

## **ALP Submission to House of Representatives Standing Committee on Procedure**

### **Introduction**

The ALP welcomes the fact that the House of Representatives Standing Committee on Procedure is inquiring into the effectiveness of the current standing orders relating to Question Time.

While all of the work of the House of Representatives is important, Question Time has a special significance. Question Time should be the primary opportunity to publicly hold Executive Government to account.

For better or worse, Question Time is the public face of Parliament to the Australian community. It is the part of proceedings most likely to be reported in mainstream news media. Indeed, for most Australians the only image they have of Parliament would be the image of Question Time.

The effectiveness of the current standing orders relating to Question Time should therefore be judged against two simple tests:

- Are the Standing Orders effective to ensure Executive Government is held to account; and
- Are the Standing Orders effective to enhance standards of Parliamentary behaviour and consequently the reputation of Parliament.

In any objective analysis, the current standing orders fail these two tests.

### **Key problems**

#### *Relevance*

It is now customary for completely irrelevant answers to be ruled relevant. On current relevance rulings, if a Minister for Transport were asked whether or not he or she had taken a million dollar bribe from a shipping company, the answer would be ruled relevant if it were about shipping. Given the current way in which Standing Order 104 is applied, Question Time cannot play its vital role of holding Executive Government to account.

In June 2006 I wrote to the Speaker regarding this matter. In this letter I cited an example from Question Time on 1 June 2006, in which the Prime Minister responded with a one word answer to a question from the Shadow Minister for Industrial Relations regarding remarks made by Professor Ian Harper, chair of the government's fair pay commission, on Lateline, that the government's legislation 'pushed' the fair pay commission to reduce the minimum wage in real terms. However, the Prime Minister was then permitted, despite numerous attempts to highlight Standing Order 104, to extensively debate an

interview given by the Opposition Leader 13 years ago on the 7.30 Report on a matter unrelated to the context of the question. This exchange resulted in two members of the Opposition's front benches being removed from the House of Representatives. While repeated points of order from the Opposition are being increasingly disregarded and, at times, misconstrued as a tactical device, there is clear evidence that Standing Order 104 is ineffective.

*“Are there any alternate views”*

It is now common place for questions from Government backbenchers to end with words such as *‘and are there any alternate views’*. This formulation of the question is a device to allow Government Ministers a largely unrestrained attack on the Opposition or Members of it. Clearly, such attacks are nothing to do with holding the Government to account. There is no doubt that the number of times this device is used has increased dramatically. The total number of times it was used in the 2005 Parliamentary year more than doubled compared to its use each year from 2000-2003.

*Impact on parliamentary conduct*

It is inevitable that when Question Time degenerates in to Opposition Questions, which go unanswered and Government Questions, which are all about attacking the Opposition that the atmosphere in Question Time will be rowdy as a result of the sheer frustration.

It is also inevitable that tensions will mount when Opposition Members are disproportionately warned or excluded from the Chamber. For example, on the 18 October, the Member for Grayndler, in a Question to the Speaker, brought to the attention of the House the disparity in the number of warnings and ejection issued during that day's question time proceedings<sup>1</sup>.

*Consequences for the Parliament and Australian People*

The current way in which Question Time functions circumvents Parliament's only means by which corruption, mismanagement or errors by Executive Government can be exposed. All this undermines the objective of Question Time and betrays the Australian people's right to an open and transparent Parliament. It also threatens to bring the Parliament into disrepute.

This Labor submission suggests some uncontroversial means by which the conduct and quality of Question Time could be improved. Indeed, some of the changes suggested are already operative in the Senate and State Parliaments.

It should be noted this submission is made by the Manager of Opposition Business on behalf of the Labor Party. Individual Labor Party Members may also choose to make submissions.

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<sup>1</sup> House of Representatives Hansard, 18 October 2006. Six Opposition members were ejected and 11 warned compared to only one warning issued to a member from the government side.

It should also be noted given the Australian Parliament belongs to the Australian people, in Labor's submission the Australian people should be able to have a say in this inquiry through appropriate consultation mechanisms.

### **Required changes**

Labor recommends the following changes to the Committee for its consideration:

1. The application of time limits;
2. Supplementary questions;
3. Enhancing the authority of the Speaker;
4. Limiting standing orders which apply to questions and "party political" matters; and
5. The changing role of the Clerk.

Each of these recommendations discussed below in turn.

#### *1. The application of time limits*

The application of time limits on questions and answers has had some success in improving discipline in the Senate.

