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Securing Democracy

Australia's Pandemic Response in Global Context

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Summary

Key Points

The Policy Brief makes the following central points:

- (a) The COVID-19 pandemic has had a dramatic impact on democracies worldwide. An unprecedented number of states are simultaneously under a state of emergency and have derogated from key human rights treaties. Over 50 states have postponed elections.
- (b) Government responses in democracies worldwide can be divided into 4 broad categories: effective rationalists; constrained rationalists; autocratic opportunists; and fantasists.
- (c) Australia's response falls into the 'effective rationalist' camp. The state has effectively addressed the pandemic through fact-based policy, acted within the constraints of the law, placed clear limitations on emergency actions, and developed innovative responses to address the crisis; principally, the National Cabinet.
- (d) That said, there is a need for attention to 6 key issues: reviving parliaments; making the National Cabinet more transparent; ensuring adequate restrictions on surveillance measures; organising forthcoming elections; mitigating the pandemic's hollowing out of independent media across Australia; and seizing the moment for democratic reform.

Recommendations

This Policy Brief makes seven recommendations:

- (a) **Leadership:** Australia should consider how best to assume an international leadership role (alongside regional partners such as New Zealand and South Korea) by gathering international best practice and communicating key dimensions of its pandemic response.
- (b) **Parliaments:** Greater attention should be paid to experiments with online and 'hybrid' parliaments overseas, and to 'future proofing' parliaments for any further crises.
- (c) **National Cabinet:** The lack of transparency concerning the National Cabinet's deliberations requires attention, especially given that it will be made permanent.
- (d) **Surveillance:** A tailored oversight mechanism should be established for the COVIDSafe app.
- (e) **Elections:** The conduct of forthcoming elections in 2020 should draw on best practice worldwide. A review of resilience to future crises (e.g. postal voting) should be conducted.
- (f) **Media:** Federal and state governments need to explore how to address the devastating impact of the pandemic on media outlets across Australia, especially at the local level.
- (g) **Innovation:** The crisis, and the shift it has effected in the political climate in moving beyond 'politics as usual', should be seized on to consider democratic innovations beyond the National Cabinet, such as citizens' assemblies, with the aim of giving citizens a greater voice.

Securing Democracy

Australia's Pandemic Response in Global Context

1. Introduction

As Australia's lockdown eases, this Policy Brief places the Australian response to the COVID-19 pandemic in global perspective, focusing on how the pandemic has affected the democratic system and assessing how the government's response complies with democratic standards. Australia has been a global leader in its COVID-19 response. However, six key challenges are discussed at the end of this document.

2. COVID-19's Global Impact on Democracy

The pandemic has had a dramatic impact on democracies worldwide. An unprecedented number of states are simultaneously under a state of emergency (or emergency measures without a formal declaration of emergency e.g. [Ireland](#)) and have derogated *en masse* from international human rights treaties. Over 50 states have postponed elections, with often little certainty as to when and how they will be held.

Concerns run high. In a survey of 142 states' exposure to 'pandemic backsliding' the V-Dem Institute perceives emergency measures as little threat to democracy in just 47 states (including Australia). However, 82 states are at high (48) or medium (34) risk, with the pandemic response

accelerating established trends of democratic decay – including in some of the world's largest democracies: the USA, Brazil, India, and Indonesia.

There are clear commonalities across all democracies affected. Fundamental protections against excessively powerful executives have had to be temporarily shelved as governments wield sweeping powers. Citizens have had to submit to rights restrictions, 'stay at home' orders, expanded police powers, and in some states, surveillance apps, often without anything close to an acceptable level of democratic scrutiny as parliaments (and the media) have been hobbled by the lockdown.

3. Four Broad Responses

Beyond these commonalities, the effect of the COVID-19 response on the democratic system has been – and will be – starkly uneven across democracies worldwide, due to the different democratic 'starting point' of each state as the pandemic hit. Government responses can be placed into four broad categories:

Effective Rationalists: Some democratic governments have effectively addressed the pandemic through rational policy based on fact, acted within the constraints of the law, and placed clear limitations on emergency actions to preserve maximal democratic functioning.

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In New Zealand, for instance, parliamentary committees have continued to function and an Epidemic Response committee has been established to scrutinise government action. South Korea has flattened the curve primarily through contact tracing and successfully held national elections on 15 April – the first country to do so. These states have benefited from their starting position of high-quality democratic governance, high state capacity, and the economic ability to assist individuals negatively affected by emergency measures.

Australia belongs in the ‘effective rationalists’ category, as discussed in detail below.

