



PARLIAMENT of AUSTRALIA
HOUSE of REPRESENTATIVES

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Dr A. Southcott MP
Chair
House of Representatives Standing Committee on Procedure
Suite R G 31
Parliament House

Dear Dr Southcott

Inquiry into the Conduct of Question Time

I refer to the letter of 26 October 2015 from Mr Rees, on behalf of the Committee, informing me of the Committee's inquiry into the conduct of Question Time and inviting a submission.

As previous Procedure Committees have investigated the subject of Question Time and have produced several reports and a discussion paper, I am conscious that the Committee will already have in its own records a large amount of background material. The Department's Chamber Research Office will be able to assist the Committee with any updating of Question Time statistics or other information that the Committee requires.

This submission covers the following topics:

- The purpose of Question Time;
- A brief history of standing orders relating to Question Time;
- Rules about the content of questions;
- Rules about the content of answers;
- Time limits on questions and answers;
- Interruptions to Question Time;
- Supplementary questions; and
- Constituency questions.

The purpose of Question Time

It is a central feature of our system of government that the Executive Government is accountable to the House. Question Time is a mechanism that helps to ensure accountability. *House of Representatives Practice* states:

The accountability of the Government to Parliament is pursued [among other means] through questions, in writing or without notice at Question Time, directed to Ministers concerning the administration of their departments

The aim of parliamentary questioning and inquiry is to seek information, to bring the Government to account for its actions, and to bring into public view possible errors or failings or areas of incompetence or maladministration.¹

¹ *House of Representatives Practice*, 6th edn, p. 39.

The ostensible purpose of Question Time is to seek information on government administration. The ostensible purpose is sometimes contrasted with what appears to observers as the de facto purpose of Question Time—the contest for political advantage. However, from another viewpoint these elements can be seen as inextricably linked—accountability is the goal, seeking information is the means, and political advantage is a motivation.

It would seem that the aspects of Question Time that critics sometimes object to as ‘political’ tend to be those that could be seen as the ‘non-productive’ aspects of Question Time (that is, non-productive in terms of obtaining information). These include interruptions and distractions that interfere with the asking of questions, and Members and Ministers perceived to be making statements attacking opposing parties rather than asking questions or giving answers.

From a technical point of view the purpose of Question Time is to provide the opportunity to ask questions and receive answers. The proposals in this submission are for the Committee’s consideration. They are aimed at helping to establish a Question Time that proceeds more efficiently and briskly, with fewer interruptions and the opportunity for more questions, including for follow up questions. They are put forward as a package of potential changes for the Committee’s consideration should there be a desire to look at further reform of Question Time.

A brief history of standing orders relating to Question Time

The temporary standing orders adopted by the House in 1901 provided for a question period during which oral answers were given to written questions (i.e. questions on notice). The rules were not extensive:

Questions respecting Public Business

92. After Notices have been given Questions may be put to Ministers of the Crown relating to public affairs; and to other Members relating to any Bill, Motion, or other public matter connected with the business on the Notice Paper, of which such Members may have charge.

Such questions not to involve Argument

93. In putting any such Question no argument or opinion shall be offered, nor any facts stated, except so far as may be necessary to explain such Question.

No Debate allowed

94. In answering any such Question a Member shall not debate the matter to which the same refers.

As the practice of asking questions without notice became established, these provisions were held to apply equally to questions without notice.

The practice of asking questions without notice developed in a rather ad hoc manner and from a low base. Questions without notice were not asked at every sitting in the early Parliaments and sometimes only one or two questions were asked. Ministers continued to read out answers to questions on notice during the question period until 1931, when provision was made for Ministers to instead supply the written answers to the Clerk for inclusion in Hansard. It was at this stage that the question period became the Question Time we are familiar with today, although this was not acknowledged in the standing orders. By the early 1930s up to 18 or 19 questions without notice were being asked at each Question Time. A record was reached at a sitting in 1940, when 43 questions were asked in approximately 50 minutes. During this time both questions and answers tended to be short and to the point.²

² *House of Representatives Practice*, 6th edn, pp. 543–4.

Questions without notice were recognised in the standing orders only when permanent standing orders were adopted in 1950. Detailed rules for the content of questions were included at this time. The new rules were basically a list of practices of the UK House of Commons taken from *Erskine May's Parliamentary Practice*. The standing orders were again reviewed and expanded 'to give effect to the practice of the House of Commons'³ when the standing orders were revised and renumbered with effect from 1963.

