

Parliamentary scrutiny during the COVID-19 crisis in Tasmania

Australia and New Zealand have shut down their parliaments, but found a non-partisan alternative to maintain some accountability.

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INTRODUCTION¹

In the last week of March 2020, both the Tasmanian State Parliament and New Zealand's Parliament voted to suspend sittings. New Zealand adjourned for about five weeks (till the 28th of April) and the Tasmanian parliament for about five months, until August.

Before the Tasmanian Parliament adjourned, it granted extraordinary powers to the government through the enactment of the Covid-19 Disease Emergency (Miscellaneous Provisions) Bill (the Covid-19 Bill).

Before the New Zealand Parliament adjourned, it – by consensus – established the Epidemic Response Committee, a special select committee to examine the Government's response to the COVID-19 outbreak.

The committee is chaired by the Opposition Leader, Simon Bridges (National Party), and has an opposition majority. All political parties are represented on the committee, but ministers are not permitted. The committee will sit three days a week (via teleconference) at least until Parliament resumes. It will be livestreamed to the public.

¹ For details on the NZ committee, see the motion to establish the committee and the debate in Hansard: Hansard Reports, New Zealand Parliament (2020) *Business of Select Committees — Epidemic Response Committee*, https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20200325_20200325_24

The committee will have the powers of a Privileges Committee to “send for persons, papers and records”.

The Australian Capital Territory has also established a parliamentary oversight committee for the territory government’s COVID-19 response, although the ACT Legislative Assembly is still meeting weekly.²

The only mechanism for scrutiny on Tasmania’s government during this crisis is the Subordinate Legislation Committee that reviews all Notices issued under the Covid-19 Bill. However, this committee only has the power to issue disallowance motions and does not appear to cover directions issued by the Director of Public Health³. Directions from the Director of Public Health are the most interventionist and arguably more in need of review. The committee also does not hold publicly broadcast meetings or have powers similar to a privileges committee.

BENEFITS

Scrutiny and keeping the work of Parliament going

There are New Zealanders up and down the country right now doing things that make themselves feel very uncomfortable. There are people who don't know where they'll be when this period ends, and Parliament, to some extent, finds itself in that position as well. So I do want to acknowledge that. I want to acknowledge that scrutiny during this unprecedented time, when the Government is placed in the position of exercising such extraordinary powers, has never been more important.

Chris Hipkins, Leader of the House (Labour Party)⁴

The Epidemic Response Committee represents a compromise between the government of New Zealand, which closed Parliament for public health reasons, and

² ACT Legislative Assembly (2020) *Select Committee on the COVID-19 response*, https://www.parliament.act.gov.au/in-committees/select_committees/select-committee-on-the-covid-19-response; Jervis-Bardy (2020) “*We need scrutiny*”: *Assembly committee to probe COVID-19 response*, <https://www.canberratimes.com.au/story/6708538/we-need-scrutiny-assembly-committee-to-probe-covid-19-response/>

³ Authors own interpretation of the committee as no parliamentary direction or public analysis is available

⁴ Hansard Reports, New Zealand Parliament (2020) *Business of Select Committees — Epidemic Response Committee*

opposition parties (the National Party and ACT New Zealand),⁵ which wanted to keep Parliament open to keep the government accountable.⁶

In New Zealand, politicians were not convinced by the argument that other parliaments were adjourning for more than five weeks, with ACT New Zealand Leader David Seymour saying:

I've heard it said that other parliaments are actually adjourning for longer than ours. I don't think that's leadership. I don't think any leader aims to be the world average or worse.⁷

In his opening words on the motion, Shadow Leader of the House Gerry Brownlee (National Party) expressed the need for such a committee in parliament's absence:

This is, I think, a very good motion that recognises the fact that all Governments take their legitimacy from Parliament—all Governments, that is, in democratic countries. So what we are going to see here is, firstly, today, the extraordinary availability of funds voted by the Parliament for the Government to deal with this crisis, and now, as the Parliament is likely to agree to adjourn very shortly for a longer period of time, a committee that during that time will be able to scrutinise the activities of the Government in the expenditure of that money, and in particular to ensure that there is a focus, as I think is the will of the whole House, on the wellbeing of New Zealanders who are most adversely affected by this virus and its fallout.⁸

The New Zealand government has welcomed the move. Minister and Leader of the House, Chris Hipkins, specifically acknowledged that the government would make mistakes because it must act quickly and without perfect information and said that the committee will ensure those mistakes are picked up and remedied.⁹

⁵ The National Party is New Zealand's centre-right major party. ACT New Zealand is a classical liberal minor party, named after the Association of Consumers and Taxpayers (ACT).

⁶ Cooke (2020) *Coronavirus: Parliament will close until late-April, replaced with Simon Bridges-chaired select committee*, <https://www.stuff.co.nz/national/health/coronavirus/120526301/coronavirus-parliament-will-close-until-lateapril-replaced-with-simon-bridgeschaired-select-committee>

⁷ Hansard Reports, New Zealand Parliament (2020) *Business of Select Committees — Epidemic Response Committee*

⁸ Hansard Reports, New Zealand Parliament (2020) *Business of Select Committees — Epidemic Response Committee*

⁹ Hansard Reports, New Zealand Parliament (2020) *Business of Select Committees — Epidemic Response Committee*

New Zealand's Epidemic Response Committee is chaired by the Opposition Leader and has representatives from all political parties. This allows the Opposition and other parties to remain constructively involved in the COVID-19 response.