Time limits on questions and answers may also act as a deterrent for Ministers to use Question Time as a forum for statements or announcements on policy or current events (particularly in the area of foreign policy) and reinstate the use of the Ministerial Statement for this purpose.

The imposition of a time limit is also not inconsistent with House of Representatives Practice on the content and form of questions, insofar that it requires questions to be free of debate, "lengthy speeches or statements" and "should not be used as vehicles for the discussion of issues"<sup>2</sup>. Coupled with other measures to improve quality of questions and their answers, time limits can have the effect of increasing the rigour and efficiency of time allocated to questions without notice.

It should be noted that the longest responder to questions from his own party is the Member for Menzies, Kevin Andrews, with an average answer of 3 minutes 53 seconds (compared to the Prime Minister's 3 minutes 49 seconds) making a 4 minute limit on answers not unreasonable or particularly restrictive.

### **Recommendation:**

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<sup>2</sup> p. 540, Department of the House of Representatives, House of Representatives Practice, Fifth Edition, Canberra 2005

*The Standing Orders be amended to limit questions asked in question time to one minute and limit answers to question during question time to four minutes.*

## *2. Supplementary questions*

Like time limits, supplementary questions are also in place in the Senate and most State upper houses.

Supplementary questions as employed in the Senate have the effect of creating a two stage question, rather than encouraging a greater focus on an evasive answer.

As a result, Labor is recommending a different form of supplementary questions in the House of Representatives.

Labor is recommending a fixed number of supplementary questions, for example six each Question Time, which could be employed at any point during question time by either side of Parliament. These supplementary questions could be employed in succession following one question or could be spread across as many questions as there are supplementaries.

The main benefit of such an innovation would be that greater “interrogation” of Ministers could occur with the effect of improving the accountability mechanism of the House of Representatives. Less of the limited number of questions available to the Opposition would be wasted repeating or rephrasing the same or similar question in an attempt to get an answer.

The Opposition is suggesting that after the asking and answering of a question, any Member could rise and call ‘Supplementary Question’. This Member would have precedence for the call over other Members rising unless the other Member had called for a point of order. The Member could then ask a question arising from the answer.

If six supplementary questions were available each Question Time, the Speaker would recognise three supplementary Questions from each side.

This is not dissimilar to question time in the New Zealand Parliament, however the Opposition is not advocating that original questions be placed on notice. The NSW lower House also employs supplementary questions, however these take the place of other questions asked.

The Opposition also notes that the House of Representatives Standing Orders already allow supplementary questions and have so since their introduction into the Standing Orders in 1950. However, the Opposition also notes that Speakers have been reluctant to rule against practice which has given preference to the tradition of alternating the call between the left and right of the Chair.

## **Recommendation:**

*That Standing Orders be amended to allow a fixed number of supplementary questions be available to both sides of the chamber to be used in addition to any question asked during question time.*

### *3. Standing orders and the authority of the Speaker*

One of the most contentious elements of the ongoing debate on question time surrounds Standing Order 104, the only standing order applying to answers to questions, that “an answer must be relevant to the question”.

As noted above, followers of Parliamentary debate can be astounded at the extent to which answers to questions are not provided and even more so by the reluctance to ensure that answers are “relevant” to the question asked.

Irrespective of recent commentary by the Leader of the Government in the House and the Clerk of the House himself<sup>3</sup> regarding the use of standing orders as “tactical weapons”, no one can deny that current procedure does not require answers in Question Time to be directly relevant to the question, nor that they be answered at all.

It then becomes necessary to debate whether indeed it is in the best interests of the Parliament that ministers are required to answer questions. The House of Representatives Practice clearly states that Question Time is critical to the House’s scrutiny and review of the Executive Government:

*One of the more important functions of the House is its critical review function. This includes scrutiny of the Executive Government, bringing to light issues and perceived deficiencies or problems, ventilating grievances, exposing, and thereby preventing the Government from exercising, arbitrary power, and pressing the Government to take remedial or other action. Questions are a vital element in this function.*

*The accountability of the Government is demonstrated most clearly and publicly at Question Time when, for a period (currently usually over an hour) on most sitting days, questions without notice are put to Ministers<sup>4</sup>.*

Furthermore, the Practice highlights that for scrutiny to effectively occur, question time must involve garnering information from Ministers, who must be equipped to answer accurately:

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<sup>3</sup> Harris, I., *Question time, impartial Speakers and dissent from rulings, some comments on the House of Representatives experience*, Parliament Matters, No.15 February 2006.

