

The effectiveness of current standing orders relating to Question Time

Question Time is a highlight of each sitting: ‘usually an occasion of special interest’¹. It lasts on average for at least 64 minutes² - this is some 12% of the House’s sitting hours each week. The nature of the business transacted during Question Time is quite different from almost all other proceedings, as are the atmosphere and dynamics of the period. Although it is quite unrepresentative of the way the House goes about its work, it remains the proceeding visitors most wish to observe. More significantly, it is the most heavily reported segment of House business: stories in the print and in the electronic media reflect events in Question Time and images available to millions of citizens are taken from it³.

This submission notes some of the criticisms that have been made about the period: criticism of the content of questions and answers, and of standards of behaviour. It notes the period’s strengths but points out that these very strengths contain the seeds of the problems complained of. The submission lists recommendations and comments made about the issues, it refers to the problem of disorder and the matter of questions to the Speaker. It endorses comments to the effect that changes in thinking and attitude may be more significant in achieving improvements than changes in the standing orders.

Frequent criticism

Well attended as Question Time may be by visitors and by media personnel, critics are to be found both within Parliament and beyond its walls. Complaints are often made by Members⁴, and external critics have sometimes been caustic, for example:

If it represents the essence of parliamentary democracy, then the institution is seriously flawed.⁵

To another scholar Question Time is

the low end of Parliament’s contribution to public deliberation.⁶

A former state Presiding Officer, after commenting on Members’ behaviour, posed the question:

¹ *House of Representatives Practice* - (5th edition), p.527

² Figures for 2004 75 mins, 2005 64 mins, 2006 (to date) 66 mins.

³ John Uhr *Reforming the Parliament* (2005), p.5.

⁴ Recent examples include HR Debates 17.8.06, p 90; 21.6.06 p 95; 21.6.06, p.99.

⁵ David Solomon *A Single Chamber Australian Parliament* - Senate occasional lecture, 18 Feb 2000.

⁶ John Uhr *How democratic is Parliament?* Democratic Audit (6/2005) p 33.

Is it any wonder that Question Time is questioned as an accountability mechanism?⁷.

Strengths of Question Time

It is easy, especially in the face of strong criticism, to overlook the positive things that can be said about Question Time. These are significant: in the first place, every sitting day the Prime Minister and other Ministers are required, by convention if not by standing order, to be present and to answer to the representatives of the community for their stewardship of the nation's affairs. Whatever may be said about the way Question Time operates, the routine and frequent accountability of the highest level of the nation's political leadership is a feature not enjoyed in many nations⁸. Secondly, the standing orders and practices governing Question Time allow questions that are both immediate and topical⁹. Matters occurring minutes before, or even during, Question Time can be raised and pursued with Ministers. A third and related feature is the flexibility of the rules. While this is sometimes criticised, it has advantages - for example longer answers may be given without objection, and in special circumstances Opposition Members have been permitted to ask the majority of questions¹⁰, Ministers have been permitted to answer questions which have been out of order technically¹¹ and all the rules governing the content of questions may not be applied strictly¹². Fourth, however well briefed they may be, when they stand at the Despatch Box to respond to what are often hostile questions, Ministers, the apex of the executive branch, are being held to account in a real and personal way, they are on their own and they are tested. Finally, the performance of leading Opposition members during Question Time is also observed. This is a matter unrelated to the goal of executive accountability that lies behind Question Time, but it is a political reality¹³.

The downside of the period's strengths

The positive features of Question Time in the modern House of Representatives also largely explain the problems so often complained of. The period really does matter and is widely believed to have political significance. The presence of the Prime Minister and leading Ministers and the belief that they will be tested and that the Opposition will want to acquit itself well all combine to ensure that even in anticipation, let alone in reality, much will be at stake. The possibility of the most immediately relevant matters being raised heightens anticipation and helps ensure that the House itself and the galleries will be well attended. Those factors in turn build on the inherent dramatic potential – but also on the possibility of discourteous and disorderly behaviour.

⁷ Dr Ken Coghill *Question Time: Questionable Questions with Few Answers* Democratic Audit (11/2002).