Changes to the standing orders relating to Question Time since 2004

In the 2004 revision of the standing orders the provisions relating to questions and answers were re-arranged but not changed significantly, and are mostly still in force today. The changes since 2004 are summarised below:

<u>Date</u>	<u>S.O.</u>	<u>Effect of amendments</u>
17.3.2005	100(f)	To suspend, and later delete the provision:
29.11.2006		100(f) Questions must not anticipate discussion on an order of the day or other matter.
13.2.2007	98, 99	To clarify that provisions applying to Parliamentary Secretaries would also apply to Assistant Ministers who are Parliamentary Secretaries.
12.3.2008	97(a)	To provide that Question Time occurs on every sitting day (the standing order had previously specified Monday, Tuesday, Wednesday and Thursday).
29.9.2010	100(f)	To insert new S.O. 100(f) to limit the duration of each question to 45 seconds.
	104	(a) To provide that an answer must be 'directly relevant' to the question (the previous requirement was 'relevant'). (b) To limit points of order regarding relevance to one for each answer. (c) To limit the duration of each answer to 4 minutes.
8.2.2012	100(f)	To reduce the duration of each question to 30 seconds.
	104(c)	To reduce the duration of each answer to 3 minutes.
13.11.2013	101(b)	To delete the provision giving the Speaker the discretion to allow supplementary questions.

The most significant of these changes were those adopted in 2010 (and later further refined by the changes in 2013). These introduced for the first time:

- time limits on questions and answers;
- the requirements for answers to be 'directly relevant'; and
- a limit on points of order.

³ Standing Orders Committee, *Report together with the proposed revised standing orders of the House of Representatives*, August 1962, p. 32.

These changes represented the most significant changes to Question Time since the formal adoption of standing orders relating to Question Time in 1950. They endeavoured to deal with a number of the long-standing issues which had arisen about Question Time and which had been the subject of a number of reports by the Procedure Committee.

The matters covered in the remainder of the submission reflect other changes which are raised for the Committee's consideration as a package of measures if there is a desire to further streamline the running of Question Time.

Rules about the content of questions

The need for detailed rules?

The preceding paragraphs are included here not only for the sake of historical interest, but also as a basis from which to suggest the following propositions:

- A productive Question Time seemed to be possible before detailed rules on the content of questions were introduced.
- The rules introduced, based on United Kingdom House of Commons practice that applied to a very different Question Time situation,⁴ may not necessarily be the most appropriate for Question Time as it has developed in the House of Representatives.⁵
- The fate of former S.O. 100(f) relating to the anticipation of business in a question indicates that a detailed rule can be dropped without adverse effect.

House of Representatives Practice observes that 'The necessity to make instant decisions on the application of the many rules on the form and content of questions is one of the Speaker's most demanding tasks. Because of the importance of Question Time in political terms and because of the need to ensure that that this critical function of the House is preserved in a vital form, Speakers tend to be somewhat lenient in applying the standing orders.' *House of Representatives Practice* also notes the latitude extended to opposition leaders and to the Prime Minister in asking and answering questions, and inconsistencies in the enforcement of the rules. It makes the further observation that 'Speakers have commented that only a small proportion of questions without notice are strictly in order and that to enforce the rules too rigidly would undermine Question Time'.⁶ In other words the rules are difficult to enforce, are not always enforced and, if they were enforced it could be counter-productive.

In 1992, using a similar argument, the Procedure Committee of the 36th Parliament reported that the standing order on the content of questions needed significant simplification, and proposed that it be replaced with a standing order which removed many of the specific provisions which were thought to be ineffective. It proposed that the detailed rules be deleted (with the exception of the rule relating to questions critical of persons) and be replaced with the following rule:

⁴ Notably that questions are on notice for oral answer.

⁵ For example, see comments in G. S. Reid and Martyn Forrest, *Australia's Commonwealth Parliament 1901–1988: ten perspectives*, Melbourne University Press 1989, p. 161.

⁶ *House of Representatives Practice*, 6th edn, p. 548. Speaker Smith recently made a similar comment when ruling against a point of order on a question containing argument, H.R. Deb. (12.11.2015) 64 (proof).

Questions without notice will be concise, seek information, relate only to one subject and not contain material not necessary to the understanding of the question.⁷

The committee's recommendation was not adopted. In retrospect, the House was not ready for such a seemingly drastic change. As in the 1950s when the rules were introduced, the perception continued that there was a problem with questions that needed to be controlled. Arguably this perception was fully justified while questions were open-ended in duration, and in such circumstances having possibly ineffective rules on content could be seen as preferable to having no or fewer rules.

