



31st October 2019

Committee Secretary
Standing Committee on Procedure
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Dear Committee,

Submission to [Inquiry into the practices and procedures relating to question time.](#)

Yours sincerely

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for

Adjunct Professor the Hon. Dr Ken Coghill
Former Speaker, Legislative Assembly,
Parliament of Victoria

and The Hon. Kevin Rozzoli AM
Former Speaker, Legislative Assembly,
Parliament of NSW

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Submission

This submission addresses the terms of reference for this inquiry, which are:

To inquire into and report on practices and procedures relating to question time.

The first thing to be noted is that these terms of reference are similar to those of the 2007 inquiry by the Standing Committee on Procedure:

To review the effectiveness of current standing orders relating to Question Time, with particular reference to the provisions governing the form and content of questions and answers.

This highlights the perennial nature of concerns over the operation of the Question Time in the House.

This submission draws on the experience of two former Speakers (Kevin Rozzoli, NSW and Ken Coghill, Victoria), each of whom have maintained their interest in the operation of parliamentary systems, including through active membership of the Australasian Study of Parliament Group (ASPG) and the Accountability Round Table (ART) and research funded by the Australian Research Council.

Background

Question Time is often the window through which much of the public's opinion of Parliament is shaped. Therefore, if it could be conducted with much more decorum, and be a genuine vehicle for fact finding would this not raise the public's opinion of the institution?

Your Committee's *Background Brief – Comparison of Question Time across Jurisdictions* provides valuable information on the formal rules applying to questions to Ministers in parliaments with which Australians like to compare ourselves. However, there are some further points that are highly relevant.

Canadian House of Commons practice provides that

Any Member can ask a question, although the time is set aside almost exclusively for the opposition parties to confront the government and hold it accountable for its actions, and to highlight the perceived inadequacies of the government.¹

This priority given to non-government MPs is not found in your House nor other Australian Houses with the notable exception of the Victorian reforms noted in your *Background Brief*.

The UK House of Commons practice is substantially different but in other ways. It provides that:

¹ (Canadian) *House of Commons procedure and practice* Second edition, 2009

<<https://www.ourcommons.ca/procedure-book-livre/document.aspx?sbdid=3f818022-ad6e-411c-b495-ec000cf32935&sbpid=2>>



All oral questions must be tabled at least three days (excluding Fridays and weekends) in advance of the session for that Department or Minister (with the exception of questions for the Prime Minister which can be accepted as soon as the deadline has passed for the previous shuffle). This three day period is regarded as the least time that Ministers and their advisers should reasonably be given in which to prepare the answer to a question and, crucially, briefing on possible supplementaries.²

This practice in the Commons is quite different to Australian models and means that it is far less likely that “gotcha” questions will find a Minister totally unprepared for a question that may lead to a potentially embarrassing answer. The exception is that skilfully framed questions can be followed by one or more supplementary questions relevant to the original question but unanticipated by an inadequately prepared Minister.

The New Zealand House of Representatives practice provides that:

The importance attached to questions is indicated by the fact that a question period is set aside for them in the House each day. During this period members address questions to Ministers, and Ministers, having had previous notice of such questions, give replies that may then be tested by further (supplementary) questions. Ministers have to answer supplementary questions to the best of their ability, drawing on their own knowledge of the subject and any supplementary information on it that their departments may have provided in anticipation of the original question being followed up. Unlike the practice in certain other legislatures, no questions are asked without previous notice of the question having been given to the person (usually a Minister) who is to answer it. The period of notice required varies depending on whether the questioner wants an oral or a written answer, and what type of oral question is being addressed.³

Again in New Zealand, notice is given of Questions and consequently Question Time is less gladiatorial.

The Australian model of questions genuinely without notice has a uniquely domestic origin and peculiarly Australian consequences.

What principles would strengthen the democratic processes of the Australian House?

