via teleconferencing technology.⁴⁵

⁴⁰ David Killick, 'Calls for Committee to Replace Parliament While in Recess', *The Mercury*, 2 April 2020. Accessed at: <https://www.dailytelegraph.com.au/news/national/calls-for-committee-to-replace-parliament-while-in-recess/news-story/3fbcecaadeebbed3a6219b5c0aa15c71?btr=462108016431201113b376af5dbf3090>.

⁴¹ David Killick, 'Parliament to Return Early to Deal with Pandemic Response'. *The Mercury*, 15 April 2020. Accessed at: <https://www.dailytelegraph.com.au/news/national/parliament-to-return-early-to-deal-with-pandemic-response/news-story/3ba4e332e71a3dfe9c649e7f6aa7426b?btr=5628394da6be9f14d36c1a134b23163a>

⁴² R. Lewis, 'Coronavirus: The Virtual Parliament House Stands Ready to Sit'. *The Australian*, 24 March 2020. Accessed at: <https://www.theaustralian.com.au/nation/politics/coronavirus-the-virtual-parliament-house-stands-ready-to-sit/news-story/c80f627033a7851489c3717f8807662a>.

⁴³ Matt Bungard, Michaela Whitbourn and Latika Bourke, 'As the Day Unfolded: Global COVID-19 Cases Surpass 2.7 Million, US Deaths Near 50,000 as Australia's Death Toll Stands at 79'. *Sydney Morning Herald*, 24 March 2020. Accessed at: <https://www.smh.com.au/national/coronavirus-updates-live-global-covid-19-cases-pass-2-6-million-us-deaths-near-50-000-as-australia-s-death-toll-stands-at-76-20200423-p54mny.html>.

⁴⁴ S. Jenkins, 'Coronavirus Prompts Changes to Hearings, Access at Parliament House'. *The Mandarin*, 17 March 2020. Accessed at: <https://www.themandarin.com.au/127635-coronavirus-prompts-changes-to-hearings-access-at-parliament-house/>.

⁴⁵ E. Visontay, 'How Australia's Politicians are Dealing with Social Distancing'. *The Australian*, 20 March 2020. Accessed at: <https://www.theaustralian.com.au/nation/politics/how-australias-politicians-are-dealing-with-social-distancing/news-story/c60acd7c8be0dd115e12e031c329d474>

Although Federal Parliament itself is not sitting on a regular basis, a new committee focused on the coronavirus pandemic has been formed to provide some measure of accountability. The Select Committee on COVID-19 is inquiring into the Australian Government's response to the COVID-19 pandemic, with a closing date for submissions of 28 May, and its final report due on or before 30 June 2022.⁴⁶

INTERNATIONAL JURISDICTIONS

From some of the oldest constitutional democracies boasting a rich tableaux of parliamentary traditions to more modern nation-states adopting innovative methods, many Parliaments across the globe are investigating the possibilities of virtual Parliament sittings. The Commonwealth Parliamentary Association has produced a 'CPA Toolkit for Commonwealth Parliaments and Legislatures on the COVID-19 (Coronavirus) Pandemic and Delivering Parliamentary Democracy' to guide its 180 Commonwealth Parliaments and legislatures in navigating practice and procedure.⁴⁷

With such a variety of democratic histories and social contexts, there is no 'one size fits all' approach to a virtual Parliament. It is, however, expedient to compare the ongoing work of international Parliaments to glean what wisdom can be shared across continents.

The United Kingdom

The usual scenes of Members heckling and jostling in the crowded House of Commons have been replaced by more sober socially distanced arrangements, perhaps informed by Prime Minister Johnson's recent personal health experience with coronavirus.

The Clerk of the House of Commons noted that, 'colleagues and I are keen to find ways of enabling Members to maintain their scrutiny of Government, despite the restrictions

⁴⁶ Parliament of Australia, 'Select Committee on COVID-19'. Accessed at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/COVID-19/COVID19.

