

Did Australian parliaments meet regularly during the COVID-19 pandemic?

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Introduction

The COVID-19 pandemic posed significant challenges to governments and governance systems all over the world.¹ Faced with a complex and uncertain virus, Australian governments imposed extensive public health controls to protect the community. Borders were closed, dancing was prohibited, and businesses were shuttered. Families were prevented from seeing their loved ones in aged care homes, whole communities were confined to their local government area, and people were banned from meeting 2 or more friends for a walk outside.²

These measures were not imposed after consideration by parliament; they were implemented by the executive. The executive is uniquely positioned to provide quick, decisive, and flexible responses to protect public health and safety in periods of crisis. However, the actions taken by the executive raised questions about the role of parliament during this time. Australia is a representative democracy governed under a system of responsible government in which the executive answers to the people through their representatives in parliament. One might have expected parliament therefore to come to the fore as a highly visible and deliberative forum for community debate. Parliamentary processes offered the opportunity to scrutinise government measures and to build public trust. A striking feature of the response to the COVID-19 pandemic, however, was the 'contraction' of parliament.³

In this article, drawn from a longer piece in the *UNSW Law Journal*, we examine and assess how Australian parliaments responded to the pandemic.⁴ We divide our paper into 2 substantive parts. Part 1 assesses the core functions of parliament to enable us to identify 4 key roles that parliament should undertake during a public health emergency. Parliament should meet regularly, be provided with sufficient time for debate on key measures and issues, and exercise both legislative and executive oversight. In part 2, we assess Australian

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¹ Tom Ginsburg, 'Foreword for special issue on legislatures in the time of Covid-19', *The Theory and Practice of Legislation*, vol. 8, issue 1–2, 2020, p. 1.

² Orders were voluminous. By 22 May 2020, state and territory governments had enacted 547 statutory instruments relating to COVID-19, the Commonwealth alone had enacted another 172 related measures: Office of Meg Webb MLC, [COVID-19 Committees: A national comparison background briefing paper](#), May 2020, p. 8.

³ Stephen Mills, 'Parliament in a time of virus: representative democracy as a "non-essential service"', *Australasian Parliamentary Review*, vol. 34, issue 2, 2020, p. 8.

⁴ Harry Hobbs and George Williams, 'Australian parliaments and the pandemic', *UNSW Law Journal*, vol. 46, issue 4, 2023.

parliaments against the first of these functions. We ask whether Australian parliaments met regularly during the pandemic.

The roles of parliament

It is often noted that the primary function of a parliament is to make and amend law. This central purpose is reflected in the common name of these institutions – while a parliament, assembly, commission, or congress denotes a group of representatives meeting – a legislature legislates. Members of these institutions agree. A 2012 survey of 155 parliamentarians from 15 national legislatures found that more respondents thought legislation to be one of the 2 most important functions of parliament than any other role.⁵ However, is this the key role of parliament? Many political scientists have suggested otherwise. After all, ‘a large part of the time of these bodies is not devoted to law-making at all’.⁶ In fact, ‘most of the world’s legislatures do not legislate very much’.⁷ Any role that parliament may have in law-making ‘is not now, nor has it ever been, the dominant one’,⁸ for law and policy is made elsewhere. What, then, are the functions of modern parliaments? If legislatures are not primarily law-making bodies, what is it that they do?

a) How do political scientists describe the role of parliament?

In *The English Constitution*, British constitutional theorist Walter Bagehot sought to answer this question. Bagehot outlined 5 basic functions of the House of Commons. For Bagehot, parliament held an ‘elective’, ‘expressive’, ‘teaching’, ‘informing’ and ‘legislative’ function. The primary function of the House of Commons is its elective function. As the executive must maintain the confidence of the House, the chief role of the House of Commons is choosing the prime minister and the government.⁹ If confidence is lost, the House can dismiss the prime minister and elect another to serve in his or her place. The next 3 functions are related. Parliament’s role is to ‘express the mind of the British people on all matters which come before it’.¹⁰ As part of this, parliament will implicitly educate the British people, and inform the country of grievances and complaints, to lay them before the nation in parliamentary debate, to ‘makes us hear what otherwise we should not’.¹¹ The fifth function of parliament is law-making, ‘of conceiving, shaping, amending, rejecting and accepting bills’.¹² While Bagehot acknowledges that ‘it would be preposterous to deny the great importance’ of this task, it is of less significance than the former roles performed by the parliament, particularly, ‘the executive management of the whole state, or the political education given by Parliament to the whole nation’.¹³

⁵ Ken Coghill, Peter Holland, Abel Kinyondo, Colleen Lewis and Katrin Steinack, ‘The functions of parliament: reality challenges tradition’, *Australasian Parliamentary Review*, vol. 27, issue 2, 2012, p. 60.

⁶ Kenneth Clinton Wheare, *Legislatures*, Oxford University Press, London, 1963, p. 1.

⁷ Robert Packenham, ‘Legislatures and political development’, in Allan Kornberg and Lloyd Musolf (eds), *Legislatures in Developmental Perspective*, Duke University Press, Durham, 1970, p. 546.

⁸ C.E.S Franks, *The Parliament of Canada*, University of Toronto Press, Toronto, 1987, p. 5.

⁹ Walter Bagehot, *The English Constitution*, 2nd edition, Little, Brown, and Company, Boston, 1873, p. 118.

¹⁰ Walter Bagehot, *The English Constitution*, 2nd edition, Little, Brown, and Company, Boston, 1873, p. 119.

¹¹ Ibid; and Walter Bagehot, *The English Constitution*, 2nd edition, Little, Brown, and Company, Boston, 1873, p. 120.

¹² Bernard Crick, ‘Parliament in the British political system’, in Allan Kornberg and Lloyd Musolf (eds), *Legislatures in Developmental Perspective*, Duke University Press, Durham, 1970, p. 51.

¹³ Walter Bagehot, *The English Constitution*, 2nd edition, Little, Brown, and Company, Boston, 1873, p. 120.