1. To remove or at least ameliorate the corrosive influence of ‘Dorothy Dixers’
2. Provide a reasonable opportunity for back-benchers to raise matters relevant to their constituencies.
3. Avoid long rambling answers from Ministers
4. Achieve a minimum of personal invective
5. Establish a representative spread of questions amongst back-benchers - opposition, government, minor parties and independents.
6. Encourage relevant and comprehensive answers either orally or with supplementary answers through the Questions on Notice procedure

² (UK) *House of Commons Information Office Factsheet P1 Procedure Series Revised August 2010 Parliamentary Questions* < <https://www.parliament.uk/documents/commons-information-office/p01.pdf> >

³ New Zealand Parliament (2017) *McGee Parliamentary Practice in New Zealand* Fourth edition (p. 632)



This submission argues that the problems with Question Time derive from the initial 1901 Ruling allowing questions without notice and makes recommendations as follows:

- *The Speaker make a Ruling redressing the 1901 Ruling and making other reforms requiring ministers to provide answers to questions and similarly setting requirements for questions;*
- *After a trial period of the operation of the above Ruling, Standing Orders be amended to make similar provision, with any amendment found to be desirable;*
- *The Prime Minister issue revised guidelines for ministers supportive of and complementary to the above Ruling.*

Introduction

The terms of reference relate to the effectiveness of standing orders affecting questions without notice. As such, the inquiry must have regard to the factors that affect that effectiveness. Those factors clearly extend beyond the “black letter” provisions of standing orders governing form and content, to the norms of behaviour practiced by members individually, amongst members of political parties and within the Chamber as a whole.

Among the factors that undoubtedly affect the operation of the provisions regulating Question Time is the manner in which those are interpreted by the Speaker, including previous Rulings by which he is guided, and by Ministers’ responsiveness to questions.

A very early Ruling is at the heart of the enduring problems with the procedure. Why? Rulings by Speakers since 1901 have created and exacerbated this peculiarly Australian problem. During the first Session of the House of Representatives, the Speaker was asked whether the practice of asking question without notice should be created. He said:

There is no direct provision in our Standing Orders for the asking of questions without notice, but as there is no prohibition of the practice if a question is asked without notice and the Minister to whom it is address chooses to answer it I do not think I should object.⁴

Those words leaving a discretion with the Minister as to whether or not to answer and thus is an escape clause that has since permitted Ministers to evade direct responses and frustrate questioners, the House and ultimately democratic accountability.

To redress this historical legacy, Standing Orders could be amended to provide that -

A Minister can only decline to answer any question or part of a question where national security or criminal investigation and prosecution could be jeopardised (a limited "ground of public policy"), where the Minister is unable to answer the question fully and accurately without notice and requests that the question be placed on Notice, or where

⁴ Speaker (1901) Hansard 3 July Vol.2 p.1954



the Minister undertakes to give an extensive answer through a Ministerial Statement or announcement.

Such a Standing Order would require that the Ministers must answer the question unless claiming a valid ground of public policy, upheld by the Speaker, for his refusal or need for notice to ensure that he could provide a full and accurate answer. Answers should be directly relevant and responsive to the question, be succinct and should not introduce extraneous matter or debate the issue.

How much of a role should the Speaker take in ensuring a constructive Question Time? The Speaker can only act within the Standing Orders. Within this authority the Speaker must ensure that proceedings are conducted in a polite and dignified manner while ensuring that information sought by the questioner is adequately answered. The Speaker has the capacity to control the tone and dignity of the House (although this would require considerable courage in the process of reforming the current culture) and should not hesitate to point out to all members, from the PM down, that good behaviour is expected. If a question should not contain arguments, inferences, imputations, insults, ironical expressions, and hypothetical matter then why should answers not be judged by the same standards?

However, there are other influences on Ministers' conduct that should also be addressed, notwithstanding that their influence may be ameliorated by the above reform. Ministers are, in turn, guided by the Prime Minister's *Guide to Key Elements of Ministerial Responsibility* (1998).^{5, 6} The *Guide* states:

Questions without Notice

In general, questions asked at question time are answered fully by ministers. From time to time, a minister may undertake to provide further information. This undertaking is regarded as taking the question (whether in part or in whole) "on notice". The minister may provide the further information or answer:

- by letter to the member/senator concerned (a response conveyed in this way will not appear in Hansard); or
- by having it delivered to the Clerk in accordance with the normal question on notice process (a response conveyed in this way will appear in Hansard); or
- by leave at the end of question time or at another early opportunity (the response will automatically be recorded in Hansard; in the Senate it is also possible to seek leave to have the answer incorporated).