⁴⁷ Commonwealth Parliamentary Association, 'CPA Toolkit for Commonwealth Parliaments and Legislatures on the COVID-19 (Coronavirus) Pandemic and Delivering Parliamentary Democracy'. Accessed at: http://www.cpahq.org/cpahq/Main/Programmes/Coronavirus_Toolkit.aspx

that are in place’, while also needing ‘to ensure that our version of Zoom meets some basic legal, security and privacy requirements’.⁴⁸

Following a motion from the Leader of the House of Commons, it was resolved:

That this House is committed to taking all steps necessary to balance its responsibilities for continuing scrutiny of the executive, legislating and representation of the interests of constituents with adherence to the guidance issued by Public Health England and the restrictions placed upon all citizens of the United Kingdom, and is further committed, in pursuit of that aim, to allowing virtual participation in the House’s proceedings, to extending the digital capacity of those proceedings to ensure the participation of all Members, and to ensuring that its rules and procedures are adapted to permit as far as possible parity of treatment between Members participating virtually and Members participating in person.⁴⁹

At the will of the House, the House of Commons implemented a hybrid model from 21 April 2020.⁵⁰ Up to 50 Members can sit socially distanced from one another in the Commons, while up to 120 Members can participate using the videoconferencing platform, Zoom.⁵¹ Screens are positioned in the Chamber to allow the Speaker and physically present Members to see their ‘virtual’ colleagues.⁵² The model is being trialled for the first two hours of the sitting day, which features oral questions to Ministers (including Prime Minister’s Questions), urgent questions and ministerial

⁴⁸ Clerk of the House of Commons, UK Parliament, ‘Letter to Chi Onwurah MP’. Accessed at: <https://www.parliament.uk/documents/commons-governance-office/CoH-to-Chi-Onwurah-Virtual-Parliament-030420.pdf>

⁴⁹ House of Commons, UK Parliament, ‘Votes and Proceedings – Tuesday 21 April 2020’.

⁵⁰ Parliament of the United Kingdom, ‘MPs Approve Historic Motion to Allow Remote Participation in Key Commons Proceedings’. Accessed at: <https://www.parliament.uk/business/news/2020/april1/-mps-approve-historic-motion-to-allow-remote-participation-in-key-commons-proceedings/>

⁵¹ Peter Walker, ‘Slimmed-Down “Virtual House of Commons” to Sit Next Week’. *The Guardian*, 17 April 2020. Accessed at: <https://www.theguardian.com/politics/2020/apr/16/slimmed-down-virtual-house-of-commons-to-sit-next-week>.

⁵² Parliament of the United Kingdom, ‘Return of the House of Commons: Update on First Steps to a Virtual House’. Accessed at: <https://www.parliament.uk/business/news/2020/april1/return-of-the-house-of-commons-update-on-first-steps-to-a-virtual-house/>.

statements, with the aim of expanding the trial to the remainder of the day after adequate troubleshooting.⁵³

At this stage, all other Chamber proceedings will be entirely physical. A motion to extend hybrid proceedings to cover other business such as legislation is expected to be debated soon.⁵⁴

The question of remote voting remains to be settled by the House, with preparatory work on a suitable system underway, following the Speaker's request to the House Service and Parliamentary Digital Service.⁵⁵ The House of Lords will look to hold a similar style of remote sittings using Microsoft software.⁵⁶

Wales

The Welsh Senedd (National Assembly for Wales) is the first national legislature in the UK to move completely online, with its first virtual plenary session of the Parliament held on 1 April 2020.⁵⁷ The meeting was the first virtual Parliament in the world to simultaneously translate between languages.⁵⁸

This was made possible by the introduction of Standing Order 34, which details temporary provisions to facilitate the continuation of Assembly business during the COVID-19 outbreak. Provisions include amended voting rules and the ability to appoint temporary presiding officers and acting chairs of plenary meetings, as well as exclude the public and control broadcasting from plenary and committee meetings.⁵⁹

⁵³ Speaker of the House of Commons, UK Parliament, 'Speaker to all MPs 14 April 2020'. Accessed at: <https://www.parliament.uk/documents/Speaker%20to%20all%20MPs%20-%20Update%20re.%20virtual%20proceedings%2014%20April%202020.pdf>.