⁸ And see Solomon, *op cit*.

⁹ *House of Representatives Practice op cit*, p 527.

¹⁰ HR Deb (15.10.2002), 7581-3; (24.3.2003) 13301-2; (25.3.2003) 13411-13.

¹¹ Eg H.R. Deb. (5.9.2005), p 35.

¹² *House of Representatives Practice op cit*, p.532; and see *About Time*, p 24-5.

¹³ And see Procedure Committee Discussion Paper, p 6.

The impact of television

Question Time has probably always been an important, if imperfect, means of accountability, but it has also probably always been important in terms of dynamics, power and status both between and within political parties. For many years however one of the challenges for parliamentarians was to assess the extent to which events during Question Time had an impact in the wider community. The introduction of the television cameras has had a dramatic impact in this regard. While any influence Question Time may have in the wider community may be unclear, the potential is surely much greater with television coverage: the widespread belief in this potential is likely to weigh heavily in the minds of all Members, but particularly those with a role in sitting day arrangements. This presumably partly explains the resort occasionally had to organised disorderly displays during the period. Question Time is probably the period from which most people take their images of the House¹⁴.

The observations of a Canadian review are of interest. It was told that television had ‘led to an over-emphasis on Question Period.....individual members tended to play to the cameras’¹⁵. The committee’s 1995 discussion paper stated that television had exaggerated the development of Question Time as a testing ground for the leaders ‘by encouraging the public to focus on the relative performance of the leading figures as shown by the brief “grabs” which are replayed on the evening news’. The committee went on ‘The “grabs” are apparently chosen for their dramatic spectacle and not necessarily for the newsworthiness of the question and its answer’¹⁶.

The scene is set for conflict:

It is a ... time when the intensity of partisan politics can be clearly manifested ... because public attention focuses so heavily on Question Time it is often a time for political opportunism. Opposition Members will be tempted to stress those issues which will embarrass the Government, while government Members will be tempted to provide Ministers with an opportunity to put government policies and actions in a favourable light or to embarrass the Opposition¹⁷.

Standards of behaviour

While observers are often critical of the content of Question Time – of what is said in questions and in answers - of further concern is the lack of courtesy and civility and the disregard for the authority of the Speaker so often evident. A common response to criticism is to point out that the processes of Question Time are a means through which the great issues of the day, issues about which there may be deep disagreement, can be ventilated, and that the argument and testing that takes place is in fact healthy, and better than many

¹⁴ *About Time* report, p 27; and see John Uhr *Reforming the Parliament*, p 5.

¹⁵ R Marleau and C Montpetit *House of Commons Practice and Procedure*, p 419.

¹⁶ Discussion Paper, p 6. The paper also noted that these developments were not unique to Australia.

¹⁷ *House of Representatives Practice op cit.* p 527.

alternative means of conflict resolution. There is some truth in this, and there certainly are nations where parliamentary conflict is sometimes carried further than in the House.

It is probably difficult for any Member, who will in one way or another be a participant, to see these matters from the perspective of a citizen not involved in politics. A similar difficulty applies in respect to Clerks. That said however it is likely that many Members will have received indications of the views of citizens on Question Time. Some such views reach our department. Obviously there is no way of knowing how representative the views received are. Often a range of issues is raised, but commonly disapproval or disappointment is expressed, and sometimes anger. I would not wish to express a view as to whether in fact standards have declined, but I would say that the presence of television coverage has enabled the best and the worst of Question Time to be disseminated and that behaviour perhaps understood or accepted by participants as inherent in a 'robust forum' is not appreciated by some citizens. Scenes of disorderly behaviour can feed and confirm any hostility that people may have towards the House, and of course overshadow any attention given to the great amount of hard and constructive work done by Members in the House and its committees.

The Speaker is in a difficult position during Question Time, having to apply the standing orders and the practice that has grown around them, wanting to uphold the rules but not to stifle proceedings. The taking of points of order on both questions and answers is widespread, the Committee commenting 'interruptions for spurious points of order have been raised to an art form'¹⁸. The standing orders have themselves become weapons, sometimes appearing to be used for tactical purposes¹⁹.