Since Bagehot, political scientists and public lawyers have added, subtracted, and finessed these central functions. Bernard Crick would combine the expressive, teaching and informing roles into a singular ‘communications function’.¹⁴ Richard Mulgan would collapse them all into just 2 broad functions, ‘to support an executive from within its own ranks and to hold this executive publicly accountable’.¹⁵ Allan Kornberg sees 3 functions: representative, legislative, and control (or accountability).¹⁶ Michael Mezey, also identifies 3 core activities. Mezey articulates these as legislative, representative, and ‘system maintenance’, which he articulates as ‘the recruitment and socialization of political elites and determining who forms government’.¹⁷

Alternative formulations have been offered. CES Franks identified ‘four essential functions’ of the Canadian Parliament: to make a government, to make a government work (that is, ‘to give the government the authority, funds, and other resources necessary for governing the country’), to make a government behave, and to make an alternative government (‘that is, to enable the opposition to present its case to the public and become a credible choice for replacing the party in power’).¹⁸ Indian parliamentarian Laxmi Singhvi would dispense with the legislative role altogether, noting that at least within the parliamentary system, modern legislatures ‘have a predominantly debating and consultative function; they inform and legitimize. They correct by influence more than by specific command’.¹⁹

Scholars have also proposed additional functions. In a study of global parliaments (across both parliamentary and presidential systems), Philip Laundy identifies 6 functions: the legislative, financial, deliberative, critical, informative, and representative.²⁰ Reflecting his wider scope, Laundy omits Bagehot’s elective function, but adds both a financial and deliberative role. Even so, Laundy notes that his global study has revealed that ‘the true common denominator’ is representation; for almost all parliamentary assemblies have a representative function.²¹ Robert Hazell adopts a similar set of roles as Laundy. Hazell identifies 7 distinct tasks: representation, legislation, deliberation, scrutiny, budget setting, making and breaking governments, and redress of grievances.²²

Other functions can be considered. Ken Coghill, the former Speaker of the Victorian Legislative Assembly, endorses this list but considers 3 more: judicial, constitutional, and electoral roles.²³ As Coghill explains, some parliaments have a judicial function that allows it to impeach or remove incapable or corrupt judicial officers. Others have a constitutional

¹⁴ Bernard Crick, ‘Parliament in the British political system’, in Allan Kornberg and Lloyd Musolf (eds), *Legislatures in Developmental Perspective*, Duke University Press, Durham, 1970, p. 34.

¹⁵ Richard Mulgan, ‘The Australian Senate as a “house of review”’, *Australian Journal of Political Science*, vol. 31, issue 2, 1996, p. 200.

¹⁶ Allan Kornberg, ‘Parliament in Canadian society’, in Allan Kornberg and Lloyd Musolf (eds), *Legislatures in Developmental Perspective*, Duke University Press, Durham, 1970, p. 84.

¹⁷ Michael Mezey, *Comparative Legislatures*, Duke University Press, Durham, 1977, p. 7.

¹⁸ C.E.S Franks, *The Parliament of Canada*, University of Toronto Press, Toronto, 1987, pp. 4–5.

¹⁹ Laxmi Singhvi, ‘Parliament in the Indian political system’, in Allan Kornberg and Lloyd Musolf (eds), *Legislatures in Developmental Perspective*, Duke University Press, Durham, 1970, p. 216.

²⁰ Philip Laundy, *Parliaments in the Modern World*, Dartmouth Publishing Co, Aldershot, 1989, p. 11.

²¹ *Ibid.*

²² Robert Hazell, ‘The challenges facing our parliaments: how can we improve their performance?’, *Australasian Parliamentary Review*, vol. 16, issue 2, 2001, pp. 23–24.

²³ Ken Coghill, Peter Holland, Abel Kinyondo, Colleen Lewis and Katrin Steinack, ‘The functions of parliament: reality challenges tradition’, *Australasian Parliamentary Review*, vol. 27, issue 2, 2012, p. 58.

amendment function such that particular amendments require approval by a special majority of the Assembly. Coghill remarks that, like the budget setting function, this role ‘is of such importance that there is a strong argument for treating it as a distinct function’.²⁴ Some parliaments may also act as an electoral college to elect certain office-holders—this is an electoral function, distinct from making or breaking government. Parliament clearly has many responsibilities.

b) How do Australian parliaments describe their role?

It is useful to examine how political scientists identify the functions of legislatures in parliamentary systems, but it may be more valuable to examine how Australian parliaments themselves articulate their functions. Each parliament in Australia has an accompanying education office or engagement program that provides information and factsheets for citizens, school students and other interested parties. These programs ‘aim to promote an understanding and appreciation of the role and significance’ of the parliament to citizens and visitors.²⁵ Six of 9 jurisdictions outline the functions or roles of their legislature. A summary reveals that each understands their functions in broadly similar ways, though they use different language and express their tasks in varied ways. They also often adopt a different ordering, though it is not clear if this is intended to hold any significance.

The Australian Parliamentary Education Office outlines 4 main functions carried out by the Australian Parliament. Those function are to:

1. make laws for Australia
2. represent the people of Australia
3. examine the work of the government
4. provide a place where government is formed.²⁶

These functions echo the 5 functions identified by Bagehot. We can describe them as a *legislative*, *representative*, *accountability*, and an *elective* function. These are, of course, high-level descriptors of the main roles performed by the Australian Parliament. The seventh edition of *House of Representatives Practice*, for example, outlines 10 distinct functions.²⁷ Each of these roles can be housed within the 4 core functions identified. Among others, they include making and unmaking a government, the initiation and consideration of legislation, seeking information on and clarification of government policy, and surveillance, appraisal, and criticism of government administration.

The most recent edition of *Odggers’ Australian Senate Practice* lists 12 functions for the Senate.²⁸ Once again, for our purposes, these functions can be understood as discrete activities or tasks performed underneath one of the 3 core responsibilities already outlined (not including, of course, the elective function). The 12 functions include ensuring that legislative measures are exposed to the considered views of the community, to probe and

²⁴ Ibid.

²⁵ See Legislative Assembly for the Australian Capital Territory, *Programs* (accessed 6 December 2023).

²⁶ Parliamentary Education Office, *What is the role of parliament?*, (accessed 2 August 2024).

²⁷ D.R. Elder and P.E. Fowler (eds), *House of Representatives Practice*, Department of the House of Representatives, 7th edition, 2018, pp. 37–41.

²⁸ Harry Evans, *Odggers’ Australian Senate Practice*, ed Rosemary Laing, Department of the Senate, 14th edition, 2016, pp. 28–29.

check the administration of laws, to keep itself and the public informed, to insist on ministerial accountability for the government's administration, and to exercise surveillance over the executive's regulation-making power.

