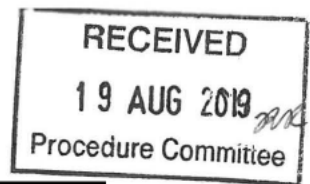


JEREMY TRAVERS



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15 August 2019

Dear Mr Vasta

I am grateful to the Committee for conducting this inquiry and for the opportunity to make this submission. This submission outlines the proposals that I believe will make Question Time more productive and other avenues that the Committee may wish to consider in its deliberations and report. By way of summary, this submission focuses on the time limit for question time, the role of points of order, portfolio-based question times, the abolition of Dorothy Dixers, supplementary questions, the relevance of answers, and motions for the suspension of Standing Orders. This is by no means an exhaustive list of what this submission discusses.

By way of disclosure, I am writing this submission in my capacity as a citizen with what my friends would describe as an extreme interest in parliamentary procedure. Before commencing my studies at the University of Sydney, I did spend some time working for the Department of the Legislative Assembly of New South Wales. The opinions expressed in this submission are solely mine and should not be attributed to any other person or organisation. I have also been a member of the Liberal Party, but I have not been party political since 2016 and this submission has been made with no party political considerations in mind.

By way of summary, I propose the following changes to the procedure for Question Time:

1. The time limit for Question Time should be enshrined in the Standing Orders;
2. The time limit for all questions should be 30 seconds;
3. The Standing Orders should be amended to prohibit the raising of points of order during the time set aside for Questions;
4. The Committee should enquire into the possibility of conducting portfolio-based Question Times;
5. Political parties need to change their culture in relation to Dorothy Dixers with the view of abolishing them;
6. There should be a practice of supplementary questions after the asking of a lodged primary question;
7. There should be consideration of a 'take note' debate similar to those conducted in the Senate;

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8. There should be a strict interpretation of what constitutes a ‘directly relevant’ answer and contrasting government and opposition policy should not be permitted;
9. Procedural interruptions, such as motions to suspend the Standing Orders, should not be permitted during the time set aside for Questions; and
10. There should be no change to the current procedure for the asking of questions, which should remain the responsibility of members.

I. INTRODUCTION

House of Representatives Practice (hereafter referred to as *Practice*) describes the purpose of questions as ‘ostensibly to seek information or press for action’.¹ In the next sentence, *Practice* refers to the fact that the level of public interest in Question Time means that it is often used as a period of political opportunism.² I must say to the Committee that it is my view that the balance between these two concepts at present is misguided with the accountability of the Executive by the House being outweighed by political opportunism. This is a misjustice to our parliamentary system and reduces government accountability to a daily sporting match where the Executive and Opposition front bench are two opposing teams, the backbenches are the cheer squads for their respective teams, and the public are the viewership, often supporting one team or another.

II. TIME LIMITS

The present practice has been that the length of Question Time is in the hands of the Prime Minister or the senior Minister present by asking that further questions ‘be placed on the *Notice Paper*’.³ As the *Practice* and Speakers’ rulings have made clear, the Prime Minister can call time on Question Time at his or her discretion. It is my contention that the time for Question Time should be codified in the Standing Orders. I argue this for one main reason; the House should be the judge of how long Ministers are accountable to it and, through it, the Australian people. The Legislative Assembly of New South Wales, for instance, has a standing order that requires Question Time to last for 45 minutes or the asking of ten questions, whichever is the longer.⁴ It would be preferable, in my submission, for an overall time limit. This is to ensure that more questions can be asked. I note that the *Practice* says that Ministers are not obliged to answer questions and I agree with this in principle.⁵ I also appreciate that there are times where Question Time will need to be postponed. Nothing in this submission has the intention of recommending anything that would interfere with the occasional cancellation of Question Time.

The Committee may also wish to examine the time limits for questions and answers, which were implemented in 2010. As it stands, questions are limited to 30 seconds

¹ David Elder (ed), *House of Representatives Practice* (Department of the House of Representatives, 7th ed, 2018) 543.

² Ibid 543.

³ Ibid 545.

⁴ Legislative Assembly of New South Wales, *Standing Orders* (Parliament of New South Wales, 2016) 47. The relevant standing order is 131(5).