<sup>4</sup> p. 527, Department of the House of Representatives, *House of Representatives Practice*, Fifth Edition, Canberra 2005

*The purpose of questions is ostensibly to seek information or press for action...  
...the opportunity given to Members to raise topical or urgent issues is invaluable.  
Ministers accept the fact that they must be informed through a check of press,  
television or other sources of possible questions that may be asked of them in  
order that they may provide satisfactory answers.*<sup>5</sup>

There are continuous debates and suggestions about how standing orders which apply to questions and answers may be reformed so that answers supplied in question time are indeed “relevant” pertinent, to the question asked.

One option could amend Standing Order 104 to state that “An answer must be *directly* relevant to the question asked” to stress pertinence in the definition of relevance, so that an answer must be “to the point” and related to the matter in hand.

Changes in standing orders alone, however, will not be enough to improve scrutiny of Executive Government. Any change must be coupled with a rethink of the Speaker’s powers and how these are expressed as part of the Standing Orders. Currently, the Speaker’s powers arise from a combination of constitutional, procedural and traditional sources. Tradition and procedure are most relevant to the Speaker’s powers to rule on matters relating to the House business or the operation of the House and as the Practice describes:

*The Speaker must preserve order in the Chamber to enable business to be conducted properly. In order to do this the Speaker must rule fairly on points of order and be very familiar with the standing orders and the practices of the House. The Speaker’s statements and rulings must be sufficiently clear and authoritative for Members to accept them.*<sup>6</sup>

Ruling fairly on points of order requires that standing orders are clearly articulated and that in these standing orders, the power of the Speaker is also clearly articulated. To this end, any amendments to standing orders as they apply to questions and answers should also reflect the Speaker’s power to rule on these matters.

Standing orders could be amended to reflect this power, for example, Standing Order 104 could be drafted to direct the Speaker to act on relevance by stating: “*The Speaker must ensure that answers are directly relevant to the question asked.*” Such an amendment codifies the obligation of the Speaker and addresses the commonly made assertions that the Speaker is either partial or impotent.

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<sup>5</sup> p. 527, Department of the House of Representatives, House of Representatives Practice, Fifth Edition, Canberra 2005

<sup>6</sup> p. 187, Department of the House of Representatives, House of Representatives Practice, Fifth Edition, Canberra 2005

## **Recommendation:**

*That Standing Order 104 be amended to read:*

*‘The Speaker must ensure that answers are directly relevant to the question asked’.*

### *4. Limiting standing orders which apply to questions and “party political” matters*

With a view to simplifying House practice and expanding the scope of Parliamentary scrutiny, the Opposition also supports the abolition of all Standings Orders as they apply to the form in which questions must be asked namely Standing Order 100 *Rules for questions*.

It is clear from both current practice and the Practice that if these standing orders were to be strictly enforced, they would undermine Question Time<sup>7</sup>. With a view to ensuring the Standing Orders keep pace with practice, the Opposition sees no reason why Standing Orders 100(a) that *questions must not be debated* and (d) that *Questions must not contain: statements of facts or names of persons, unless they can be authenticated and are strictly necessary to make the question intelligible; arguments; inferences; imputations; insults; ironical expressions; or hypothetical matter* should be maintained in the Standing Orders.

For the same reasons, Standing Order 98 (d) which excludes asking for an expression of opinion, or the seeks the announcement of government policy, should also be excluded to reflect current practice and Speakers’ rulings.

The Opposition also seeks to codify in the Standing Orders the ability for questions asked to include matters which relate to a Minister’s party activities. In recent times many questions relating to party matter have been ruled in order by the Speaker, however, on other occasions (for example, on 1 June 2006, at the time when the proposed merger of the Queensland National and Liberal Parties was being considered) these questions have been ruled out of order. So as to recognise the critical broad nature of “public affairs” to which a Minister is involved, the Opposition supports the inclusion of these matters in the Standing Orders and believes this will avoid the variation from Standing Orders which prevails.

Finally, questions asked should expressly exclude the phrase “*Are there any alternative views/policies*”. The latitude given to government benches on the use of this phrase is contributing to the already tarnished reputation of Question Time. The increasing use of this phrase has had the effect of eroding the objectives of Question Time and specifically, Standing Order 98(c), which requires that Ministers can only be questioned on matters related to their areas of responsibility. Codifying this exclusion in the Standing Orders will prevent Question Time being used by government to express opinion and views on matters unrelated to Ministerial and official responsibilities.