State and territory parliaments articulate their core functions in similar ways as the Australian Parliament. The New South Wales (NSW) Parliamentary Education and Engagement Office explains that the NSW Legislative Assembly has 4 main roles. They are:

1. to represent the people (*representative*)
2. to form the government for NSW (*elective*)
3. to make laws (*legislative*)
4. to keep the government accountable to the people of NSW (*accountability*).²⁹

The Legislative Council has the same functions, excluding the role of forming government.³⁰ The Tasmanian Parliament Education Office lists the same 4 functions for its parliament. The State Parliament:

1. represents the people of Tasmania (*representative*)
2. forms the executive government (*elective*)
3. scrutinises the executive government (*accountability*)
4. creates and amends Tasmanian laws (*legislative*).³¹

The Western Australian Parliamentary website also lists 4 functions for the Western Australian Legislature. These functions differ slightly from those already discussed. The State legislature:

1. makes law (including for the allocation of funds for government expenditure) (*legislative and financial*)
2. debates public policy (*deliberative*)
3. holds the government to account for its policies, actions and spending (*accountability*)
4. represents the people of Western Australia (*representative*).³²

It does not separately list the Legislative Assembly's role of forming government.

Two states list additional functions for their legislature. The website of the Parliament of Victoria outlines 5 functions. Members of the Victorian Parliament:

1. form a government from its members (*elective*)
2. represent the opinions of the people of Victoria in a public forum (*representative*)
3. debate, pass, amend and repeal laws (*deliberative and legislative*)
4. examine and approve government taxes and spending (*financial*)
5. hold the government to account for its policies and actions (*accountability*).³³

The Queensland Parliament is a unicameral legislature. Its website outlines 6 functions 'which overlap and interact'. They are to:

1. form government (*elective*)

²⁹ Parliament of New South Wales, [Role of parliament](#) (accessed 6 December 2023).

³⁰ Ibid.

³¹ Parliament of Tasmania, [House of Assembly Education Office](#) (accessed 6 December 2023).

³² Parliament of Western Australia, [Parliament's role](#) (accessed 6 December 2023).

³³ Parliament of Victoria, [What is parliament?](#) (accessed 6 December 2023).

2. make law (*legislative*)
3. budget and supply (*financial*)
4. scrutiny (*accountability*)
5. representation (*representative*)
6. debate and grievance (*deliberative* and *petitions*).³⁴

South Australia and the Australian Capital Territory (ACT) do not outline the roles of their parliament or legislative assembly. The Northern Territory (NT) Assembly website lists only 2 functions. According to the parliamentary website, the Assembly's functions are *representative* and *elective*; it is 'the meeting place for the elected Members to represent their constituencies. The party with the majority of Members is able to form government so long as they retain the confidence of the Assembly'.³⁵

Australian parliaments thus identify the same 4 core functions: *elective*, *representative*, *accountability*, and *legislative*. What these functions entail can be spelled out in more detail. Under its *elective* function, parliament makes and unmakes governments. The *legislative* function sees parliament initiate, debate, pass, amend and repeal laws, including laws on government spending (that is, budget and supply). The *representative* role of parliament is clear: parliament represents the people and their interests in an open and public forum, including by hearing petitions, and ventilating grievances and other matters of concern. Finally, in exercising its *accountability* function parliament holds the executive to account by seeking information on, appraising and critiquing, government administration, law and policy through committees, parliamentary debate (especially question time), and by examining delegated legislation. Are all these roles as relevant during a public health emergency?

c) What roles does parliament prioritise during a crisis?

In times of national crisis or emergency, extraordinary powers are often considered necessary. The slow and deliberative process that characterises the legislative branch of government is seen as unable to respond effectively when decisive action is required. Yet, while the role of parliament must necessarily adapt during a crisis, this does not mean that it should be entirely dispensed with. Even when threatened by the exigencies of total war or major civil strife, it has long been recognised that national assemblies must continue to meet and exercise certain core functions. In fact, the necessity of exercising its core functions may become even more apparent when the executive is implementing extraordinary powers. With those powers must come heightened scrutiny and vigilance, which parliament is best placed to provide.

Consider the role of the United Kingdom (UK) Parliament during World War II. At the outbreak of hostilities, Arthur Greenwood, the Deputy Leader of the Labour Opposition outlined how his party saw the role of the House of Commons during the conflict. As Greenwood explained, the tasks of the House in this period were twofold. First, to listen 'with sympathy and understanding' to the statements made by the prime minister and government and, 'if necessary, to debate them', by bringing to bear on proposals and legislation 'what we

³⁴ Queensland Parliament, [The role of parliament](#) (accessed 6 December 2023).

³⁵ Legislative Assembly of the Northern Territory, [About parliament](#), 19 September 2023 (accessed 6 December 2023).

honestly conceive to be the views of the British public'.³⁶ Second, given that the government was focused on the effective prosecution of the war effort, the opposition would be 'closer' 'to the heart of the people'. It therefore fell upon them 'to take the initiative, as responsible public representatives, in raising discussions, to enlighten the Government, to bring home to them the questions that are troubling the minds of the people and to do our best to avoid the Government falling into difficulties'.³⁷ Ivor Jennings described this formulation of the parliament's role as playing a 'candid friend'.³⁸ Following the collapse of the Chamberlain Government and the formation of the National Government under Prime Minister Winston Churchill, HRG Greaves characterised the Commons as 'a collaborating Council of State'.³⁹ In both circumstances, the role of the parliament was understood to be one 'of vigilant supervision and the voicing of popular feeling'.⁴⁰ In other words, parliament would exercise representative and accountability functions.

This is not to discount the legislative or elective functions of parliament. It is important that parliament formally pass legislation providing the executive with the necessary powers to respond to a crisis. If the crisis intensifies and government considers further powers are required, it is the legislature's role to consider and determine whether it agrees. Similarly, while the parliament should support the executive in the effective prosecution of its strategy by minimising instability, a point may be reached where it becomes clear that the people no longer support the government's strategy, or the government has lost the confidence of the legislature itself. At these times parliament has a responsibility to exercise its elective function to choose an alternative administration. That no Australian government lost the confidence of the parliament during the COVID-19 pandemic does not mean the elective function is unimportant during times of crisis.⁴¹ In October 1940, the Arthur Fadden Government was defeated in a vote on a supply bill in the House of Representatives. Reluctant to call an election given the House was barely a year old, the Governor-General obtained the assurances of 2 independent members who held the balance of power that they would support a Labor government. John Curtin was subsequently sworn in as prime minister.⁴²

In the initial stages of the COVID-19 pandemic, many parliaments appeared to implicitly understand that their primary responsibility was supporting an effective response by representing the interests of their constituents and holding that government to account. Of course, legislation would need to be enacted, but given the overriding sense that 'we are all in this together',⁴³ parliaments largely deferred to government proposals to suspend parliament or pass economic support measures. Amendments may be proposed, but the

³⁶ Cited in W. Ivor Jennings, 'Parliament in Wartime I', *The Political Quarterly*, vol. 11, issue 2, 1940, p. 185.