⁵ Elder, above n 1, 545.

and 45 seconds for crossbench members⁶, and answers are limited to three minutes.⁷ Mr Speaker has previously made the point that the 45 second time limit was instigated for the benefit of the honourable gentleman the member for Kennedy.⁸ In the interests of fairness, I would argue that crossbench members should be subjected to the 30 second time limit. My view is that all Members should be able to ask a question within the same time frame and I see no reason why some parts of the House should have longer than others in order to ask a question.

III. POINTS OF ORDER

The taking of points of order, as the Committee would be aware, has been a part of Question Time for as long as we can remember. Any viewer of Question Time would be familiar with the sight of a member rising to his or her feet to complain about a grievance concerning the lack of answers from Ministers or to highlight a portion of the question that has been overlooked. The purpose of a point of order is draw the Speaker's attention to a matter of disorder. However, during Question Time, they are misused as debating points. Until 2010, the Standing Orders had no regulation on the number of points of order that could be raised. As a consequence of the 43rd Parliament, the Standing Orders were changed to subsequently allow one point of order on relevance per answer.⁹ No further regulation on points of order were made, and this allows the raising of points of order following the one point of order on relevance. For instance, after a point of order has been raised on relevance, a point of order could be raised that the Speaker's ruling has been ignored. Indeed, this has happened.

I propose that points of order be abolished for the duration of Question Time. This would be consistent with Westminster practice, where points of order come after oral questions.¹⁰ Two things would happen in the event of the abolition. The first is that Ministers will not be distracted mid-flight by a politically opportunistic point. The second that the Speaker would be free to fulfil his role of being the sole arbiter of matters of order. The Speaker would be free to rule questions out of order without long and protracted submissions and the Speaker could use his authority under the Standing Orders to sit a Minister down for lack of relevance during an answer.

IV. PORTFOLIO-BASED QUESTION TIMES

Another avenue that the Committee may consider exploring is the idea of portfolio-based Question Times. This is a procedure that is in place in the House of Commons. Portfolio areas are allocated a time on the sitting calendar for the asking of oral questions. The obvious example to point to is that of Prime Minister's Question Time, which takes place at 12pm on Wednesdays for half an hour (although the time limit is not strictly observed).¹¹ I

⁶ Ibid 553.

⁷ Ibid 569.

⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 18 October 2017, 11098-9.

⁹ Department of the House of Representatives, *Standing Orders – As at 4 December 2017* (2017) 51. See standing order 104(b).

¹⁰ See, eg, United Kingdom, *Parliamentary Debates*, House of Commons, 6 March 1995, vol 256, col 1.

¹¹ For instance, the final Prime Minister's Question Time under the Prime Ministership of the Rt. Hon. Theresa May, M.P., lasted for over an hour.

believe that this would be an effective way of ensuring that Ministers are available to the House as times determined by it for the asking and answering of oral questions.

The Committee may be aware that when he was Prime Minister, the Hon. Paul Keating had a roster of Ministers for Question Time where Ministers would appear at two Question Times per week (out of four).¹² This practice has not been carried on by successive governments¹³ and I would argue that this is for the best. Portfolio-based question times would be like these rosters, but questions would be focused on areas of portfolio responsibility, unless the connection was made. For instance, the Minister for Energy would not be asked about Defence policy. The Westminster practice has been that the grouping of portfolios has been based on government departments, and this is how I would envisage it happening here. The Ministry list would be a good place to start for inspiration on how to sort out the appropriate groupings. Another benefit to this is that it would potentially remove the need for ministerial arrangements.

V. DOROTHY DIXERS

The terms ‘Dorothy Dix’ and ‘Dorothy Dixers’ are synonymous with Question Time. I would encourage anyone interested in a synopsis of the history of the term to read footnote 3 on page 543 of *Practice*. They are, in short, a practice where Ministers, their staff or the Chief Government Whip have provided questions to backbenchers. They are the parliamentary equivalent of the ‘free kick’ in football. I believe that they should be consigned to history like their namesake. There are two main reasons for this. The first and overriding reason is that, as Atkin and Jinks noted in their tome *Australian Political Institutions*, ‘such ... questions ... are in effect occasions for ministers’ speeches, rather than parliamentary criticism of the executive’.¹⁴ Dorothy Dixers turn the House of Representatives into an area for press conferences with the added protection of parliamentary privilege. The second reason is because there are other forms of the House for the Government to make itself look good and to embarrass the Opposition. These include, but are not limited to, ministerial statements, second reading debates, and the adjournment debate.