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<sup>7</sup> p. 532, Department of the House of Representatives, House of Representatives Practice, Fifth Edition, Canberra 2005

**Recommendation:**

*That Standing Orders 98 (d), 100(a) and (d) be removed to reflect current practice and enhance the objective of Question Time.*

*That the Standing Orders reflect that the “public affairs” to which a Minister may be questioned during Question Time include “party matters”.*

*That Standing Orders be amended to expressly exclude the use of the phrase “are there any alternative policies or views” (or variations of this phrase) which circumvent the objectives of Standing Order 98(c) so as to ensure that Question Time remains focused on the Executive accountability.*

5. *Discussion of the changing role of the Clerk.*

In the past, the Clerk’s interaction with the Speaker was a semi-passive one. The Clerk had the ability to rise to provide information, or the Speaker could initiate contact or advice through the use of the buzzer.

However, in recent years the role of the Clerk has changed and this reflects, to some extent, the availability of e-mail and other real time technologies which allow instantaneous communication between the Clerk and Speaker of the House.

The Opposition notes that this change has occurred incrementally, rather than through any formal resolution of the House of Representatives. The Opposition also notes that according to the Practice, the Speaker’s duty, first and foremost, is to the “*House and its members in upholding its dignity and protecting its rights and privileges*”.

The Opposition makes no substantive recommendation regarding this incremental change, but does request that the Committee consider this change and its impact on the conduct of the Speaker and the manner in which rulings and statements are decided upon and delivered to the House, with a view to deciding on the need for a formal resolution.

**Recommendation:** *That the Committee discuss the changing nature of the Clerk’s interaction with the Speaker and the House and whether a formal resolution is required to recognise this change.*



**Occasions since 1996 on which the Speaker has not ruled a question to a Leader about party organisational matters out of order (to 1 June 2005):**

Date	Questioner	Responder	Subject (Hansard)	Summary
31 May 2006	Beazley	Howard	Queensland Liberal and National Parties	Plan to merge National Party (Qld) with Liberal Party (Qld)
29 May 2006	Beazley	Vaile	Queensland: The Nationals	Plan to merge National Party (Qld) with Liberal Party (Qld)
6 December 2005	Beazley	Howard	Liberal Party of Australia	Replacement of Ron Walker as Federal Treasurer of the Liberal Party
18 November 2004	Albanese	Anderson	The Nationals	National Party preference deal
11 August 2004	Latham	Howard	Political Parties: Donations	James Hardie donations to the Liberal Party
11 August 2004	Latham	Howard	Political Parties: Donations	James Hardie donations to the Liberal Party
19 February 2004	Zahra	Howard	Liberal Party of Australia: Fundraising	Liberal Party the beneficiary of raffle proceeds
28 August 2001	Beazley	Howard	Queensland Liberal Party: GST Tax	Liberal Party (Qld) GST scam
8 August 2001	McMullan	Howard	Liberal Party of Australia: Four Corners Program	Role of Liberal Party "volunteer" John Seyffer
28 February 2001	McLeay	Anderson	National Party: One Nation Preferences	National Party HTV cards
7 December 2000	Beazley	Anderson	National Party of Australia: Electoral Practices	National Party HTV cards
6 December 2000	Beazley	Howard	Liberal Party of Australia: Electoral Practices	Liberal Party (WA) HTV card
5 December 2000	McMullan	Howard	Liberal Party of Australia: Electoral Practices	Lindsay by-election – HTV-financing
5 December 2000	Kerr	Howard	Liberal Party of Australia: Electoral Practices	Liberal Party activities in Cook
5 December 2000	Beazley	Howard	Liberal Party of Australia: Electoral Practices	Liberal Party (WA) pre-selection
5 December 2000	McClelland	Howard	Liberal Party of Australia: Electoral	Liberal Party pre-selection in Wentworth

			Practices	
4 December 2000	Beazley	Howard	Liberal Party of Australia: Electoral Practices	Rorting of Liberal Party branches
31 October 2000	Beazley	Howard	Liberal Party of Australia: One Nation Preferences at State Election	Liberal Party (WA) HTV card
5 December 1999	McMullan	Howard	Greenfields Foundation	Liberal Party fundraising
26 November 1998	McMullan	Howard	Liberal Party: Focus Group Research	Mark Textor's polling for the Liberal Party
1 July 1998	Beazley	Fischer	One Nation Party: National Party Preferences	National Party preferences
30 June 1998	Beazley	Fischer	One Nation Party	National Party preferences
29 June 1998	Beazley	Fischer	One Nation	National Party preferences
22 June 1998	Beazley	Fischer	One Nation	National Party preferences
27 May 1998	Brereton	Fischer	One Nation	National Party preferences

Please do not hesitate to contact me on any or all of the issues raised in this submission.

Yours sincerely

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