However, in my opinion, the introduction of time limits on questions and answers since 2010 has been a 'game changer', and the time is now right for the Procedure Committee to revisit its earlier recommendation. In brief, the argument is that when time is limited, questions are obliged to be short and to the point, and not include too much in the way of extraneous information. The Committee may conclude that experience has shown that detailed rules on the content of questions without notice are now less necessary or not necessary at all. Of course the normal rules of debate and decorum applicable to other proceedings would still apply and, most importantly, standing order 98(c) which relates to Ministers only being questioned on matters within their area of administrative responsibility, would remain.

Rules would still be needed to govern the content of questions in writing. The Committee's 1992 proposed rule for questions without notice could I think be applied to questions in writing also. However, the Committee might want to consider whether the rules for oral and written questions need to be the same.

Questions reflecting on persons

I agree with the 1992 Procedure Committee's position that the restrictions on questions reflecting on persons should remain. However, I believe there is an anomaly in the way these requirements are expressed that could be corrected.

The persons protected by standing order 100(c)(i) are those covered by standing orders 88 to 90. The second part of subparagraph (i) provides that the conduct of these persons is challengeable only by means of a substantive motion. It is an anomaly that this substantive motion provision is inserted in a standing order regarding questions, and only here, when it has far wider application. It is in fact applicable to all proceedings.⁸ I suggest that the provision would be better expressed as a general requirement. For example, a new S.O. 90A, which the revised 100(c) would reference, could be inserted as follows:

90A Conduct challenged by substantive motion

The conduct of a person referred to in *standing orders 88, 89 and 90* may be challenged only by means of a substantive motion.

⁷ Standing Committee on Procedure, *The standing orders governing questions seeking information*, 1992, pp. 8–9.

⁸ *House of Representatives Practice*, 6th edn, pp. 515, 520.

Possible revised rules for the content of questions

Existing standing order

98 Questions to Ministers

...

- (d) Questioners must not ask Ministers:
- (i) for an expression of opinion, including a legal opinion; or
 - (ii) to announce government policy, but may seek an explanation about the policy and its application, and may ask the Prime Minister whether a Minister's statement in the House represents government policy.

100 Rules for questions

The following general rules apply to all questions:

- (a) Questions must not be debated.
- (b) A question fully answered must not be asked again.
- (c) For questions regarding persons:
 - (i) questions must not reflect on or be critical of the character or conduct of a Member, a Senator, the Queen, the Governor-General, a State Governor, or a member of the judiciary: their conduct may only be challenged on a substantive motion; and
 - (ii) questions critical of the character or conduct of other persons must be in writing.
- (d) Questions must not contain:
 - (i) statements of facts or names of persons, unless they can be authenticated and are strictly necessary to make the question intelligible;
 - (ii) arguments;
 - (iii) inferences;
 - (iv) imputations;
 - (v) insults;
 - (vi) ironical expressions; or
 - (vii) hypothetical matter.
- (e) Questions must not refer to debates in the current session, or to proceedings of a committee not reported to the House.

Proposed standing order

98 Questions to Ministers

Explanatory note:

It is proposed to delete 98(d).

100 Rules for questions

- (a) Questions must be concise, seek information, relate only to one subject and not contain material not necessary to the understanding of the question.
- (b) For questions regarding persons:
 - (i) questions must not reflect on or be critical of the character or conduct of a person whose conduct may be challenged only by means of a substantive motion in accordance with *standing order 90A*; and
 - (ii) questions critical of the character or conduct of other persons must be in writing.

Explanatory note:

It is proposed to delete all detailed rules in S.O. 100, except paragraph (c), and replace with a single rule as proposed by the Procedure Committee in 1992 (or equivalent rule). Paragraph (c) — new (b) — is revised as earlier discussed.

Rules about the content of answers

It is the established practice of the House (although perhaps not widely recognised) that Ministers cannot be required to answer questions⁹ nor to answer questions to the satisfaction of the questioner. The only provision in the standing orders on the content of questions is that an answer must be directly relevant to the question (S.O. 104(a)). The change in wording in 2010 from 'relevant' to 'directly relevant' has given the Speaker greater authority to require answers to be less wide-ranging. However, as noted in *House of Representatives Practice*, the interpretation and application of the provision has remained challenging.¹⁰

I suspect that an increase in the number of rules regarding the content of answers might produce an increase in the number of points of order, rather than have any other effect. A more effective approach might be to further reduce the time limit on answers, as discussed below. Answers may tend to expand to fill the time available, and shorter answers may be more likely to be more directly relevant to the question asked. If an answer is less than fully relevant, listeners will no doubt draw their own conclusions as to the Minister's ability to answer the question.

Time limits on questions and answers

As discussed previously, in my opinion the imposition of time limits on questions and answers has been beneficial to the conduct of Question Time.