⁵⁴ Parliament of the United Kingdom, 'MPs Approve Historic Motion to Allow Remote Participation in Key Commons Proceedings'.

⁵⁵ Speaker of the House of Commons, UK Parliament, 'Speaker to all MPs 14 April 2020'.

⁵⁶ Walker, 'Slimmed-Down "Virtual House of Commons" to Sit Next Week'.

⁵⁷ 'Coronavirus: National Assembly to Hold its First "Virtual" Parliamentary Session'. *National Assembly for Wales*, 31 March 2020. Accessed at: <https://www.assembly.wales/en/newhome/pages/newsitem.aspx?itemid=2089>.

⁵⁸ 'First Vote Cast at Virtual Plenary as National Assembly for Wales Meets Online'. *National Assembly for Wales*, 8 April 2020. Accessed at: <https://www.assembly.wales/en/newhome/pages/newsitem.aspx?itemid=2093>.

⁵⁹ National Assembly for Wales, 'Standing Orders of the National Assembly for Wales – March 2020'.

The ‘Emergency Senned’ meeting occurred over the Zoom videoconferencing platform. Assembly Members heard statements from the First Minister, the Minister for Health and Social Services and the Minister for Economy, Transport and North Wales, and could then ask questions.

Parties agreed to nominate a limited number of Members to attend. The rules regarding voting were also amended so that only four Members were needed for votes at plenary meetings to be valid.⁶⁰

The Presiding Officer of the National Assembly for Wales noted that:

This was a first for the Senedd and a first for any parliament in the UK. The innovative way in which proceedings were conducted reflect the Assembly’s determination to continue to fulfil its duty in allowing effective scrutiny to take place ... It is vital that [the] Welsh Government can continue to update Members throughout this developing crisis, and for Members to be able to hold the Government to account ... Democratic accountability is important, and continues to be important even in these most trying of times.⁶¹

The Assembly decided not to livestream its first virtual session, as it was deemed not practical for the meeting to be broadcast live. Rather, the recording was published on the parliamentary website after proceedings.⁶²

Following the first virtual session’s success, it was decided that plenary sessions should be held via Zoom for the foreseeable future, especially considering the closure of the Senedd and Pierhead buildings to the public and suspension of all face-to-face events at the National Assembly for Wales, extended until at least 31 May.

The virtual plenary session on Wednesday 8 April was broadcast live online on Senedd.tv and BBC Parliament, with an expanded 28 Members participating in

⁶⁰ ‘National Assembly for Wales Holds UK’s First Virtual Parliamentary Meeting’. *National Assembly for Wales*, 1 April 2020. Accessed at: <https://www.assembly.wales/en/newhome/pages/newsitem.aspx?itemid=2090>.

⁶¹ National Assembly for Wales – Plenary, ‘Statement by the Llywydd’, 1 April 2020. Accessed at: <https://record.assembly.wales/Plenary/6267#A700000220>

⁶² National Assembly for Wales – Plenary, ‘Statement by the Llywydd’, 1 April 2020.

proceedings.⁶³ Members heard statements on the latest response to coronavirus from the First Minister, and the Minister for Environment, Energy and Rural Affairs.⁶⁴

These were followed by a debate and a vote on Stage 1 of the Local Government and Elections (Wales) Bill. The vote was cast using weighted voting by roll call, where a representative of each party group cast votes on behalf of all Members of the group.⁶⁵

New Zealand

The New Zealand Parliament sat on 25 March 2020 to respond to the COVID-19 epidemic, with far fewer Members present than usual. The House passed legislation to fund the Government's response to the COVID-19 epidemic, and agreed to establish a committee with appropriate oversight responsibilities.⁶⁶