Constrained Rationalists: Other governments have also taken a broadly rational and law-abiding approach but are in a starkly different position due to limited state capacity. South Africa is said to be facing a ‘state of disaster’ due to emergency measures preventing access to food, water, and even basic hygiene. The state is also less equipped to address the economic fall-out of the lockdown, with uncertain implications for its fragile young democracy.

Many of Australia’s nearest neighbours fall into this category.

Fantasists: The final category includes governments whose response has been impeded and distorted by partial or full denial of the facts presented by recognised experts, and engagement in conspiracy theories (e.g. that the pandemic is a Chinese bio-weapon). ‘Pandemic denial’ has turned the USA into a global outbreak hotspot, placed citizens in the unenviable position of risking their health and lives to exercise their democratic rights in Wisconsin’s April primary elections, encouraged inaction at federal and state levels, and undermined any action taken.

However, the true global leader of pandemic deniers is Brazil’s President Bolsonaro, who continues to simply refuse to act and for whom, it has been asserted, “politics comes before truth”. Both are extreme examples of what has been called ‘antitrust governance’, based on “indifference to the boundaries between truth and falsehood” and an aversion to objective institutional expertise.

This not only presents an existential threat to democratic government. In the current circumstances, it also threatens the health and life of thousands, and in both states has fueled social unrest.

Even in the world’s top performers – democracies that have managed to effectively stem the spread of the virus while broadly maintaining respect for democratic governance – concerns have arisen.

Autocratic Opportunists: The third camp are states where democratic decay has been proceeding apace for years and governments, while seemingly recognizing the reality of the threat, have pounced on the crisis to further consolidate and expand their power.

Hungary, once a consolidated liberal democracy, is the poster child, with the parliament having empowered the prime minister to rule by decree, setting no time-limit for the emergency, and arming the government with a law criminalizing “publication of false or distorted facts”.

4. A Mixed Picture

Even in the world’s top performers – democracies that have managed to effectively stem the spread of the virus while broadly maintaining respect for democratic governance – concerns have arisen.

In New Zealand, for instance, analysts have debated the legality of the government’s response, with some arguing that lockdown orders issued under the Health Act 1956 went beyond what the Act permits. In Ireland, constitutional law experts have strongly criticized internal legal advice to the government that the Constitution precludes

online sittings of Parliament. Taiwan's legislative framework has been criticized as giving a 'blank check' to the executive. In South Korea, cases have started to rise again, raising questions about the decision to avoid a strict lockdown.

5. Australia's Pandemic Response

Australia's pandemic experience to date can be summarized as follows.

The first positive case of COVID-19 was registered on 25 January. On 18 March a federal biosecurity emergency was declared under the Biosecurity Act 2015, granting expansive powers to the government to take measures to stem the spread of the virus, including actions that contradict existing Australian laws. States of emergency were declared in states and territories both shortly before and after the federal emergency declaration.

Australia's external borders were closed on 20 March and screening and quarantine measures were put in place for all exempted arrivals. Within Australia, four states or territories also closed their borders to non-essential travel. Social distancing measures were introduced on 21 March and governments placed restrictions on non-essential services, which became stricter over time. Sanctions were introduced to address individuals and businesses failing to comply with government directions, such as 'stay at home' directions. Fines of up to \$40,500 and sanctions of up to 6 months' imprisonment were put in place.

Two bodies were key to the overall pandemic response:

(i) **National Cabinet**: Established on 13 March, this is an intergovernmental forum comprising the federal prime minister and all state and territory premiers and chief ministers. Meeting multiple

times per week, it has focused on 'executive federalism' as a way to achieve coordinated and swift action in response to the crisis, with each head of government responsible to their own cabinet and parliament, and with the states and territories largely responsible for implementing the decisions taken. It has been essential to the pandemic response, especially given the early stages of the crisis, which saw state and territory governments acting unilaterally on measures such as border closures.

(ii) **Australian Health Protection Principal Committee (AHPPC)**: The key coordination committee for health emergencies, it comprises all state and territory chief health officers, is chaired by the Australian Chief Medical Officer and has assisted the National Cabinet in its decisions through the provision of data, modelling, and advice regarding the virus.

As a result of this coordinated response, while cases of COVID-19 initially rose sharply, peaking at 350 cases per day by end of March, they lowered to under 20 per day by the end of April. On 1 June the number of cases had reached 7,204 and the death toll stood at 103.

6. Australia's Response in Global Context

Placed against this global context, Australia's pandemic response lies in the category of 'effective rationalists', having successfully addressed the pandemic through fact-based policy, within the constraints of the law, and placing clear limitations on emergency actions.