Suspension of the Tasmanian parliament was supported by all parliamentarians, and for a much longer period of five months. Before adjourning the Parliament passed the Covid-19 Bill.

The Covid-19 Bill gives the Tasmanian government time limited but far reaching powers. As Leader of the Greens, Cassy O'Connor stated in the chamber:

Madam Speaker, this is, without question, the most consequential and sweeping legislation of powers parliament has debated. It is huge legislation that will have significant impact on the lives of many Tasmanians.¹⁰

Unlike New Zealand, there is no new overarching body to assess legislation passed under the Covid-19 bill, nor any public hearings or discussions relating to decisions. The leaders of the ALP and of the Greens instead assured Tasmanians that they believed the Premier would act in good faith and keep them up to date. The Leader of the ALP Rebecca White, told media that:

I've received a commitment from the Premier that we'll be able to speak regularly and we're going to organise weekly meetings given this is a crisis and we all need to be able to work together on solutions.¹¹

There is no formal role for opposition parties or independents to critique decisions in real time, nor is there any public scrutiny of Parliament as a whole. Whilst some opposition MPs are being briefed, others are not and the public are left to rely on media addresses from the Premier and relevant ministers.

A standing committee on subordinate legislation constituted under the Subordinated Legislation Committee Act 1969 continues to have a role in reviewing legislation. However, this committee has not been given any increase in power and, although not explicit, does not appear to cover direction issued by the Director of Public Health. The Director of Public Health is responsible for the issuing of the most interventionist directives.

¹⁰ <http://www.parliament.tas.gov.au/ParliamentSearch/search> p 29

¹¹ The Mercury (2020) *Tasmanian parliament suspended for five months*, <https://www.themercury.com.au/news/politics/tasmanian-parliament-suspended-for-five-months/news-story/842a5d23d6130b64c953fa3d8730ee4a>

THE NEW ZEALAND COMMITTEE'S FIRST WEEK¹²

New Zealand's Epidemic Response Committee met three times on the week of the 30th of March, just days after it was established. The committee uses the commercial teleconference software Zoom to conduct its meetings remotely and broadcast them live to the public.

During its first week, the committee questioned representatives from the government on a variety of topics, including:

- Why bakers and butchers have been forced to close while supermarkets remain open.
- The risks of testing for symptoms at the border (for example, if asymptomatic people are not identified).
- When updated unemployment figures will be available (the government confirmed it would be a matter of days).
- Why the government has given daily health updates but not daily economic updates.
- General confusion over what will happen with rents (ad hoc agreements between lessor and lessee vs the government imposing rent relief).
- Reports that airports are not enforcing the 1.5 metre social distancing requirement.

The committee has also heard from experts outside of government, who have given information on topics like what shape the economic recovery will take and why it is important for the recovery that public servant jobs are secure.

CONCLUSION

As New Zealand shut down its parliament for five weeks, it founded a new and creative institution to help fill the accountability gap: an all-party, Opposition-chaired special select committee with broad powers regarding calling witnesses and the provision of documents. The Opposition Leader has promised to use the committee constructively, and the government have thanked him for doing so – and agreed that the unprecedented emergency means that there will be mistakes that the committee can help fix.

Tasmania has shut down its parliament not for five weeks but five months. Accountability is more important than ever as the government exercises broad new

¹² See "Further reading" for more details.

powers. The Tasmanian Parliament could do with a similar committee, not just for accountability, but to represent other voices: including the Opposition Leader, but also minor parties and independents – all of whom have specific expertise to offer.

In these unprecedented times, it is not just economic policy and health policy that requires creativity and innovation; our democratic structures need to be similarly responsive.

FURTHER READING

Epidemic Response Committee homepage:

<https://www.parliament.nz/en/pb/sc/scl/epidemic-response/>

What is the Epidemic Response Committee? explainer from New Zealand Parliament:

<https://www.parliament.nz/en/get-involved/features/covid-19-what-is-the-epidemic-response-committee/>

Hansard debate on the motion to establish the Epidemic Response Committee,

including speeches from members of all New Zealand political parties:

https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20200325_20200325_24

Initial reporting on the Committee:

<https://www.stuff.co.nz/national/health/coronavirus/120526301/coronavirus-parliament-will-close-until-lateapril-replaced-with-simon-bridgeschaired-select-committee>

Reporting on the first week of Committee hearings:

- Day 1, “Covid-19: Questions fired in first Epidemic Response Committee meeting”: <https://www.rnz.co.nz/news/political/413008/covid-19-questions-fired-in-first-epidemic-response-committee-meeting>
- Day 2, “Epidemic Response Committee holds second meeting”: <https://www.rnz.co.nz/news/political/413116/epidemic-response-committee-holds-second-meeting>
- Day 3, “Epidemic Response Committee holds third meeting”: <https://www.rnz.co.nz/news/political/413231/epidemic-response-committee-holds-third-meeting>