³⁷ *Ibid.*

³⁸ *Ibid.* Jennings warned that the position could not last for long, for 'either one becomes friend and collaborator, or one becomes really candid and an opponent', p. 194.

³⁹ H.R.G Greaves, 'Parliament in War-Time', *The Political Quarterly*, April–June 1941, p. 203.

⁴⁰ H.R.G Greaves, 'Parliament in War-Time', *The Political Quarterly*, April–June 1941, p. 202.

⁴¹ Note that the initial stages of the COVID-19 pandemic resulted in a 'rally-round-the-flag' effect in many countries, increasing trust in and support for national governments, this effect faded over time where citizens perceived their government's response to be lacking: See generally Sylvia Kritzinger, Martial Foucault, Romain Lachat, Julia Partheymüller, Carolina Plescia and Sylvain Brouard, "'Rally round the flag": the COVID-19 crisis and trust in the national government', *West European Politics*, vol. 44, issue 5, 2021, p. 1205.

⁴² John Edwards, *John Curtin's War—Volume I: The coming of war in the Pacific, and reinventing Australia*, Viking, Melbourne, 2017, pp. 256–267.

⁴³ The Hon Simon Bridges MP, Leader of the Opposition, [New Zealand House of Representatives Hansard](#), 25 March 2020, p.17280.

legislation would be supported. On 23 March 2020, for example, the Hon Anthony Albanese MP explained that under his leadership the Labor opposition would act ‘in a responsible and constructive manner’. This would involve putting forward ‘suggestions’ and ‘views to try and improve the [emergency] legislation’.⁴⁴ Reminding the government that those views ‘do represent, by the way, the largest political party in this parliament’, Albanese noted that they should ‘be taken into account’.⁴⁵ Nevertheless, while admitting the legislation ‘is not perfect’, Albanese was clear that ‘this is not a time to prevent measures which, however imperfect, are necessary to be implemented’.⁴⁶

In Canada, members of parliament also focused on the need to support the government’s effective response. This would involve standing ‘ready to help find solutions’,⁴⁷ and ‘offer[ing] proposals to better serve [the] interests’ of their constituents.⁴⁸ The Leader of the New Zealand Opposition understood the role of parliament in a similar fashion. The Hon Simon Bridges MP explained that even when the parliament is adjourned, it would ‘join with the Government in seeking to constantly improve our nation’s response for the common good of our people’.⁴⁹ In the UK House of Commons too, parliamentarians agreed that ‘genuine, constructive engagement from Members of all parties’, drawing from issues experienced by their constituents could help ‘plug the gaps’⁵⁰ in the government’s immediate response.

If the 2 primary roles of parliament during a pandemic is to exercise representative and accountability functions, how should it fulfil its responsibilities? What sort of activities should it engage in? We outline 4 activities below against which parliament can be assessed in light of its core functions and how these might be exercised during a pandemic. In this paper, we will consider only the first function in detail.

Parliament should meet regularly

In Westminster systems, parliament is ‘the source of the legitimacy and authority of a government’.⁵¹ It is thus essential that parliament continue to sit regularly, demonstrating that the executive maintains its confidence. It is also crucial for the government to ensure its policies and administration are supported by the people. Even when accepting the need to adjourn due to rapidly growing case numbers, parliamentarians were clear that ‘it is imperative and important that the House continue to sit’,⁵² for ‘during this period, during a time of crisis, is when the Australian public needs us to sit’.⁵³ While governments continued to update the nation via regular press conferences and media releases, the visibility, publicity, and transparency inherent in the act of speaking through parliament is itself important.⁵⁴

⁴⁴ The Hon Anthony Albanese MP, Leader of the Opposition, [House of Representatives Hansard](#), 23 March 2020, p. 2775.

⁴⁵ The Hon Anthony Albanese MP, Leader of the Opposition, [House of Representatives Hansard](#), 23 March 2020, p. 2776.

⁴⁶ The Hon Anthony Albanese MP, Leader of the Opposition, [House of Representatives Hansard](#), 23 March 2020, p. 2775. See also Mr David O’Byrne MP, [Tasmanian House of Assembly Hansard](#), 26 March 2020, p. 2.

⁴⁷ The Hon Andrew Scheer MP, Leader of the Opposition, [Canadian House of Commons Hansard](#), 24 March 2020, p. 2069.

⁴⁸ Mr Yves-Francois Blanchet MP, [Canadian House of Commons Hansard](#), 24 March 2020, p. 2061.

⁴⁹ The Hon Simon Bridges MP, Leader of the Opposition, [New Zealand House of Representatives Hansard](#), 25 March 2020, p.17280.

⁵⁰ The Rt Hon John McDonnell MP, [United Kingdom House of Commons Hansard](#), 25 March 2020, p. 414.

⁵¹ C.E.S Franks, *The Parliament of Canada*, University of Toronto Press, Toronto, 1987, p. 11.

⁵² Mr Jarrod Bleijie MP, Manager of Opposition Business, [Queensland Legislative Assembly Hansard](#), 17 March 2020, p. 605.

⁵³ The Hon Tony Burke MP, Manager of Opposition Business, [House of Representatives Hansard](#), 23 March 2020, p. 2894.

⁵⁴ Elena Griglio, ‘Parliamentary oversight under the Covid-19 emergency: striving against executive dominance’, *Theory and Practice of Legislation*, vol. 8, issue 1–2, 2020, p. 62.

Parliament should be provided with sufficient time to debate key measures and issues

Regular meetings are important as a symbol of continuity during a time of uncertainty and of the significance of parliament as a public institution that represents the people. But it is not enough for parliament to simply meet and vote on government proposals. Parliament must be provided with sufficient time to consider and debate key measures and issues. In ordinary times, parliament is a forum for the diverse interests of citizens to be heard and potentially incorporated into the design of policy and administration. This role is especially important during times of crisis or emergency. To fulfil its representative function, the legislature must not merely sit but must be provided with 'an opportunity for people representing the different corners of Australia'⁵⁵ to articulate their views and seek to have their grievances redressed.⁵⁶

Parliamentary debates are also important for their legitimating function. Simply by assembling and deliberating, even where outcomes are largely preordained, parliaments can reduce societal tension and enhance support amongst the populace.⁵⁷ While journalists can critique and challenge government decision-making announced in press conferences, it is in parliament where elected members can and should 'press the government for the answers [citizens] deserve'.⁵⁸

Parliament should maintain legislative oversight, including of delegated legislation

Our constitutional system recognises 'the necessity of draconian powers in moments of national crisis',⁵⁹ but hastily drafted and hurriedly enacted legislation is likely to cause unintended and unexpected problems. The same is true for regulations or orders made by a minister or a health officer. Even when parliament is unable to sit, it has 'unique institutional features that allow it to serve as a deliberative forum for scrutinising emergency policies and providing feedback to the executive'.⁶⁰ In a crisis, parliament must continue to exercise legislative oversight by examining and critiquing proposed laws and delegated legislation. As the Leader of the New Zealand House of Representatives noted, 'scrutiny during this unprecedented time, when the Government is placed in the position of exercising such extraordinary powers, has never been [more important]'.⁶¹

Parliament should scrutinise government administration and policy

Public health emergencies may require changes to parliamentary process and procedure. It is important that the government act quickly to slow the spread of highly transmissible viruses and provide necessary economic support to protect the community. This does not mean,

⁵⁵ The Hon Tony Burke MP, Manager of Opposition Business, *House of Representatives Hansard*, 23 March 2020, p. 2894.