Governments have ensured internal ongoing review of states of emergency, bolstered by external scrutiny through the federal Senate's Select Committee on COVID-19. Democratic responsiveness has been reflected in, for instance,

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the Victorian government's quick reversal of its ban on visiting intimate partners living in another residence, following public outcry. Use of the contact-tracing app COVIDSafe has been made voluntary, compared to mandatory use in India.

The National Cabinet (NC) has been a centre-piece of innovation in the pandemic response. Long-time critics of the political system's dysfunction have been surprised by the NC's capacity to coordinate executives of different party colours across the Commonwealth, sidelining 'politics as usual' and cutting through the hyper-partisan *status quo* to achieve consensus and the necessary unity of purpose on nation-wide action.

This achievement lies in stark contrast to the chaotic tussles in the USA between federal and state governments, and two main parties, over everything from the validity of state lockdowns to the purchase and retention of protective equipment. The pandemic, instead of unifying the nation, has widened divisions, with the unequal impact of the virus meeting police brutality to produce a nationwide conflagration of protest against unjust and inept government.

In the UK, divergent messaging from the Westminster government, in comparison to the devolved governments, and scandal surrounding its defence of senior adviser Dominic Cummings' lockdown violations has seen public trust in Westminster plummet.

Given these stark failures elsewhere, Australia should consider how it might assume a leadership role (alongside regional partners including New Zealand and South Korea) by gathering and developing domestic and international best practice.

7. Six Key Challenges

Despite the broadly positive picture presented above, six key democratic challenges require serious and urgent attention from politicians and policymakers as Australia moves into the next phase of its pandemic response:

Parliament: Adjournment of parliamentary sittings since March has been criticized as hampering scrutiny of pandemic measures, especially in light of experiments with online and 'hybrid' parliaments (i.e. parliaments sitting through a mix of face-to-face and online means) in the UK, Canada and elsewhere. Greater attention should be paid to successful overseas experiences. Measures should also be put in place in preparation for any future crisis.

National Cabinet: Despite its effectiveness, the secrecy of the NC's deliberations has been criticized as problematic as regards transparency under freedom of information legislation and parliamentary scrutiny of its decisions. This is a pressing issue given the announcement (29 May) that the NC will replace the Council of Australian Governments (COAG).

Surveillance: Serious privacy concerns have been raised regarding the COVIDSafe app, which are amplified by acute privacy failures overseas. Calls have been made for establishment of a tailored oversight mechanism: a COVIDSafe Privacy Advisory Committee. Dedicated oversight is already in place elsewhere (e.g. by appointment of a COVID-19 Designated Judge in South Africa).

Elections: Queensland's in-person March elections raised concerns regarding public health. Organisation of further elections in 2020 should draw on lessons learned and best practice worldwide. A review of resilience and preparedness for future crises, including more extensive postal voting, should be conducted.

Six key democratic challenges require serious attention from politicians and policymakers as Australia moves into the next phase of its pandemic response.

Independent Media: Federal and state governments urgently need to explore measures to mitigate the pandemic's devastating impact on the independent media. The Australian Newsroom Mapping Project indicates that 200 media outlets have closed (or merged) since the crisis began. Growing swathes of the country are 'media deserts', especially at the local level.

Innovation: The crisis and the move beyond 'politics as usual' has opened a window for fundamental democratic reform beyond what previously seemed possible. Democratic innovations beyond the NC should be considered, such as citizens' assemblies, to give citizens a greater voice in government.

8. Conclusion

Australia presents an example of best practice in its response to the COVID-19 pandemic, and the current easing of the lockdown is testament to the high quality of governance. As the lockdown eases it is vital to ensure that any democratic deficits are minimized as the lockdown eases, that democratic rights and principles such as privacy and scrutiny are respected, and that future-proofing strategies address both risks and opportunities for the democratic system.

The crisis and the move beyond 'politics as usual' has opened a window for fundamental democratic reform beyond what previously seemed possible. Democratic innovations beyond the National Cabinet should be considered, such as citizens' assemblies, to give citizens a greater voice in government.

References

Note: A variety of references in this text are provided as hyperlinks within the text. This references section lists selected texts, especially texts related directly to the Australian context. A small number of these texts are not linked in the text but provide useful background reading.