I believe experience since 2012 has shown that the current limit on questions of 30 seconds is about right. However, the Committee might consider whether benefits could come from further reducing the 3 minute limit on answers to 2 minutes. I think that experience shows that questions are able to be answered in the shorter time.

A shorter time limit for answers would enable additional questions to be asked, or provide time for supplementary questions should the Committee recommend their re-introduction.

Interruptions to Question Time

Points of order

Since time limits on questions and answers were introduced the clock has been paused during points of order made during Question Time. Points of order therefore do not take time from individual questions and answers. However, they do take the time of the House, disrupt the flow of proceedings, and reduce the total number of questions that can be asked in a set time. Very few points of order are upheld.

In 2010 the House introduced the provision that a point of order regarding relevance may be taken only once in respect of each answer.¹¹ Since then on average roughly 9 points of order have been raised per Question Time.

S.O. 86 states that, following the raising of a point of order, 'consideration and decision of every other question shall be suspended until the matter is disposed of by the Speaker giving a ruling thereon.' However, there is no question (meaning a matter for decision) before the House during Question Time.

⁹ *House of Representatives Practice*, 6th edn, p. 565.

¹⁰ *House of Representatives Practice*, 6th edn, p. 568.

¹¹ S.O. 104(b).

The Committee might consider the proposition that the flow of Question Time could be improved if the House adopted the practice followed in the UK¹² and Canada¹³ that points of order relating to the operation of Question Time are dealt with together at the end of the period. That is, the Speaker could respond to points of order at the conclusion of Question Time, prior to responding to any questions on the administration of the Parliament pursuant to standing order 103. The two opportunities—to raise points of orders relating to Question Time and to ask questions on administrative matters—would need to be kept separate and distinct to avoid the potential of running into a general debate.

If the rules regarding the content of questions are simplified as suggested, points of order might be expected to focus on the relevance of answers. However, if the time available for an answer is also reduced as suggested, there will be less opportunity for a Minister to stray into non-relevance. Speakers will intervene in cases of blatant non-relevance without needing to be prompted by a point of order.

Supplementary questions

Questions often refer to answers to earlier questions. However, the practice of alternating the call between the right and left of the Chair has the effect that follow-up questions are not asked immediately.

The House has recently removed the opportunity for immediate follow-up questions by omitting S.O. 101(b), which before November 2013 read as follows:

The Speaker may:

- (b) allow supplementary questions to be asked to clarify an answer to a question asked during Question Time;

The degree to which Speakers previously exercised the discretion given them by S.O. 101(b) to permit immediate supplementary questions varied. Most preferred to keep to the traditional alternation of the call. In the last Parliament Speaker Jenkins allowed one supplementary to the Leader of the Opposition (or delegate) at each Question Time. Later, Speaker Slipper permitted up to 5 supplementaries shared between opposition, government and non-aligned members.¹⁴

This wide variation in practice came from the standing orders giving the Speaker a discretionary power to allow or vary the number of supplementary questions. If supplementary questions are to be re-introduced I believe it would be better for the standing orders to give certainty. The rule applying to supplementaries could be contained in S.O. 100 under 'Rules for questions', not in S.O. 101 under 'Speakers discretion about questions'. For example:

100 Rules for questions

...

(d) The original questioner may ask one supplementary question in respect of each original answer. The supplementary question must directly relate to the answer.

(e) The duration of a supplementary question is limited to 20 seconds. The duration of an answer to a supplementary question is limited to 1 minute.

Objections to supplementary questions in the past have included that they reduce the number of original questions that can be asked in a limited time. This was a valid criticism when there was no limit on the length of questions and answers.

¹² *May*, 24th edn, p. 455.

¹³ *House of Commons Procedure and Practice*, 2nd edn, 2009, p. 500.

¹⁴ *House of Representatives Practice*, 6th edn, pp. 547–8.

However, if the duration of answers were to be further limited, and the potential for disruption from points of order and other interruptions removed, as proposed above, there would be additional time available. In this context the Committee might wish to consider whether supplementary questions could be re-instated as part of a 'package' of changes.

Constituency questions

I have noted the new emphasis, for a trial period, by government Members on asking questions on matters of interest to their local constituency in the last part of Question Time. This approach is within the current standing orders and I do not believe any changes to the standing orders are needed to facilitate such an approach if it is to be continued.

Please let me know if the Committee needs any further information. If the Committee would find it helpful for me to expand on these points and respond to any questions, I would of course be happy to attend a meeting.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'David Elder', with a stylized, cursive script.

DAVID ELDER
Clerk of the House