From a technical point of view, for every point of order, to put it simply, there is a winner and a loser, but Opposition Members are more likely to raise points of order than Government Members. Points of order during Question Time are likely to be 'part of the strategic, political contest, rather than genuine concerns about the standing orders'²⁰. Such points of order are likely to fail, but even if the failure rate is similar for points of order raised by Government and Opposition Members, because more points of order are likely to be raised by Opposition Members they will have more failures technically (the fact that the point of order may disrupt the flow of the Minister's response, or permit an Opposition viewpoint to be made subtly, may mitigate the technical failure). In these circumstances it is easy for a Speaker to be accused of partiality²¹. This point is reinforced by Dr Uhr²². Discourtesy by Members towards other Members is undesirable, but when

¹⁸ *About Time* report, p 24.

¹⁹ Ian Harris *Question time; impartial Speakers and dissent from rulings - some comments on Dr Coghill's paper in Democratic Audit* (March 2006), p 1-2.

²⁰ *And see* Ian Harris *op cit*

²¹ Ian Harris, *op cit*, pp 2-3.

²² John Uhr *op cit*, p 10 'To see an independent Speaker as a stand-alone reform is misguided. Speakers get into trouble because oppositions get frustrated and have no one else to blame for the way the system limits their opportunities to keep ministers in the glare of adverse publicity'.

directed at the Speaker much to be regretted; as well as signifying disrespect for the office it surely erodes the standing of the House and any confidence in its ability to govern itself properly.

The ‘sin bin’ procedure was introduced, on the recommendation of the Procedure Committee, to allow disorder to be dealt with speedily and without disrupting proceedings²³. The provision was seen by the committee as a means to achieve order, and not as punishment. It is not surprising that since the procedure was introduced in 1994 some 83% of orders to withdraw have been made during Question Time. The procedure has proven to be a useful additional facility to assist the Speaker in maintaining order, although it may be that the fact that there is no additional penalty for repeated instances could tempt Members to act in ways that they may know are likely to lead to warnings and orders to withdraw.

Significant reviews

While academic and other critics have commented on and made suggestions about Question Time, the Procedure Committee has conducted thorough inquiries into it. Its third report was on the standing orders and practices which govern the conduct of Question Time (1986). In 1992 it reported on *The Standing Orders Governing Questions Seeking Information*; its *About Time* report in 1993 dealt with aspects of Question Time, as did *Time for Review* (1995). In 1996 it reported on *The operation of standing order 143* and in 1995 the Chair and Deputy Chair issued a discussion paper on Question Time.

Despite the efforts put into consideration of the matter by members of the Procedure Committee, and despite the attention given to the committee’s reports, no permanent changes have been made to the main standing orders governing Question Time²⁴. Improvements have occurred in respect of one matter of recurring concern: the number of questions asked has, for example averaged 16 in 2003, 17 in 2004 and 19 in 2005.

One of the difficulties in evaluating the effectiveness of the current arrangements is the absence of an agreed purpose for Question Time. Not only is there no clear agreed purpose²⁵, there are underlying inconsistencies: Question Time is seen as being about the accountability of the executive to the Parliament — but the standing orders allow questions to other Members — for example to the Leader of the Opposition and to Shadow Ministers²⁶; it is said to be about obtaining information, yet an often quoted statement refers to the purpose of pressing for action²⁷. Perhaps such features help give

²³ October 1993 report, pp 27-8.

²⁴ From 1994 until 1996 Ministers were rostered to attend Question Time; under Speaker Halverson immediate supplementary questions were permitted and standing order 100(b) (anticipation) was suspended by sessional order in February 2006.

²⁵ And see 1995 Discussion Paper, pp 5-6.

²⁶ Solomon, *op cit*.

²⁷ *House of Representatives Practice* *op cit*, p 527; quoting from *May’s Parliamentary Practice* 23rd edition, p 345.

the period its character, but they also compound the challenge facing the reformer who may seek to reconcile, for example, the inherent tensions, between any notion of a sober quest for information, and the reality of Opposition Leaders pressing Prime Ministers for action, perhaps months or even weeks before general elections.