The new Epidemic Response Committee was established to consider and report to the House on matters relating to the Government's management of the COVID-19 epidemic. The committee meets regularly via videoconference, which is livestreamed on the Parliament's website. The powerful committee can compel witnesses and subpoena documents, and is chaired by the Leader of the Opposition, including six Opposition members out of a total 11 Committee members.⁶⁷ The committee heard from 'a range of people from sectors including health, business, police, and civil defence' in its first week.⁶⁸

The scrutiny of the Government performed by this committee is important during the adjournment of Parliament due to COVID-19, with the intention that the committee will keep Government action in check during the pandemic. Indeed, in April, the *Sydney Morning Herald* reported that 'Six former judges, including former High Court justice

⁶³ 'Plenary Meetings Continue, but Senedd Buildings Will Stay Closed Until June'. *National Assembly for Wales*, 7 April 2020. Accessed at: <https://www.assembly.wales/en/newhome/pages/newsitem.aspx?itemid=2092>.

⁶⁴ 'First Vote Cast at Virtual Plenary as National Assembly for Wales Meets Online'.

⁶⁵ National Assembly for Wales – Plenary, 'Voting Time', 8 April 2020. Accessed at: <https://record.assembly.wales/Plenary/6288#A57495>

⁶⁶ New Zealand Parliament, 'FAQ: Parliament During COVID-19 Alert Level Four' Accessed at: <https://www.parliament.nz/en/get-involved/features/faq-parliament-during-covid-19-alert-level-4/#b>.

⁶⁷ New Zealand Parliament, 'FAQ: Parliament During COVID-19 Alert Level Four'.

⁶⁸ Epidemic Response Committee, New Zealand Parliament, 'COVID-19: What is the Epidemic Response Committee?'. Accessed at: <https://www.parliament.nz/en/get-involved/features/covid-19-what-is-the-epidemic-response-committee/>

Mary Gaudron, called for Australia to adopt New Zealand's approach of using an all-party select committee to scrutinise government decisions'.⁶⁹ Parliamentary select committees will continue to meet remotely using videoconferencing or teleconferencing, with witnesses able to provide evidence using the same technology.⁷⁰

On 25 March, amendments were made to two sessional orders regarding timing for replies to written questions and Government responses to committee reports. The Business Committee also waived the usual proxy vote limit of 25 percent of each party's Members for the sitting on 25 March, with the power to continue to waive the proxy vote limit during future sittings.⁷¹

Members agreed to adjourn the House until the alert level had lowered. With the country under the highest level restrictions under the COVID-19 alert system, Parliament was adjourned for five weeks until 28 April 2020, with the Business Committee, chaired by the Speaker, given authority to vary sitting dates.⁷²

Canada

The Canadian Parliament was suspended on 13 March until at least 20 April 2020 due to the COVID-19 pandemic. Prime Minister Trudeau self-isolated and worked from home for a number of weeks from 12 March, as his wife was confirmed to have COVID-19.⁷³ Parliament was recalled on 24 March in order to approve an \$82 billion financial

⁶⁹ David Crowe and Rob Harris, 'New committee to monitor government on coronavirus measures'. *The Sydney Morning Herald*, 5 April 2020. Accessed at: <https://www.smh.com.au/politics/federal/new-committee-to-monitor-government-on-coronavirus-measures-20200405-p54h8j.html>

⁷⁰ New Zealand Parliament, 'How Select Committees Will Run Under COVID-19 Alert Level 3'. 30 March 2020. Accessed at: <https://www.parliament.nz/en/get-involved/features/how-select-committees-will-run-under-covid-19-alert-level-3>

⁷¹ New Zealand Parliament, 'FAQ: Parliament During COVID-19 Alert Level Four'.