No equivalent provision has been found in the current Statement of Ministerial Standards.⁷

The provisions of the *Guide to Key Elements of Ministerial Responsibility* fail to recognise the central role of questions without notice ("Question Time") as a key accountability mechanism. The effect it to give ministers a wide discretion to evade answering for their responsibilities and seemingly unlimited opportunities to comment on matters irrelevant to their responsibilities,

⁵ Prime Minister (1998). *A Guide On Key Elements Of Ministerial Responsibility*. Department of Prime Minister and Cabinet.

⁶ The current status of the *Guide* is unclear and should be clarified by the Prime Minister.

⁷ Morrison, Scott (2018) Statement of Ministerial Standards.



including to attack the Opposition, other non-government parties and their policies. To be effective, ministers must be under an obligation to fully answer questions.

This requires more than changes to the rules – Standing Orders and Speakers’ Rulings. Structure and culture (norms) go hand in hand. Research investigating the events examined by three Royal Commissions - Fitzgerald, WA Inc and Tricontinental – found that ministers and their governments variously treated Opposition probing contemptuously, played a dead-bat, or actually provided the information requested. The parliamentary structures were much the same, but ministerial accountability operated quite differently.⁸

This was recognised in a Ruling issued by Speaker Coghill (1992). The ruling states:

It is important that question time is conducted in a manner which both ensures that it fulfils its intended purpose and is consistent with the status and proper dignity of Parliament.

The following are the guidelines based on Standing Orders, Speakers' rulings and May⁹ which apply to the conduct of question time:

- a member or a Minister must not read a question or an answer. Such questions and answers may be ruled out of order by the Chair;
- questions and answers must relate to government administration or policy and should be directed to the Minister most directly responsible or answering on behalf of such Minister in another place;
- questions to the Premier may relate to matters within the Premier's portfolio responsibilities and to general matters of government policy and administration, but questions concerning detail affecting another portfolio should be directed to the responsible Minister;
- questions should not seek an expression of opinion, seek a legal opinion or ask whether statements reported in the media are accurate or correct;
- questions should not seek a solution to a hypothetical proposition, be trivial, vague or meaningless;
- questions should not contain epithets or rhetorical, controversial, ironical, unbecoming or offensive expressions, or expressions of opinion, argument, inferences or imputations;
- questions should not raise matters which are sub judice or anticipate debate on an Order of the Day;
- where a question relates to an allegation, assertion, claim, imputation or similar matter, the member is responsible for the accuracy of the facts.
- Where the facts are of sufficient moment the member may be required to provide prima facie proof to the Speaker before the question is admitted;
- questions cannot reflect on the character or conduct of members of either House and certain other persons in official or public positions which are defined in May. Attention is also drawn to the provisions of the Australian House of Representatives Standing Orders which restrict questions critical of the character or conduct of other persons to questions on notice;

⁸ Coghill, Ken (1999) *Complex Governance: Ministers, Responsibility and Accountability* PhD Thesis (Monash University)

⁹ Erskine May's "Treatise on the Law, Privileges, Proceedings and Usage of Parliament"



- where a question seeks information which is too lengthy to be dealt with in an answer to a question or otherwise invites a Ministerial statement, the Chair may disallow it and suggest that the Minister to whom it is directed consider making a Ministerial Statement on the matter following Question Time.
- It should be noted that such action is not constrained by the practice of issuing copies of Ministerial Statements, which is a courtesy only, or by the relatively recent practice of Ministerial Statements being followed by debate on the question that the Ministerial Statement be noted ;
- questions which breach the guidelines are out of order and there is no right to immediately rephrase or re-ask questions which have been disallowed;
- answers must comply with the same rules and practices as apply to the asking of questions;
- answers must be directly responsive, relevant, succinct, limited to the subject matter of the question, may provide statements of policy or the intentions of the government, including information on examinations of policy options and other actions which the Minister has had undertaken but must not debate the matter. (Answers to questions should be limited to 2 minutes usually and an absolute maximum of 5 minutes actual speaking time);
- an answer may be refused on the grounds of public policy, for example,
 - that answering may jeopardise criminal investigations or for some other particular reason may be against the public interest
 - that the information is not available to the Minister, in which case it may be requested that it be placed on notice
 - that the Minister intends to make a Ministerial Statement on the subject matter in the near future.