There is another key reason why Dorothy Dixers should be done away with. They are just so silly. Questions asking Ministers about the wonderful virtues of a particular policy is an obviously bad type of question. It is even worse when a question asks how a particular government policy benefits a Member’s electorate. From the public commentary I have seen, this raises questions as to a Member’s knowledge of the issues in their own electorate. I, of course, make no such reflection here. Given the fact that government backbenchers frequently discuss and criticise government policy in the press, the parliamentary opportunities for them to strengthen their arguments on these policies should exist.

The Committee may receive submissions asking for the right of government backbenchers to ask questions to be removed. I would be opposed to such a change on the basis

¹² Elder, above n 1, 549.

¹³ Ibid 549.

¹⁴ Don Aitken and Brian Jinks, *Australian Political Institutions* (Pitman Publishing, 3rd ed, 1985) 67.

that I have explained in the paragraph above. The Legislative Assembly of Victoria changed its practice to allow ministerial statements of up to two minutes during the time allocated for oral questions.¹⁵ I also oppose this idea as it takes away time for government accountability by the House. If a Minister wanted to explore the benefits of a policy, he or she could always seek leave to make a ministerial statement after Question Time. Or, better yet, give a press conference as that is what a Dorothy Dixer is – a chance for Ministers to give a brief parliamentary press conference. And asking questions on ‘alternate’ or ‘alternative’ policies are an insult to the purpose of Question Time. I discuss the answers to these questions in part six of my submission.

Should the Standing Orders be altered to prohibit Dorothy Dixers? I would answer this question in the negative. The amending of Standing Orders and changes to practice and procedure are good things, but they cannot be the sole method of change. Members of the House have a responsibility to contribute to this change. Abolishing Dorothy Dixers needs cultural change. This means that political parties need to take a stand and give them up in the interests of government accountability and good parliamentary practice.

As Amy Remeikis from the *Guardian Australia* often says, ‘death to Dixers’. The Speaker of the New Zealand House of Representatives is more restrained in his criticism, simply referring them to ‘undesirable, where everything that [a] Minister has said [in an answer] was in the paper last week’.¹⁶ They serve no legitimate purpose and, as I write above, should be consigned to history.

VI. SUPPLEMENTARY QUESTIONS

The current practice is to allow one question at a time with no chance of a supplementary question. The House of Commons of the United Kingdom and the House of Representatives of New Zealand allow supplementary questions during their respective Question Times. In the case of the latter, the number of supplementary questions is allocated based on party numbers in the House.¹⁷ The disadvantage to this is that minor parties receive limited opportunities to question Ministers. The Westminster practice of limiting the questions asked by Opposition frontbenchers (the Leader of the Opposition is limited to asking six questions at Prime Minister’s Question Time) and enabling backbenchers to ask supplementaries is desirable. If portfolio-based question times are introduced here, the idea would be for a shadow minister to have a similar limitation while focusing on questions from backbenchers.

The practice in the two Houses that I refer to above is that questions are submitted to the Clerk’s office and are drawn at random. For instance, the ‘open question’ at Prime Minister’s Question Time in Westminster is one that asks the Prime Minister to list his or her

¹⁵ Legislative Assembly of Victoria, *Sessional Orders* (Parliament of Victoria, 2019) 3. See sessional order 7.

¹⁶ New Zealand, *Parliamentary Debates*, House of Representatives, 16 August 2018, 6149.

¹⁷ Mary Harris and David Wilson (eds) *Parliamentary Practice in New Zealand* (Oratia, 2017) 636-7.

engagements for that day.¹⁸ The experience in Wellington is to usually submit a question that asks about a particular policy or asks if the Prime Minister or a Minister ‘stands by all of his (or her) statements’¹⁹. This is known as the ‘primary question’.²⁰ The advantage to these types of questions is that while Ministers are aware of the first question to be asked, they are not aware of any supplementaries that may be asked. This requires Ministers to be adequately briefed.