⁷² New Zealand Government, 'New Zealand Moves to COVID-19 Alert Level 3, Then Level 4 in 48 Hours'. 23 March 2020. Accessed at: <https://www.beehive.govt.nz/release/new-zealand-moves-covid-19-alert-level-3-then-level-4-48-hours>

⁷³ Maryam Shah, "'All Clear": Sophie Grégoire Trudeau Thanks Well-wishers After Recovering from COVID-19'. *Global News*, 28 March 2020. Accessed at: <https://globalnews.ca/news/6747353/sophie-trudeau-covid-19-clear/>.

aid package to fund the COVID-19 response, with 32 Members returning to the House of Commons for the emergency sitting.⁷⁴

On 20 April 2020, the House of Commons adopted a motion to adjourn the House until 25 May, unless the four House Leaders agreed it should remain adjourned to a later date or the Speaker recalled the House earlier after consultation with the Government.⁷⁵

The House authorised the Chairs of the Standing Committee on Health and Standing Committee on Finance to convene videoconference or teleconference meetings in order to receive evidence relating to the COVID-19 pandemic during the adjournment.⁷⁶

In response to a request from the Leader of the Government in the House of Commons for advice about the House of Commons Administration's ability to support and facilitate virtual sittings, the Speaker instructed Digital Services and Real Property to ensure the House could hold virtual sittings by 6 May 2020. This work was to be undertaken in collaboration with public and private sector partners as well as in consultation with other legislatures, including the UK, Australia, New Zealand, USA, Taiwan and Brazil.⁷⁷

In investigating options for voting on bills and motions, the Institute for Research on Public Policy recommended Members receive a secure device on which they could cast their vote, as well as proper training in the process including the verification of their

⁷⁴ Tariq Ahmad, 'Continuity of Legislative Activities During Emergency Situations in Selected Countries – Canada'. *Law Library of Congress*, pp.16-18. Accessed at: <https://www.loc.gov/law/help/emergency-legislative-activities/emergency-legislative-activities.pdf>

⁷⁵ House of Commons Canada, 'Fact Sheet: Special Committee on the COVID-19 Pandemic (COVI)'. Accessed at: <https://www.ourcommons.ca/Content/Newsroom/Articles/Factsheet-Special-Committee-COVID-19-EN-FINAL.pdf>.

⁷⁶ House of Commons Canada, 'Fact Sheet: Virtual Committee Meetings', Accessed at: <https://www.ourcommons.ca/Content/Newsroom/Articles/FactSheet-VirtualCommitteeMeetings-0409-EN.pdf>

⁷⁷ The Hon. Anthony Rota MP, 'Letter from the Speaker to the Government House Leader on Virtual Sittings of the House'. House of Commons Canada, 8 April 2020. Accessed at: <https://www.ourcommons.ca/Content/Newsroom/Articles/COVID-19-SpeakerVirtualSittingsResponse-2020-04-07-e.pdf>

votes. The Institute also suggested the development of clear parliamentary procedures for situations of cybersecurity issues and voter errors.⁷⁸

On 28 April, a Special Committee on the COVID-19 Pandemic composed of all Members began physically meeting in the chamber one day every week and virtually over Zoom videoconference two days every week. Chaired by the Speaker, the committee meets to consider ministerial announcements, to allow Members to present petitions and to question Ministers, including the Prime Minister.⁷⁹

European Union

In the European Parliament, Members voted remotely via email to pass three emergency bills relating to COVID-19 in an extraordinary plenary session on 26 March 2020.⁸⁰ Members were emailed a voting paper, to be completed with a yes or no vote and the Member's signature, and returned from their official email address to a specific European Parliament email address. The President, assisted by Parliament's Secretariat, established the result of the vote, which was recorded in minutes and published.⁸¹ The Parliament will be able to vote using this method until 31 July, but it has come under criticism for its potential security and voter error risks.⁸²

In addition, plenary sessions are not being held in Strasbourg as usual, but in Brussels, which hosted the sessions on 16 and 17 April 2020. The Parliament continues its Committees work via videoconference.⁸³

⁷⁸ Nicole Goodman and Aleksander Essex, 'Online Voting Entirely Possible for MPs During Times of Crisis'. *Policy Options*, 25 March 2020. Accessed at: <https://policyoptions.irpp.org/magazines/march-2020/online-voting-entirely-possible-for-mps-during-times-of-crisis/>.