Recommendations for change have been made in several areas:

Content of questions

Much criticism has been levelled at the content of questions, for example:

Seeking information has ceased to be a real function of questions without notice. Almost all questions are asked for overtly political reasons....²⁸

Question time is often disfigured by argumentative and abusive questions²⁹.

Dr Coghill writes:

Non-Government Members generally ask questionswith the aim of maximum media impact, often with little more than a pretence of seeking information or pressing for action³⁰.

Typical formulations include wording such as:

Has the Minister's attention been drawn to the plight of.....as a result of the government's determination to proceed with its.....what does the Minister say to.....”

or

Minister, given the disastrous impact of the Government's.....will the Minister now/admit/concede/apologise to.....

Opposition Members may feel that such formulations are a necessary means of countering what they regard as long and/or irrelevant answers (a point on which the Committee has expressed some sympathy³¹) or answers in which Ministers refer of Opposition plans or policies; Government Members may feel that such loaded questions justify responses which may themselves be highly political or rhetorical.

The Procedure Committee has twice proposed changes to the standing orders. It has recommended that:

²⁸ David Solmon *The People's Palace* (1986) 31, quoted in Discussion Paper, p 5.

²⁹ *About Time* report, p 25.

³⁰ Ken Coghill, op cit.

³¹ *About Time* report, p 24.

- the standing orders be amended to require that questions be brief and confined to a single issue (1986 report); and
- the detailed standing order (then 144) governing questions be replaced with the following ‘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’. (1992).

The 1992 report also recognised the issue of interpretation and practice and recommended that the Speaker should make a statement at the beginning of each Parliament, and on other occasions as he or she judged necessary, outlining how he or she intended to apply the standing orders affecting both questions and answers³².

No action has been taken to implement these recommendations. Apart from any other factors, it may have been considered likely that, even with much more concise or simplified wording, Speakers would find interpretation of a brief and higher-level rule both difficult to make and subject to disputation.

An alternative to changing the terms of standing orders 98 and 100 would be to introduce time limits for questions. In itself such a change would not solve the problems of the content of questions, but it would contain their length and therefore limit the risk of such things as the giving of information and argument in questions. A limit of 60 seconds applies in the Senate. Departmental records show that many questions are asked within 12-20 seconds, and some of the shorter questions from Opposition Members appear to have advantages over longer ones.

Ninety seconds is the limit for a Member’s statement and two thirds of this time may be seen as allowing questions to be turned into short submissions — especially if Members were to feel there was great freedom within a time limit. Accordingly, should a time limit be considered for questions, thirty seconds would appear more conducive to a faster moving period of questions and answers.

One cause of Opposition frustration in recent times has been the phrasing of questions that invites Ministers to respond on “alternative policies”, “alternative views” etc. Questions of this kind grew between 1993 and 1995, and have become more frequent in recent years. There is no doubt that questions seeking a response on Opposition policies etc are not in order, as these are not within a Minister’s responsibility. However much the Members may feel that a question which refers to ‘alternative views’ is seeking a response relating to an Opposition’s position, there is no ground for the Chair to rule a question of this kind as being out of order. A prime function of Question Time is accountability of the Executive to the Parliament, and it could be argued that this would allow reference to an Opposition’s role as an alternative government. It would be preferable, however, if the practice were not overdone.

³² 1992 report, p 21.

Content of answers

Concerns about the content of answers are not recent phenomena:

[Answers were] endless dissertations that produced very little³³.

Ministers avoid accountability ... evade questions, attack the Opposition and try to limit opportunities for effective questions ...³⁴

[Dorothy Dix questions] provide an excuse for a well-rehearsed ministerial statement about government success and opposition failure³⁵.

As has been stated often, and in contrast to the considerable detail set out for questions, only one standing order applies explicitly to answers to questions without notice:

An answer must be relevant to the question³⁶.

A considerable body of practice has grown around this simple injunction³⁷. In summary, the rule has been interpreted and applied by successive Speakers as allowing Ministers considerable latitude. One former Speaker has stated:

... standing order 145 is one of the shortest standing orders, it is not necessarily the clearest by way of interpretation. The question of relevance is generally a matter of opinion or judgment. I find myself in exactly the same position as previous Speakers who have had difficulty in pleasing all sections of the House When general questions are asked it is very difficult to define them down to specific relevant parts³⁸.