The Committee may wish to explore the possibility of introducing a system where Members submit primary questions. Those questions would be checked by the Clerk’s office for admissibility under the Standing Orders and lodged on the day’s Blue²¹ or the *Notice Paper*. This would provide Members and parties with the opportunity to form supplementaries that could be asked. Under my doctrine (for lack of better word) for Question Time, this would work exactly the same way as Question Times in the House of Commons and the New Zealand House of Representatives. What I propose is that these supplementaries be subjected to the current Standing Orders and Speakers’ rulings, and that they be asked in the same way as current questions are – by alternating the call from government to opposition and crossbench. For instance, an Opposition member would ask a primary question then a supplementary question, and this would be followed by supplementary questions from the Government backbench and then the Opposition backbench. Crossbenchers would be able to jump in as well.

VII. ANSWERS

There has been a lot of discussion about questions, but there needs to be a discussion on answers. As I typed that sentence, I am reminded of the well-known expression that ‘this is question time, not answer time’. At the risk of being a pedant at the level of which Bernard Woolley from *Yes, Minister* would be proud, I make the point that you cannot have Question Time without answers because it would essentially be an hour long exercise in asking rhetorical questions. Which are, of course, inconsistent with the purpose of Question Time in the first place.

The question of the relevance of Ministers’ replies are always on the mind of plenty of people. Until 2010, the Standing Orders required a Minister to be relevant to the question asked.²² The Standing Orders presently require a Minister to be ‘*directly* relevant’.²³ I make two observations on Ministers’ replies. First, Ministers often use replies to questions as a mechanism for broad discussion on the policy topic raised in the question. Indeed, Mr Speaker has deemed that approach to be relevant. I do not seek to make a reflection upon him by saying

¹⁸ Richard Kelly, *Prime Minister’s Questions* (House of Commons Standard Note SN/PC/05183, 9 February 2015) 3.

¹⁹ See, eg, New Zealand, *Parliamentary Debates*, House of Representatives, 18 December 2018, 9021.

²⁰ See, eg, New Zealand, *Parliamentary Debates*, House of Representatives, 26 May 2015, 3936-7.

²¹ For members of the public who are reading this submission, the ‘Blue’ is the Daily Program issued every day that the House sits. It outlines the proposed schedule for the day.

²² Department of the House of Representatives, *Standing and Sessional Orders – As at 1 December 2008* (2008) 51. See standing order 104.

²³ Department of the House of Representatives, above n 9, 51. Standing order 104(a). Emphasis added.

that I disagree with that approach. Second, Ministers generally make observations about opposition policy, an area for which they have no responsibility.

There is no better example of this than on 27 August 1981, when Speaker Snedden ruled that a Minister should ‘answer the question and not engage in irrelevancies, such as contrasting the Government and the Labor Party’.²⁴ This ruling was made after a Minister made reference to the actions of Labor Party members. Readers of the *Hansard* of the two following pages will see that there were repeated points of order and at least one further attempt by the Speaker to get the Minister to refrain from referring to the ‘hypocrisy of the Labor Party’. This ruling has fallen largely into disuse since 1983 (despite repeated references to it from dissatisfied members of the Opposition)²⁵ and it would be my contention that the House and the public have been the poorer for it. The Snedden requirement that answers be free of irrelevancies such as contrasting the Government and the Opposition is not unreasonable. I would even argue that the public would have this expectation of Ministers during Question Time.

As I note above, there are other forms of the House that can be used to debate contrasting policies. The Committee may also wish to consider the Senate practice of ‘take note’ debates which occur after each Question Time.²⁶ This would be far preferable to the constant bickering of contrasting policies during Question Time, which is undesirable and a distraction from its purpose of government accountability. If ‘take note’ debates are undesirable, then I would recommend that the House continues to make use of the Matter of Public Importance debate to make these contrasts in policy.

There is one last comment that I wish to make with respect to the relevance of answers. A distinction needs to be made between an answer that is relevant under the Standing Orders and an answer that is relevant to the satisfaction of the questioner. Having observed plenty of question times, I have noticed that there has been a tendency on the part of some to judge the relevancy of answers based on the latter test. It is my view that the only relevance test that should matter is whether or not an answer is relevant under the Standing Orders. The introduction of supplementary questions, something that I discuss above, could lead to Members asking Ministers sharper questions in order to gain sharp and relevant answers.