⁷⁹ House of Commons Canada, 'Fact Sheet: Special Committee on the COVID-19 Pandemic (COVI)'. Accessed at: <https://www.ourcommons.ca/Content/Newsroom/Articles/Factsheet-Special-Committee-COVID-19-EN-FINAL.pdf>.

⁸⁰ European Parliament, 'Remote Voting in the European Parliament and National Parliaments'. Accessed at: [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).

⁸¹ Euractiv, 'European Parliament to Roll Out "Distance Voting" Technology for MEPs'. Accessed at: <https://www.euractiv.com/section/digital/news/european-parliament-to-roll-out-distance-voting-technology-for-meps/>.

⁸² Natasha Lomas, 'EU Parliament Moves to Email Voting During COVID-19 Pandemic'. *Techcrunch*, 24 March 2020. Accessed at: <https://techcrunch.com/2020/03/23/eu-parliament-moves-to-email-voting-during-covid-19/>.

⁸³ Jacopo Barigazzi, Maïa de la Baume and David M. Herszenhorn, 'Coronavirus crisis hastens remote-control Europe'. *Politico EU*, 18 March 2020. Accessed at: <https://www.politico.eu/article/outbreak-forces-eu-to-innovate-on-virtual-meetings-and-decision-making/>

The President of the European Parliament defended the Parliament's move to digital technologies:

We had the possibility to use various tools that allowed our institution to remain open and to continue to work. We said that democracy shouldn't be stopped by a virus. We need the democratic process to help us overcome this emergency.⁸⁴

Brazil

The Brazilian Senado Federal (Federal Senate) has developed a unique remote deliberation and voting system that allows Senators to discuss and vote on matters in

... situations of war, social upheaval, public calamity, pandemic, epidemiological emergency, collapse of the transport system or situations of force majeure that prevent or make it impossible for the Senators to meet in person in the National Congress building or in another physical location.⁸⁵

The plenary sessions feature deliberations over videoconference and voting via a secure application, with two factor authentication comprising a username and password combination, verified photo identification and SMS message. Votes can be recorded simultaneously, with an ability to change votes and see how others have voted. Senators can also use the videoconference to vote, stating their votes one by one, which are then recorded separately.⁸⁶ Although this system was initially developed for corporate meetings, contractors took only eight calendar days to tailor the product for the Federal Senate in order to deliver the Senate Remote Deliberation System.

⁸⁴ European Parliament, 'How Parliament Works During a Pandemic'. 17 April 2020. Accessed at: <https://www.europarl.europa.eu/news/en/headlines/eu-affairs/20200408STO76807/how-parliament-works-during-a-pandemic>.

⁸⁵ Brazilian Federal Senate, 'Technology Transfer for Remote Parliamentary Sessions'. Accessed at: http://www.senado.leg.br/senado/hotsites/sdr/index_eng.html.

⁸⁶ Brazilian Federal Senate, 'Technology Transfer Handbook: Remote Deliberation System of the Brazilian Federal Senate'. Accessed at: http://www.senado.leg.br/senado/hotsites/sdr/pdf/SDR_SF_DS_V162_eng.pdf.