- 1 AMNESTY INTERNATIONAL, 'Qatar: Contact Tracing App Exposes Personal Details of More than One Million (27 May 2020).
- 2 Luca BELGIORNO-NETTIS, 'Opinion: a new window has opened for deliberative democracy' *The Mandarin* (13 May 2020).
- 3 Stephanie BRENKER, 'An Executive Grab for Power During COVID-19?' *AusPubLaw* (13 May 2020).
- 4 Kylie EVANS & Nicholas PETRIE, 'COVID-19 and the Australian Human Rights Acts' *AusPubLaw* (6 May 2020).
- 5 Kate GALLOWAY & Melissa CASTAN, 'COVIDSafe and Identity: Governance Beyond Privacy' *AusPubLaw* (11 May 2020).
- 6 Graham GREENLEAF & Katharine KEMP, 'Australia's 'COVIDSafe App': An Experiment in Surveillance, Trust and Law' (2020) *University of New South Wales Law Research Series* 999 (30 April 2020).
- 7 Joelle GROGAN, 'States of Emergency' *Verfassungsblog* (26 May 2020). (This is an overview of over 70 country reports worldwide).
- 8 INTERNATIONAL IDEA, 'Managing Elections under the COVID-19 Pandemic: The Republic of Korea's Crucial Test' (18 April 2020).
- 9 INTERNATIONAL IDEA, 'Elections and COVID-19' (26 March 2020).
- 10 Bernard KEANE, 'A peculiar Australian disease: the total dislike of parliamentary democracy' *Crikey* (9 April 2020).
- 11 Dean R KNIGHT & Geoff McLAY, 'Is New Zealand's Covid-19 lockdown lawful? – an alternative view' *UKCLA Blog* (11 May 2020).
- 12 Robert KRIMMER, David DUENAS-CID & Iuliia KRIVONOSOVA, 'Debate: safeguarding democracy during pandemics. Social distancing, postal, or internet voting—the good, the bad or the ugly?' *Public Money & Management* (22 May 2020).
- 13 Jennifer MENZIES, 'Explainer: what is the [Australian] national cabinet and is it democratic?' *The Conversation* (31 March 2020).
- 14 Kelsie NABBEN, 'Trustless Approaches to Digital Infrastructure in the Crisis of COVID-19 Australia's Newest COVID App. Home-Grown Surveillance Technologies and What to Do About it' (21 April 2020)
- 15 PUBLIC INTEREST JOURNALISM INITIATIVE (PIJI), 'Number of public interest news contractions in Australia tops 200' (28 May 2020).
- 16 Cheryl SAUNDERS, 'Law and COVID-19: Australia's National Cabinet?' (15 April 2020). (Video: Melbourne Law School).
- 17 Adrienne STONE, 'Law and COVID-19: Parliamentary Accountability' (14 April 2020). (Video: Melbourne Law School).
- 18 Tamara TULICH, Marco RIZZI & Fiona McGAUGHEY, 'Fighting COVID 19 – Legal Powers and Risks: Australia' *Verfassungsblog* (10 April 2020)
- 19 V-DEM INSTITUTE, 'Pandemic Backsliding: Does Covid-19 Put Democracy at Risk?' (4 May 2020).

Governing During Crises Series

Governing During Crises is a research theme established by the School of Government at the University of Melbourne. The series seeks to develop our understanding of governing in the face of different types of crisis, at a time when Australia has recently faced the bushfire crisis, is currently addressing the COVID-19 pandemic, and faces even larger and longer-term challenges including climate change.

This Policy Brief series aims to distil academic research into policy analysis and clear recommendations, drawing on the cutting-edge research taking place at the School of Government and the University of Melbourne more broadly, as well as the School of Government's extensive global networks. Selected briefs will be produced in collaboration with the COVID-DEM project (www.democratic-decay.org), which examines how the pandemic is affecting democracy worldwide.



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Associate Professor Tom Daly is Deputy Director of the University of Melbourne School of Government, where he spearheads the School's 'Renewing Democracy' research theme. He is also Director of the global online research platform Democratic Decay & Renewal (DEM-DEC) and a member of the International Coalition for Democratic Renewal, which gathers policy leaders worldwide, including Nobel laureates and thought leaders like Francis Fukuyama, dedicated to protecting and re-thinking liberal democracy. His current project, COVID-DEM, focuses on curating and publishing analysis of the impacts COVID-19 is having on democracy worldwide. As well as extensive experience in the university sector (at Melbourne, Edinburgh and Copenhagen universities), Tom has worked in a variety of roles in government and international organisations, including running the Office of the Chief Justice of Ireland for over 6 years, managing a \$4.72m Council of Europe project concerning judicial ethics in Turkey, and designing a pan-continental African Judicial Network for the African Union. He has also worked on constitutional and political reform projects and reviews in states including Ireland, Georgia, Sri Lanka, Kyrgyzstan, Uzbekistan, and Lebanon.

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