

March 30, 2020

## PUBLIC STATEMENT

### PROLONGED PARLIAMENTARY ADJOURNMENT UNACCEPTABLE AND DANGEROUS FOR DEMOCRACY

For the duration of the ongoing COVID-19 crisis, NSWCCL calls upon the Commonwealth and NSW Governments to accord full respect to the principles of parliamentary supremacy and responsible and representative government, which are fundamental features of Australia's democratic and constitutional arrangements.

To this end, we urge the State and Commonwealth Governments to act through parliamentary processes and to continue to exercise legislative powers to the fullest practicable extent for the duration of this crisis. We urge them to reconsider parliamentary adjournment until September<sup>1</sup> and August<sup>2</sup> respectively. The NSW Parliament should also update its committee processes to enable NSW parliamentary committees to operate virtually, similarly to the way committees at the Commonwealth level are able to operate.

Adherence to these principles will ensure that Australians continue to enjoy full democracy, accountability and transparency from their leaders, and therefore maximum protection of their civil liberties during these challenging times.

The consequence of these parliamentary shutdowns, in the words of constitutional law expert Anne Twomey from the University of Sydney, *"is that there will be very little parliamentary scrutiny of the government for nearly five months, a critical period during which extreme powers may be exercised."*<sup>3</sup>

The emergency circumstances in which we find ourselves render it difficult to overstate the potential for the dramatic overreach of unreviewable executive power. Decisions of the High Court since 2009 make this problem even more serious.<sup>4</sup>

This is not merely an academic point. Limiting the power of the executive to act without parliamentary scrutiny – that is, without the scrutiny of 'the people' – can seriously endanger our civil liberties. As Chief Justice Owen Dixon once wrote, *"history and not only ancient history, shows that in countries where democratic institutions have been unconstitutionally superseded, it has been done not seldom by those holding the executive power. Forms of government may need protection from dangers likely to arise from within the institutions to be protected."*<sup>5</sup> Government must be responsible and be held responsible to the people through the people's house insofar as possible.

Arguments to the effect that the country does not need 'political infighting' during a crisis should be rejected as a justification for closing down Parliament. Parliament can sit without descending into a

<sup>1</sup> <https://www.dailytelegraph.com.au/news/breaking-news/nsw-parliament-works-to-pass-virus-bills/news-story/b5aa536f2dcef0abd32d946a3a5217b6>

<sup>2</sup> <https://www.sbs.com.au/news/federal-parliament-to-shut-until-august-as-coronavirus-causes-revised-schedule>

<sup>3</sup> <https://theconversation.com/a-virtual-australian-parliament-is-possible-and-may-be-needed-during-the-coronavirus-pandemic-134540>

<sup>4</sup> See e.g. *Pape v Commissioner of Taxation* (2009) 238 CLR 1.

<sup>5</sup> *Communist Party Case* (1951) 83 CLR 1 [87].

circus, and there has been a high degree of bipartisanship throughout the crisis so far as evidenced by the sittings on 23 March 2020. Those concerned about the legality of virtual sittings of the Commonwealth Parliament should be comforted by research showing that there are no serious legal barriers to this solution.<sup>6</sup>

Even the darkest days of the World Wars did not force Parliament to close for extended periods. NSWCCCL believes Australia needs more democracy and accountability in these difficult months, not less.

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