⁵⁶ Ken Coghill, Peter Holland, Abel Kinyondo, Colleen Lewis and Katrin Steinack, 'The functions of parliament: reality challenges tradition', *Australasian Parliamentary Review*, vol. 27, issue 2, 2012, p. 62.

⁵⁷ Robert Packenham, 'Legislatures and political development', in Allan Kornberg and Lloyd Musolf (eds), *Legislatures in Developmental Perspective*, Duke University Press, Durham, 1970, p. 536.

⁵⁸ Mr Mark Strahl MP, *Canadian House of Commons Hansard*, 13 March 2020, p. 2061.

⁵⁹ *A v Secretary of State for the Home Department* [2005] 2 AC 68, 130 [89] (Lord Hoffmann).

⁶⁰ Jan Petrov, 'The COVID-19 emergency in the age of executive aggrandizement: what role for legislative and judicial checks?', *Theory and Practice of Legislation*, vol. 8, issue 1–2, 2020, p. 73.

⁶¹ The Rt Hon Chris Hipkins MP, Leader of the House, *New Zealand House of Representatives Hansard*, 25 March 2020, p. 1731.

however, that parliament should abandon its critical responsibility to scrutinise government administration and policy. Responsible government does not only mean the executive sits within the legislature; it also means ‘the government is expected to be a trustworthy steward of the nation’s affairs’.⁶² It is all the more pressing during a time of national emergency that parliament ensure the government meets this standard.

Assessing the performance of our parliaments

Australians were generally supportive of the actions taken by their governments in responding to the pandemic. In 2022, the Lowy Institute found that 80% of Australians believed Australia ‘handled the pandemic well’.⁶³ This number far exceeded the results for China (45%), the UK (39%) and the United States (25%). But how did Australian parliaments fare? Did they meet regularly? In this part, we assess the performance of our parliaments.

a) The data

The pandemic severely affected the capacity of most Australian parliaments to meet their core function of regular sittings. In 2020, every Australian parliament, except for the Parliament of Western Australia, sat for fewer days than their historical average in the years prior to the emergence of COVID-19 (Figure 1). Unsurprisingly, jurisdictions that had higher case numbers and greater risks of transmissibility lost more sitting days than other jurisdictions. The NSW Parliament lost the greatest number of days in 2020, but their experience was far from unique. Indeed, NSW, the Australian and Victorian parliaments all lost more than 20 days across both houses of parliament. The ACT Legislative Assembly and Tasmanian Legislative Council each lost around 7 days. The NT Legislative Assembly also sat for a significantly fewer number of days in 2020, losing 9 days. While the NT did not experience a spike of cases, the increased vulnerability of its population resulted in a cautious approach.

The success of efforts at containing the spread of the virus meant that not all parliaments were affected to the same degree. South Australia avoided significant community transmission throughout 2020. Even so, the state parliament sat for 6.5 fewer days than their recent historical average in that year. The data is a little complicated in Queensland given the state election was held during 2020, but it appears that the parliament also lost only around 2.5 days. The Tasmanian House of Assembly lost a similar number of days.

One parliament sat for more days than might be expected from its recent historical average. By mid-April 2020, Western Australia had eliminated community transmission of COVID-19 and the state did not report more than a handful of cases until December 2021.⁶⁴ Following the initial ‘panicky days’ of March and April 2020, the Western Australian Parliament increased their number of sitting days.⁶⁵

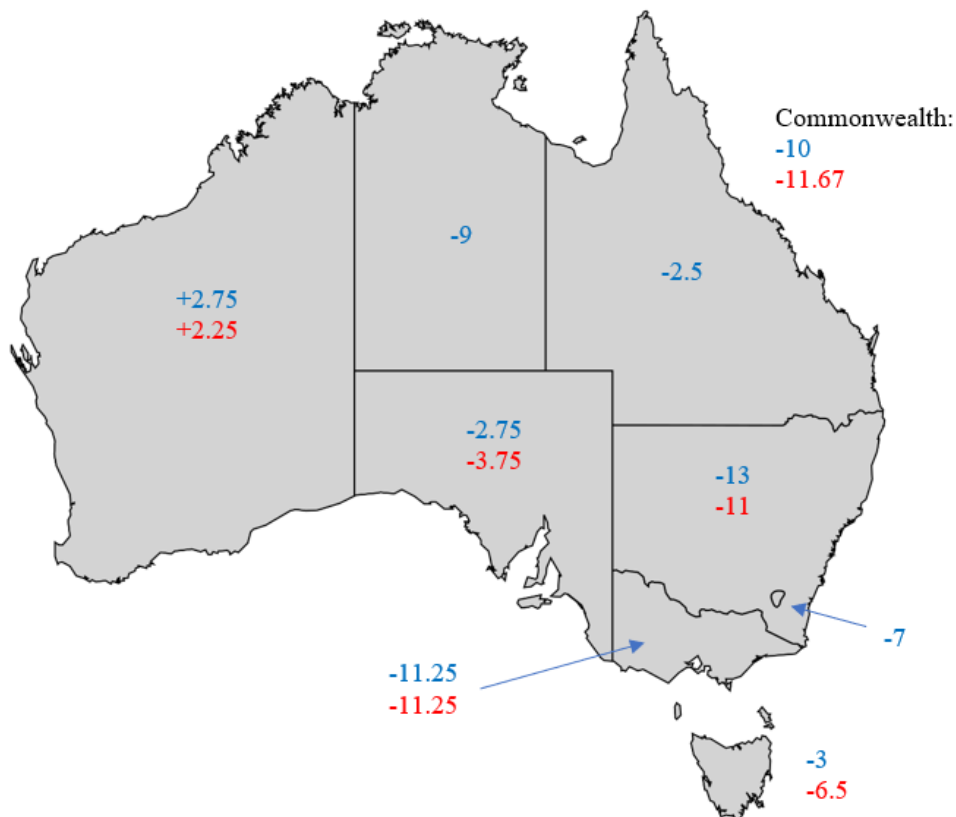
⁶² C.E.S Franks, *The Parliament of Canada*, University of Toronto Press, Toronto, 1987, p.11.