VIII. MOTIONS TO SUSPEND STANDING ORDERS

Another practice that has developed in recent years is the disruption of Question Time to move a suspension of Standing Orders for the purpose of holding a debate. Examples of this include to move motions of no confidence in the Government and to enable the Prime Minister and the Leader of the Opposition to debate health policy.²⁷ I would suggest that the

²⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 27 August 1981, 856.

²⁵ See, eg, Commonwealth, *Parliamentary Debates*, House of Representatives, 9 September 1981, 1063-4; Commonwealth, *Parliamentary Debates*, House of Representatives, 9 November 1988, 2664-5; Commonwealth, *Parliamentary Debates*, House of Representatives, 9 February 2010, 827-9.

²⁶ Rosemary Laing (ed), *Odgers’ Australian Senate Practice – As revised by Harry Evans* (Department of the Senate, 14th ed, 2016) 633-4.

²⁷ Commonwealth, *Parliamentary Debates*, House of Representatives, 18 March 2010, 2989-94.

Committee consider recommending an amendment to the Standing Orders that prohibits motions of this kind during Question Time. This limits the hijacking of the House's ability to scrutinise the Executive. The time set aside for oral questions should be limited to oral questions. The House has plenty of time in which these debates could be held.

There may be an argument against this proposed prohibition to the effect that these motions are, in fact, a form of accountability. When I made the error of defending the moving of these motions during the 43rd Parliament, a friend described them to me as the parliamentary equivalent of vexatious litigation. He was right. These motions are a way for the Opposition to express general dissatisfaction at the actions of the Government and the conduct of ministers, but they rarely succeed. The motion gets moved, a closure motion is moved, the House divides, the mover is silenced, and the process is repeated for the seconder. All that wasted time could have been used to hold Ministers accountable via the asking of oral questions. Then, if I am not mistaken, there will be – or there has been – some complaint that Question Time has not been extended because of the time taken for this procedural interruption. Those complaints do not carry much weight with me, I am afraid.

IX. CONCLUSION

The Committee has a unique opportunity to reform what was once an essential part of the House's role in holding the government to account. There will be many submissions and many calls for change. The final report has the potential to be historic and Question Time has the potential for being changed for the better. This inquiry and change require three main things. First, it requires change to the House's practices and procedures. Second, it requires cultural change, namely when it comes to 'Dorothy Dix' questions. Third, it requires total acceptance from all sides of the House. It would be a waste of the Committee's time and of the House's time if this inquiry produced a report that was accepted only to have the format changed at the convenience of the Executive.

There is one thing that I have so far not commented on. The Committee's press release makes reference to how the public could get involved in Question Time. I must make it clear to the Committee that I would oppose any proposal for a mechanism that would allow the public to submit questions. The overriding reason for this is because I am a traditionalist when it comes to parliamentary procedure. As the New Zealand House of Representatives Standing Orders Committee noted in its 2017 review:²⁸

A submission suggested allowing the public to submit questions. While this is an interesting idea, only a few questions can be asked each sitting day, and deciding the political priorities for this is the role of members. Moreover, the fundamental nature of our representative democracy is that members hold the Government to account on behalf of the public. Members are free to canvass the public for issues and questions to ask Ministers.

By way of a concluding personal note, I wish to express my thanks to the friends of mine – I will not embarrass them by naming them in this letter, but they know who they are

²⁸ New Zealand House of Representatives Standing Orders Committee, *Review of Standing Orders 2017* (Parliament of New Zealand, 2017) 37.

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– who drew my attention to this inquiry and encouraged me to make this submission. They have my gratitude, for this submission would not have been made without their encouragement. I also express my thanks to Professor Rodney Smith from the Department of Government and International Relations at the University of Sydney for reading my draft and offering feedback.

I thank the Committee for taking the time to consider this submission. Committee members should know that I am more than willing to discuss this submission, collectively or individually, via email at [REDACTED]. I would also be willing to appear before the Committee to elaborate on any points raised or to answer questions. After all, this submission should be subject to discussion and scrutiny.

With best wishes to the Committee for this inquiry, for which I look forward to seeing the final Report.

Yours sincerely

[REDACTED]

The Chair of the House of Representatives Standing Committee on Procedure