The Committee has made the following recommendations:

- that standing orders be amended to provide that answers must be relevant, not introduce matter extraneous to the question and should not contain -
 - arguments, imputations, epithets, ironical expressions, or
 - discreditable references to the House or any Member thereof or any offensive or unparliamentary expressions (1986)³⁹ and
- that the standing order be rewritten as follows:

³³ Opposition Leader Hayden - HR Deb (25.2.82) 594, (quoted in 1986 report).

³⁴ Ken Coghill, *op cit*.

³⁵ John Uhr *Democratic Audit*, p11.

³⁶ S.O. 104, formerly S.O. 145.

³⁷ *House of Representatives Practice*, *op cit*, pp 552-3.

³⁸ Quoted in 1992 report, p11.

³⁹ 1986 report, p45.

The answer to a question without notice -

- (a) shall be concise and confined to the subject matter of the question, and
- (b) shall not debate the subject to which the question refers (1992)⁴⁰.

The recommendations of the 1992 report that Speakers make statements setting out their intentions on the application of the standing orders concerning questions applied equally to answers (see above). Again, no action was taken to implement either the 1986 or the 1992 recommendations.

The implementation of such recommendations would address concerns about the discrepancy between the rules governing questions and that governing answers and provide a framework to allow more tightly controlled answers. The committee has observed nevertheless that, however much the requirements of the standing order were to be tightened up, relevance would continue to be a matter of opinion, Speakers would still find this an area of difficulty and be likely to face points of order challenging the validity of answers⁴¹.

The imposition of time limits on answers has been considered⁴². As in the case of time limits on questions, time limits on answers would not of themselves change any of the features that are objected to. Nevertheless time limits would reduce the risk of more prolonged answers, answers which are more likely to give rise to challenges on the ground of relevance. The Committee has however never recommended the introduction of time limits, recognising the need for flexibility and the difficulty for the Speaker in giving the chair authority to allow some answers to extend beyond the set time⁴³.

It sometimes appears that Question Time is more successful and more satisfactory for members on each side when it moves at a faster pace. The inclusion of time limits would be one way to achieve this. It would also avoid the risk of disputation about answers if a more detailed standing order on content were to be adopted, and the difficulties that could cause the Speaker.

The loss of flexibility with the introduction of time limits is a real issue. Sometimes longer answers are needed — and even welcomed. The suggestion that a ministerial statement should be made on these occasions, while having some theoretical merit, would introduce practical problems and also, on those occasions, remove from Question Time one of its strengths: the fact that significant and perhaps immediately occurring matters can be raised at the

⁴⁰ 1992 report, p15.

⁴¹ 1993 report, p.22.

⁴² See, for example 1992 report; 1995 discussion paper.

⁴³ 1986 report, p41; 1993 report, p23.

first opportunity. If time limits were introduced provisions could be made for extensions. If this were a matter for decision by the Speaker difficult judgments would be required; but if it were a matter of leave of the House governments might feel they had lost a long held discretion.

Another whole issue is the length of time that could be reasonable. In the Senate four minutes is the limit, but in the past the Committee has received suggestions of three, five and seven minutes⁴⁴.

Supplementary questions

The Speaker may allow supplementary questions 'to clarify an answer to a question asked during Question time'⁴⁵. It is believed that the original purpose of this provision was to ensure that there could be more than one question on a topic during Question Time⁴⁶. The committee has recommended that immediate supplementary questions be allowed, seeing this as a means of ensuring relevance and enhancing the effectiveness of Question Time in 'calling Ministers to account for their administrative responsibilities'⁴⁷.

While the Government did not support the recommendation, in 1996 Speaker Halverson announced that he would permit one immediate supplementary, provided that it arose from a Minister's answer, had no preamble, was in precise and direct terms and was asked by the Member who had asked the original question⁴⁸. In practice it did appear that the terms of a supplementary question were often included when the terms of the original question were prepared - in other words perhaps they were seen as just another part of the exchange rather than truly seeking more information⁴⁹. The practice was not continued by later Speakers⁵⁰.