⁶³ Lowy Institute Poll 2022, *Covid-19 Pandemic: Global Responses to Covid-19* (accessed 6 December 2023).

⁶⁴ Heather McNeill, ‘A timeline of WA’s COVID-19 response: was our success luck, good management, or a bit of both?’, *WAtoday*, 28 August 2020.

⁶⁵ Legislative Assembly of Western Australia Procedure and Privileges Committee, *The Legislative Assembly’s response to the COVID-19 pandemic*, November 2020, p. 20.

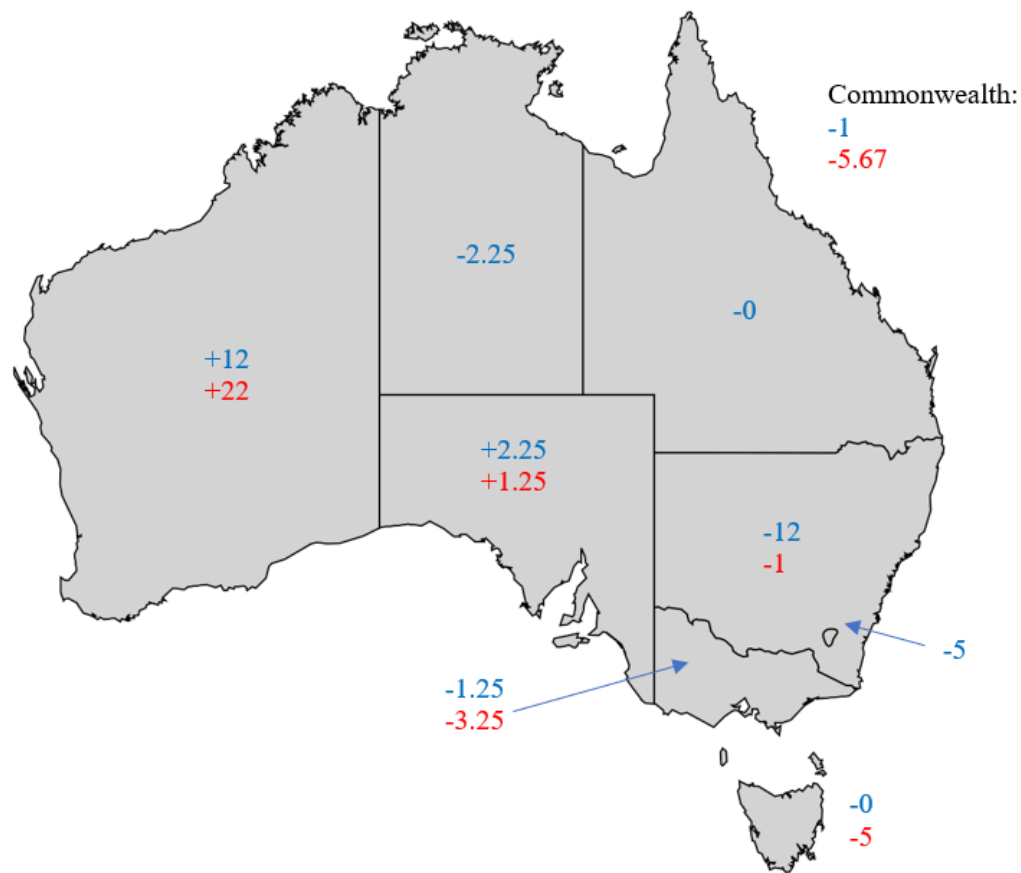
Figure 1: Parliamentary sitting days lost in 2020 (compared to recent historical average)



Lower house in blue text; upper house in red text.

Nevertheless, the Western Australian Parliament's success did not make up for the total days lost across all parliaments. In 2020, Australian parliaments sat for almost 90 days fewer than their average between 2015 and 2019. Every Australian parliament performed better in 2021, but several still sat for significantly fewer days (Figure 2). In particular, the NSW Legislative Assembly sat for 12 fewer days than its historical average between 2015 and 2019. No other House lost as many days.

Figure 2: Parliamentary sitting days lost in 2021 (compared to recent historical average)



Lower house in blue text; upper house in red text

This data is useful but limited. It does not tell us how parliaments responded in the immediate stages of the pandemic. What actions did our parliaments take when COVID-19 first emerged in Australia and sparked considerable alarm? Once again, the results are not impressive. In the jurisdictions most affected by COVID-19, parliaments met very infrequently – if at all – at the height of the crisis (late March 2020 to May 2020). The NSW, Victorian and NT parliaments met just once over a two-month period in April and May. The Queensland, Tasmanian and ACT parliaments met 4 times or fewer in that same period. The Australian Parliament met only 5 times.

Even these stark figures do not reveal the extent of the failure of Australian parliaments to fulfil their core function as the full scale of the pandemic initially took shape. It is worth clearly stating that during this period legislation of great significance was being passed. On 23 March 2020, the first sitting day following the Governor-General's declaration that a human biosecurity emergency existed, the Australian Parliament passed legislation authorising \$66 billion in spending, and approved an advance to the Minister of Finance of \$40 billion, 'far exceeding the usual limit of \$675 million', to ensure the government could respond quickly to the pandemic.⁶⁶ At the next sitting on 8 April, \$130 billion of spending was authorised. These bills were introduced into parliament and passed within a day. The failure

⁶⁶ Senate Select Committee on COVID-19, *First interim report*, December 2020, p. 70; Department of the Senate, *Procedural Information Bulletin No. 342*, 27 March 2020, pp. 2–3.

to sit regularly meant that these funding commitments did not receive significant or comprehensive debate.

b) Governments suspended parliament to avoid accountability

Uncertainty was a defining characteristic of the early days of the COVID-19 pandemic. It is not surprising that in March 2020, parliaments across Australia were quick to adjourn. However, our analysis suggests that governments suspended parliament to evade accountability. They did so by using their numbers in parliament to suspend the legislature for lengthy periods of time.

In most cases, governments worked with opposition members to secure agreement in advance on proposed changes to the standing orders. A cooperative approach allowed parliament to sit with reduced numbers to manage social distancing and expedite the passage of critical measures responding to the pandemic. It also contributed to the sense that all Australians needed to work together to get through this difficult period. However, not all governments informed the opposition in advance that they intended to adjourn parliament. Consider the example of the Australian Parliament.