The conduct and effectiveness of question time is in the hands of members. It will assist if:

- personal conversation is limited as it is discourteous and adds to the background sound which creates difficulty in clearly hearing questions and answers;
- a member or a Minister speaking pauses whenever audible conversation, interjection or other disorderly behaviour occurs;
- a member or a Minister who is unable to control his/her disorderly conduct leaves the Chamber for the remainder of question time rather than risk being named. The Chair may exercise its absolute discretion concerning the call by not giving the call to a member or a Minister whose conduct has been disorderly, including interjections.

A member or Minister who has been consistently warned as a result of disorderly conduct in question time may be named without further warning as a result of further disorderly conduct during any part of proceedings on that day or a future day during the current sittings period.¹⁰

¹⁰ Coghill, K (1992) *Victorian Parliamentary Debates (Hansard)*, 11 August, p.13)



The content of Question Time

What changes would contribute to improvements to Question Time?

Standing Orders should include provisions that:

- a) Questions relating to government policy and administration should be asked first and limited up to ten in the following order – Opposition leader or his/ her nominee, Opposition member, Minor Party or Independent member.
- b) “Dorothy Dixier” questions from Government members have been eliminated in the Victorian Parliament by substituting Ministerial Statements relating to government policy and administration, limited to three minutes. These alternate with answers to questions from non-government members. There are no questions from government members relating to government policy and administration.
- c) The remainder of Question Time shall be related to constituency matters in the following order – Opposition, Government, Opposition, Government, then Minority Party or Independent, Opposition, Government, Minority Party or Independent, Opposition, Government and thereafter in that order until the expiry of Question Time.

Questions to other Members

During Question Time, a Member should have the right to ask a question orally of another Member who is not a Minister (or Assistant Minister). Such questions should relate to a bill, motion, or other business of the House or of a committee, for which the Member asked is responsible.

Rules for questions

The following general rules should apply to all questions:

- d) For questions regarding persons, the persons to be respected (listed in S.O 100(c)) should be extended to include, ‘a member of a State or Territory Parliament’,
- (e) Questions must not refer to debates in the current session, or to proceedings of a committee not reported to the House.
- (f) The Speaker should have discretion to declare matter raised in a question as sub judice if it relates to proceedings before a Court and which could prejudice a fair trial for any person party to those proceedings.
- (g) The duration of each question asked by a Member should be limited to 45 seconds.

Speaker’s discretion about questions

The Speaker should have discretion to:

- (a) direct a Member to change the language of a question asked during Question Time if the language is inappropriate or does not otherwise conform with the standing orders and may either offer an opportunity later in question time to represent the question, or direct the question in a revised and acceptable form be asked at the next question time, and
- (b) change the language of a question in writing if the language is inappropriate or does not otherwise conform with the standing orders.

Ministers’ Answers

- (a) An answer must be directly relevant to the question.
- (b) A point of order regarding relevance may be taken only once in respect of each answer.
- (c) The duration of each answer be limited to three minutes.
- (d) If, after the expiration of three minutes it is evident the Minister has not able to give a complete answer the Speaker should direct that Minister to resume his seat and to provide a full and complete answer in the Notice Paper within 7 calendar days.



Questions to Speaker

At the conclusion of Question Time, Members should be able to ask questions orally of the Speaker about any matter of the House's or parliamentary precinct's administration for which he or she is responsible.

We hope that the suggestions we have made will receive due consideration in your endeavour to improve the integrity and efficacy of Question Time.

Recommendations:

That:

- ***The Speaker make a Ruling updating the 1901 Ruling and making other reforms requiring ministers to provide answers to questions and similarly setting requirements for questions (as described above);***
- ***After a trial period of the operation of the above Ruling, Standing Orders be amended to make similar provision, with any amendment found to be desirable;***
- ***The House consider a trial allowing limited numbers of supplementary questions where the original questions has not been fully answered;***
- ***The House consider a trial substituting short Ministerial Statements instead of Dorothy Dixier questions, similar to current Victorian practice***
- ***The Prime Minister be requested to issue revised guidelines for ministers supportive of and complementary to the above Ruling.***