Maldives

In a world first, the 87 Members of the Parliament of the Maldives met online for their session on 30 March 2020 using Microsoft 365 and Teams videoconferencing technology. Whilst the Maldivian legislature adopted a measure for virtual proceedings in January 2019 ‘as a tool for collaboration due to its security features and its wide capabilities’, the unfolding global health crisis prompted it to fully migrate to virtual sessions.⁸⁷

In a chamber with no other Members, the Speaker physically chairs parliamentary sittings from the People’s Majlis, while other Members meet with him online. Votes, debates and committee meetings also continue online through Microsoft technologies.⁸⁸

The Speaker encouraged global Parliaments to look to the Maldives as an example of how to move forward during the COVID-19 pandemic:

One-quarter of humanity [are] under de facto house arrest or some other form of isolation, including countless lawmakers. But the world’s parliaments cannot just stop representing their people during this crisis. The institutions of democracy must continue to function. The Maldivian parliament will go on, meeting online, and all its work will continue unimpeded.⁸⁹

LEGAL REFORM: CONSTITUTIONAL CHALLENGES

One of the main considerations regarding a virtual Parliament in NSW is fundamental to our democracy—namely, the *Constitution Act 1902* (NSW). The NSW Constitution requires that Members assemble ‘together’ and that voting is carried out by those who

⁸⁷ ‘Keeping Legislative Wheels Turning During COVID-19’. *Microsoft Asia News Center*, 14 April 2020. Accessed at: <https://news.microsoft.com/apac/2020/04/14/keeping-legislative-wheels-turning-during-covid-19/>.

⁸⁸ Ali Shareef, ‘Maldives Holds World’s First Fully-digitalized Parliament Sitting’. *The Edition*, 30 March 2020. Accessed at: <https://edition.mv/news/15842>.

⁸⁹ Sidhant Sibal, ‘Maldives Parliament Goes Virtual as Social Distancing Becomes Norm to Fight Coronavirus’. *WION*, 28 March 2020. Accessed at: <https://www.wionews.com/south-asia/maldives-parliament-goes-virtual-as-social-distancing-becomes-norm-to-fight-coronavirus-289159>.

are ‘present’, which casts some doubt on the current legal validity of virtual proceedings.⁹⁰

In her examination of the federal situation in Australia, constitutional expert Anne Twomey has argued that while it might have been drafted in the 1800s, the Commonwealth Constitution is commonly interpreted to accommodate changes in technology, and therefore ‘there appears no reason why attendance may not, with the permission of the House, be by electronic means’.⁹¹

The NSW Constitution appears even more accommodating in one respect. Section 10 enables the Governor to fix the time and place for holding every Session of the Legislative Council and Assembly. Provided they give sufficient notice, the Governor ‘may change or vary such time or place as ... judge[d] advisable and most consistent with general convenience and the public welfare, giving sufficient notice thereof’.⁹²

In the corporate world, technology has so permeated the practices of board meetings that it is provided for in the governing legislation. Section 248D of the *Corporations Act* indicates that Board directors may meet using any technology consented to by all directors.⁹³ Sections 249S⁹⁴, 252Q⁹⁵ and 601JH⁹⁶ of the *Act* state that Members of committees and compliance schemes may meet using any technology that gives Members as a whole a reasonable opportunity to participate. NSW law governing meetings of Body Corporates similarly permits a voter to be present in person, by proxy or by written or electronic voting paper.

One can therefore easily argue that there is no need for a distinction between being ‘present’ in person as opposed to by videoconferencing or otherwise. It can likewise be argued that there are now different forms of legitimate ‘gatherings’ or ‘assemblies’ – both physical and electronic.

⁹⁰ *Constitution Act 1902 No 32* (NSW). Accessed at: <https://www.legislation.nsw.gov.au/#/view/act/1902/32/full>.

⁹¹ Prof Anne Twomey, ‘Government Accountability and Virtual Parliaments’. *Electoral Regulation Research Network*, 2 April 2020. Accessed at: <https://youtu.be/MvUfs5VZQdk?t=664>.

⁹² *Constitution Act 1902 No 32* (NSW) s 10.

⁹³ *Corporations Act 2001* (Cth) s 248D.

⁹⁴ *Corporations Act 2001* (Cth) s 249S.

⁹⁵ *Corporations Act 2001* (Cth) s 252Q.

⁹⁶ *Corporations Act 2001* (Cth) s 601JH.