The Australian Parliament adjourned on Thursday 5 March 2020 for a scheduled mid-session break. Parliament was recalled for a one-day session on 23 March. To ensure appropriate social distancing while maintaining quorum, only 92 members of the House attended the session (a reduction from 151).⁶⁷ The standing orders were suspended to facilitate the expedited passage of the government's coronavirus response package and supply bills.

In the early evening, after the successful passage of these bills, the government presented a revised parliamentary sittings calendar that proposed to eliminate 18 sitting days in May and June, effectively adjourning the parliament until 11 August – a twenty-week break. The Hon Christian Porter MP, the then Leader of the House, acknowledged that 'there's likely to be a division with respect to the sitting calendar', but justified the government's proposal on 2 grounds. First, that the House had already agreed that day to 'necessary measures on supply' to 'ensure the proper functioning of government services', and second, that 'some risk attaches to the operation of parliament, particularly during what is anticipated to be the peak point in the transmission of the coronavirus'.⁶⁸ As Stephen Mills notes, the government's proposal conceived the role of parliament in the pandemic as effectively limited to providing the government 'with supply and appropriation'.⁶⁹

The opposition resisted the proposed sitting calendar, arguing that it was premature to eliminate sittings several months in advance. Sittings should be scheduled and later cancelled if it proved impossible to hold safely. The Hon Tony Burke MP, the then Manager of Opposition Business, declared that 'the presumption should be that we will meet if it is possible for us to sit'.⁷⁰ The then Shadow Treasurer, the Hon Dr Jim Chalmers MP agreed,

⁶⁷ House of Representatives Standing Committee on Procedure, *The House must go on: inquiry into the practices and procedures put in place by the House in response to the COVID-19 pandemic*, December 2020, p. 7.

⁶⁸ The Hon Christian Porter MP, Leader of the House, *House of Representatives Hansard*, 23 March 2020, p. 2893.

⁶⁹ Stephen Mills, 'Parliament in a time of virus: representative democracy as a "non-essential service"', *Australasian Parliamentary Review*, vol. 34, issue 2, 2020, p. 16.

⁷⁰ The Hon Tony Burke MP, Manager of Opposition Business, *House of Representatives Hansard*, 23 March 2020, p. 2894.

noting that the parliament would need to ‘scrutinise the measures which were only announced yesterday and legislated today’, because ‘the idea that the government has just perfectly nailed every aspect of this \$66 billion in new spending is absurd’.⁷¹

Relying on its numbers in the House, the government’s proposed sitting calendar was adopted.⁷² Nonetheless, the government was forced to change its plans because of the need to introduce further measures to support the economy. The House was recalled for a one-day session on 8 April 2020 and was again recalled on 12 May. At the end of that session, the House agreed to sit on 13 and 14 May. The House then agreed to sit again in June and early August, though this latter session was cancelled because of an increase in community transmission.⁷³ The House finally returned on 23 August after a nine-week break.

The NSW Parliament performed even worse in 2021. Following a rise in case numbers, NSW Premier Gladys Berejiklian announced a two-week lockdown of greater Sydney on 26 June 2021. People living in Sydney, the Central Coast, the Blue Mountains, and Wollongong were permitted to leave their homes only for an essential reason, such as shopping for food, medical care, compassionate needs, exercise and essential work or education.⁷⁴ Case numbers continued to rise. The lockdown was extended several times and more significant restrictions were placed on residents within the state. Residents in local government areas of concern (all in the western suburbs of Sydney) were placed under curfews and were required to wear a mask at all times outside the house.⁷⁵ They also faced more overt police enforcement.⁷⁶ It was not until 11 October 2021 that lockdown rules were eased for fully vaccinated people. The following day, the NSW Parliament sat for its first meeting since 24 June. This means that for the entire 107-day lockdown, the NSW Parliament did not sit.

This was not for lack of trying. On 14 September 2021, members of the NSW Legislative Council attempted to reconvene parliament. However, the government thwarted this by relying on standing order 34, which provides that the House will not meet until a minister is present. Conveniently, no government minister turned up and the President of the Legislative Council said he had ‘no choice’ but to end the sitting.⁷⁷ Opposition member the Hon Penny Sharpe MLC was incensed:

Democracy is an essential service for the people of New South Wales. As we stand here today, our State continues to face one of the most significant health crises we have faced in recent history. ... What the people of New South Wales need right now is hope, transparency and accountability from their Government. It is shameful that the Berejiklian Government would come

⁷¹ The Hon Dr Jim Chalmers MP, Shadow Treasurer, *House of Representatives Hansard*, 23 March 2020, p. 2896.

⁷² *House of Representatives Votes and Proceedings*, No. 51, 23 March 2020, pp. 833–834.

⁷³ Stephanie Borys and Jade Macmillan, ‘[Coronavirus crisis forces fortnight sitting of Federal Parliament to be cancelled](#)’, *ABC News*, 18 July 2020.

⁷⁴ *Public Health (COVID-19 Greater Sydney) Order (No 2) 2021* (NSW) cl 15C, sch 1A.

⁷⁵ *Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order 2021* (NSW).

⁷⁶ Tom Barnes and Niamh Crosbie, *COVID-19’s lasting impacts on workers: how government mismanaged changed working lives in Western Sydney*, Australian Catholic University, October 2022, p. 6.

⁷⁷ The Hon Matthew Ryan Mason-Cox MLC, President of the Legislative Council, *New South Wales Legislative Council Hansard*, 14 September 2021, p. 5942.

*into this Chamber and misuse the rules of the House to stop the majority of elected members from lawfully sitting.*⁷⁸

This aborted attempt at democracy is the closest NSW came to a functioning parliament during lockdown. The absence of parliament enabled ministers to control their messaging to an unprecedented degree. Question time was replaced by a well scripted daily press conference leaving parliamentarians unable to test the justification for public health orders or to demand documents on the modelling behind lockdowns. As one member of parliament noted:

*Dan Murphy's is open but parliament isn't? We send nurses, doctors, ambos, police, teachers, transport workers, retail workers back to work – but politicians are too precious? No matter the time or crisis, democracy and oversight isn't an optional extra.*⁷⁹

c) Parliaments did not adopt technology quickly

The pandemic necessitated changes to the sitting calendar. However, advances in technology meant that alternative options to ensure parliaments were able to continue to meet in relative safety were available. The Australian Parliament recognised as such almost immediately. On 23 March 2020, the House adopted a resolution stating, in part:

*[T]he House may 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 Members may be present (including for the purposes of achieving a quorum) to be determined by the Speaker.*⁸⁰

The motivation behind the change was to retain 'flexibility'.⁸¹ While the parliament agreed 'the best that we can do is for us to physically meet here', in uncertain times it was important to make certain that 'when the Australian people need the parliament to meet, the parliament can meet'.⁸²

However, consistent with government's desire to evade accountability, parliament did not prioritise the use of technology to facilitate sittings. Indeed, it was not until 20 August 2020 that it was finally agreed that members 'unable to physically attend parliament due to reasons related to the COVID-19 pandemic' would be allowed to contribute remotely (for the 24 August to 3 September sittings).⁸³ Significant restrictions were also placed on remote members' contributions. Those participating remotely were not permitted to vote, be counted for a quorum, move motions, propose or support a proposal to discuss a matter of public

⁷⁸ The Hon Penny Sharpe MLC, Leader of the Opposition in the Legislative Council, [New South Wales Legislative Council Hansard](#), 14 September 2021, p. 5492.