Supplementary questions are allowed in the Senate, with a time limit of one minute on both the supplementary question and the answer to it⁵¹. The right to ask a supplementary question, at least in theory, is not limited to the Senator who has asked the original question: it is a matter for the Chair⁵².

Questions to Members other than Ministers - consistent with basic objectives?

Standing order 99 allows questions to be put to private Members relating to a bill, motion or other business of the House or of a committee for which the

⁴⁴ 1986 report, p.41.

⁴⁵ S.O. 101.

⁴⁶ *House of Representatives Practice*, op cit, p.531.

⁴⁷ 1993 report, p.25.

⁴⁸ *House of Representatives Practice*, op cit, p.531-2.

⁴⁹ President McClelland commented on this issue and referred to 'double barrelled questions ... the supplementary being held back for asking virtually irrespective of the answer to the original' *Odgers' Australian Senate Practice* (11th ed) p.489

⁵⁰ *House of Representatives Practice* op cit, p 532.

⁵¹ Senate standing order 72(3).

⁵² *Odgers*, op cit p. 488-9.

Member is responsible. Little use had been made of this provision until 1995; it was used twice that year (before the standing order allowing such questions was suspended) and has had only occasional use since then⁵³.

The possibility of questions being asked of Members who are not Ministers is a long-standing feature of the standing orders, and is to be found in other jurisdictions⁵⁴. Because of the considerable differences between parliaments, caution is called for in any observations made about the relevance of practices from other jurisdictions. That said, it appears that substantial use is not made of such provisions elsewhere. In the British House of Commons it also appears that only a select group of private Members may be questioned, for example representatives of certain commissions⁵⁵.

Should the approach to and arrangements concerning Question Time be changed so as to focus on the issue of the accountability of the executive to the House, considerations should be given to the appropriateness of retaining standing order 99. It has nothing to do with executive accountability⁵⁶. Removing it would be consistent with a commitment to a basic objective of executive accountability, but would mean dropping a long-held right. In a practical sense the standing order allows the Opposition to have pre-arranged questions, and has not been used frequently. Since the original provision was inserted opportunities for private Members have certainly been expanded, and opportunities for comment and debate on matters are now quite extensive, but not during a period that is broadcast “live” or later on a delayed basis. The possibility of a period of time being set aside, for example each week, for questions to private members has also been addressed by the committee, but it saw practical difficulties with this: for example of debates being pre-empted and the possibility of low levels of attendance⁵⁷.

Questions to the Speaker

Standing order 103 allows questions to the Speaker, at the conclusion of Question Time, ‘about any matter of administration for which he or she is responsible’. This is an important right of Members, and allows them to seek information about parliamentary support services, facilities and so on. In practice there has been a tendency to also use this standing order to raise and argue procedural points, usually matters arising from Question Time and often the matters raised will already have been subject to points of order and decision. Questions to the Speaker on such matters go beyond the terms of

⁵³ And see Sept 1996 report.

⁵⁴ For example Canada, New Zealand, India, the UK.

⁵⁵ May, *op cit*, p 345.

⁵⁶ This possibility was referred to briefly in the committee’s 1996 report, at p.7.

⁵⁷ 1996 Report, p6.

the standing order. In addition, the tone and manner in which the Speaker is sometimes addressed in these matters is disrespectful, increasing any negative impressions that may have grown about general standards of conduct.

Question Time is the most high-profile of the House's proceedings. While it has its strengths, criticism is often made in terms of the content of questions and answers, and of behaviour generally. One would think that the general standing of the House and of Members would be enhanced even by an improved level of courtesy and civility during Question Time.

The way the period has evolved as something of a contest between leading Members does not always sit easily within the traditional framework set by the standing orders, yet changing the terms of the standing orders may not lead to the problems complained of being solved, for Question Time is at the heart of national political life and as such is influenced by factors beyond the standing orders.

Members of the Committee will be well placed to assess the potential for success of the various possibilities for change. The Department will be pleased to provide any additional information the committee may wish to receive.

29 November 2006