While the framers of our NSW Constitution would not have foreshadowed an assembly by videoconference, terms such as ‘present’ and ‘together’ need to be given wider definition and scope today. Such an interpretation is consistent with an ‘ordinary, everyday meaning’ that has evolved over time through to the modern, electronic age.

However, a more conservative interpretation is that introducing a move to a virtual Parliament would require amendments to the NSW Constitution Act. As the relevant provisions are not entrenched, the required amendments would appear to be relatively straightforward. They could facilitate all Members’ ability to fully participate in proceedings. There is also scope to confirm the application of parliamentary privilege to virtual proceedings in any such amendments.

TECHNOLOGY AND LOGISTICS

Typically Parliaments have not enjoyed a reputation for championing innovative technologies. However, progress is being made to modernise Parliaments to encourage digital engagement with Members, staff and the public. The *World e-Parliament Report 2018* noted that:

- Plenary rooms were equipped for video conferencing in 22 percent of Parliaments;
- Committee rooms were equipped for video conferencing in 38 percent of Parliaments;
- 67 percent of Parliaments used some form of electronic voting methods in the plenary chamber, either exclusively or together with manual voting methods; and
- Only two Parliaments, Paraguay and Spain, had systems enabling Members to vote remotely in a plenary session.⁹⁷

Extemporaneous addresses and robust debate are key features of the NSW Legislative Assembly, affectionately known by many as ‘The Bear Pit’. Moving to a virtual Parliament would undoubtedly dampen free-spirited debate to a degree, as it is

⁹⁷ Inter-Parliamentary Union, *World e-Parliament Report 2018*, 2018, p. 50. Accessed at: <https://www.ipu.org/resources/publications/reports/2018-11/world-e-parliament-report-2018>.

difficult to see how spontaneous questions, remarks and points of order could be made by Members without confusing and impractically slowing down virtual proceedings.⁹⁸

While a more ordered debate, with fewer interjections, might lead to a longer-term improvement in the standards of behaviour of Members, that is not the aim of a virtual Parliament. In examining the pitfalls of migrating to a purely digital solution in the UK, Greg Power noted:

Although the bear-pit atmosphere of the Commons is often rightly derided as creating more heat than light, the sheer presence of the place when fully-occupied has a concentrating effect on ministers. And a ministerial ability to read the mood of the place and to hold the floor of the chamber – or not – has been a key factor in determining the outcome of numerous critical debates⁹⁹

Despite this, during a time of unprecedented Government action in response to a once-in-a-generation pandemic, a virtual debate offering Members and the public opportunities for Government scrutiny certainly trumps no parliamentary debate at all.

CONCLUSION

Today our citizens participate in virtual meetings, virtual church services, virtual social activities and other forms of virtual assemblies where people are very much present together and engaging with each other in the digital sphere. So why not have a virtual NSW Parliament?

The NSW Parliament should amend the *Constitution Act* to clearly enable this to occur. It should also introduce sessional orders that facilitate electronic attendance of Members, including for Question Time.

A virtual Parliament has been achieved in many other jurisdictions around the world, and NSW should stand alongside other jurisdictions determined to keep the wheels of

⁹⁸ White, *How Could a Virtual Parliament Work?*.

⁹⁹ Greg Power, 'Can Analogue Politics Work in an Era of Digital Scrutiny? The Negative Effect of COVID-19 on the Informal Politics of Westminster'. The Constitution Unit and Global Partners Governance, 22 April 2020. Accessed at: <https://constitution-unit.com/2020/04/22/can-analogue-politics-work-in-an-era-of-digital-scrutiny-the-negative-effect-of-covid-19-on-the-informal-politics-of-westminster/>

democracy fully turning in these uncertain times. Introducing a virtual Parliament option in NSW would assure citizens of solid representation and accountability in Parliament during a time of crisis. It is time to innovatively pursue a virtual Parliament that reinforces public trust in the NSW Parliament and democracy.