⁷⁹ Kelly Fuller, ['MPs slam NSW government as return of parliament put off until "possibly" October'](#), ABC News, 30 August 2021.

⁸⁰ *House of Representatives Votes and Proceedings*, [No. 51](#), 23 March 2020, p. 334; *Journals of the Senate*, [No. 47](#), 23 March 2020, p. 1562.

⁸¹ The Hon Christian Porter MP, Leader of the House, [House of Representatives Hansard](#), 23 March 2020, p. 2901.

⁸² The Hon Tony Burke MP, Manager of Opposition Business, [House of Representatives Hansard](#), 23 March 2020, p. 2902.

⁸³ House of Representatives, [Agreement for Members to contribute remotely to parliamentary proceedings](#), 20 August 2020; and *Journals of the Senate*, [No. 59](#), 24 August 2020, pp. 2064–2065.

importance or call a division.⁸⁴ While parliamentarians agreed ‘the circumstances of the pandemic warrant a significant evolution of existing rules’, they considered that attendance in the House or the Senate should remain a priority given the Australian Constitution contains the apparent requirement that the parliament meet at the seat of government.⁸⁵

Two points are worth noting. First, the prohibition on remote participants from voting may violate the Constitution. Sections 23 and 40 of the Constitution provide that questions arising in the Senate and the House of Representatives are determined by a majority of votes. These sections provide that each elected representative has one vote. The Senate Standing Committee on Procedure casually noted that ‘the exercise of this right has always required the presence of the senator in the chamber’,⁸⁶ but these rules were adopted prior to the development of technology that can facilitate attendance during an emergency. Parliament’s failure to adapt during the pandemic is of significant concern.

Second, the Australian Parliament’s unnecessary and unreasonable delay in introducing remote participation severely damaged its representative role. It took the Australian Parliament 150 days to implement remote participation. In contrast, the UK House of Commons agreed to allow remote sitting on 21 April 2020, and held the first hybrid session of parliament the following day.⁸⁷ The model left much to be desired, but it indicated the extent to which the Commons took seriously its responsibility to meet. Indeed, parliaments around the world managed to undertake hybrid sittings in a prompt manner. A study of legislatures in 159 countries with a population of over 1,000,000 found that 14 states used videoconferencing and/or remote voting in lieu of physical presence between 23 March and 6 April 2020.⁸⁸ Many others soon followed.

Conclusion

In times of national crisis or emergency, the legislative branch of government is often perceived as unable to respond effectively or unsuited to doing so. When timely action is required, the executive must take charge in order ‘to get things done’.⁸⁹ Yet, this does not mean that parliament should abandon its constitutional and democratic responsibilities. In fact, the necessity that parliament carries out its core functions is even more apparent when the executive is exercising extraordinary powers. With those powers must come sharp scrutiny and vigilance, which parliament is best placed to provide.

In this paper, drawn from a longer article in the *UNSW Law Journal*, we have outlined 4 key functions of parliament during a public health emergency.⁹⁰ We have assessed Australian

⁸⁴ Note that the Western Australian Legislative Assembly Procedure and Privileges Committee recommended that remote voting be permitted in Western Australia: Legislative Assembly of Western Australia Procedure and Privileges Committee, [The Legislative Assembly’s Response to the COVID-19 Pandemic](#), November 2020, p. 76.

⁸⁵ Senate Standing Committee on Procedure, *First report of 2020*, August 2020, p. 2.

⁸⁶ Senate Standing Committee on Procedure, *First report of 2020*, August 2020, p. 4.

⁸⁷ *United Kingdom House of Commons Votes and Proceedings*, [No. 48](#), 21 April 2020, pp. 1–2.

⁸⁸ Ittai Bar-Siman-Tov, Olivier Rozenberg, Cyril Benoît, Israel Waismel-Manor, and Asaf Levanon, ‘Measuring Legislative Activity during the Covid-19 pandemic: introducing the ParlAct and ParlTech Indexes’, *International Journal of Parliamentary Studies*, vol. 1, issue 1, 2021, p. 109. The states were: Azerbaijan, Bolivia, Brazil, Chile, Ecuador, Indonesia, Latvia, Mongolia, Poland, Romania, Saudi Arabia, Uruguay, Uzbekistan and Venezuela.

⁸⁹ Nick Barber, *The Principles of Constitutionalism*, Oxford University Press, Oxford, 2018, p. 67.

⁹⁰ Harry Hobbs and George Williams, ‘Australian parliaments and the pandemic’, *UNSW Law Journal*, vol. 46, issue 4, 2023.

parliaments against the first of the tasks: the requirement to meet regularly. As we have explained, this function is vital. In a system of representative and responsible government the executive must demonstrate it holds the confidence of the House. Failure to sit for substantial periods of time violates fundamental principles of our constitutional system. More broadly, regular meetings are important as they provide a legitimating function. Simply by meeting and expressing the views of their constituents, parliamentarians can help build community support for extraordinary measures.

Our findings are concerning. Every Australian parliament, except the Parliament of Western Australia, failed to satisfy the central function of regular meetings. Relying on their numbers in the lower house, governments pushed for lengthy adjournments. While significant uncertainty over the scope and nature of the crisis existed, there was no need for Australian parliaments to adjourn for months. This became obvious when parliaments were recalled to pass new measures to respond to the pandemic. Concerns over meeting in person were legitimate. However, parliaments overseas adapted far more readily than Australian parliaments by utilising technology to facilitate hybrid and remote sittings. Even when the Australian Parliament finally adopted this technology, unnecessary, undemocratic, and potentially unconstitutional limitations restricting the rights of members to contribute were imposed.

COVID-19 is unlikely to be the last pandemic we face. If Australia is to respond effectively to future public health emergencies, it is vital that our parliaments improve their performance to better meet their core responsibilities.