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MONASH University

Monash Governance Research Unit



Wednesday, 7 February 2007

Committee Secretary
Standing Committee on Procedure
House of Representatives
Parliament House
Canberra

Dear Sir/Madam,

Inquiry into Question Time in the House of Representatives.

My apologies for the delay in responding to the Committee's invitation.

Attached please find my submission. I would be pleased to elaborate on the submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ken Coghill', written in a cursive style.

Ken Coghill
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Submission by:

Associate Professor the Hon Dr Ken Coghill PhD

- Department of Management, Monash University
- Member, Australasian Study of Parliament Working Party on Accountability
- Speaker 1988-92, Parliament of Victoria

To:

Inquiry into Question Time Procedures

Terms of Reference

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

Summary

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

That:

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

Introduction

The terms of reference relate to the effectiveness of standing orders affecting questions without notice. As such, the inquiry must have regard to the factors that affect that effectiveness. Those factors clearly extend beyond the "black letter" provisions of standing orders governing form and content.

Among the factors that undoubtedly affect the operation of the provisions is the manner in which those are interpreted by the Presiding Officer, including previous Rulings by which he is guided, and by Ministers' responsiveness to questions.

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

There is no direct provision in our Standing Orders for the asking of questions without notice, but as there is no prohibition of the practice if a question is asked without notice and the Minister to whom it is address chooses to answer it I do not think I should object.¹

Those words leaving a discretion as to whether to answer with the Minister is the escape clause that has since permitted Ministers to evade direct responses and frustrate questioner, the House and ultimately democratic accountability.

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

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

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

The questions themselves should also be tightened. Argument or opinion should be banned. Facts or names of persons should be included only if essential to explain the question.

However, there are other influences on Ministers' conduct that should also be addressed, notwithstanding that their influence may be ameliorated by the above reform. Ministers are, in turn, guided by the Prime Minister's Guide to Key Elements of Ministerial Responsibility² (1998). The Guide provides:

Questions without Notice

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

- by letter to the member/senator concerned (a response conveyed in this way will not appear in Hansard); or

¹ Speaker (1901) Hansard 3 July Vol.2 p.1954

² Prime Minister (1998). *A Guide On Key Elements Of Ministerial Responsibility*. Department of Prime Minister and Cabinet.

Submission by Associate Professor the Hon Dr Ken Coghill PhD

- by having it delivered to the Clerk in accordance with the normal question on notice process (a response conveyed in this way will appear in Hansard); or
- by leave at the end of question time or at another early opportunity (the response will automatically be recorded in Hansard; in the Senate it is also possible to seek leave to have the answer incorporated).

Corrections

Any answer found to be incorrect should be corrected as soon as the error is found, using the procedures of the chamber concerned.

Those provisions of the Guide fail to recognise the central role of questions without notice ("Question Time") as a key accountability mechanism. The effect it to give ministers a wide discretion to evade answering for their responsibilities and seemingly unlimited opportunities to comment on matters irrelevant to their responsibilities, including to attack the Opposition, other non-government parties and their policies. To be effective, ministers must be under an obligation to fully answer questions.

This was recognised in a Ruling which I issued as Speaker shortly before the 1992 Victorian General Elections. The ruling stated:

It is important that question time is conducted in a manner which both ensures that it fulfils its intended purpose and is consistent with the status and proper dignity of Parliament. The following are the guidelines based on Standing Orders, Speakers' rulings and May³ which apply to the conduct of question time:

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

³ *Erskine May's "Treatise on the Law, Privileges, Proceedings and Usage of Parliament"*

disallow it and suggest that the Minister to whom it is directed consider making a Ministerial statement on the matter following question time.

It should be noted that such action is not constrained by the practice of issuing copies of Ministerial statements, which is a courtesy only, or by the relatively recent practice of Ministerial statements being followed by debate on the question that the Ministerial statement be noted ;

- questions which breach the guidelines are out of order and there is no right to immediately rephrase or re-ask questions which have been disallowed;
- answers must comply with the same rules and practices as apply to the asking of questions;
- answers must be directly responsive, relevant, succinct, limited to the subject matter of the question, may provide statements of policy or the intentions of the government, including information on examinations of policy options and other actions which the Minister has had undertaken but must not debate the matter. (Answers to questions should be limited to 2 minutes usually and an absolute maximum of 5 minutes actual speaking time);
- an answer may be refused on the grounds of public policy, for example,
 - that answering may jeopardise criminal investigations or for some other particular reason may be against the public interest
 - that the information is not available to the Minister, in which case it may be requested that it be placed on notice
 - that the Minister intends to make a Ministerial statement on the subject matter in the near future.

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

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

A member or Minister who has been consistently warned as a result of disorderly conduct in question time may be named without further warning as a result of further disorderly conduct during any part of proceedings on that day or a future day during the current sittings period.⁴

It is proposed that the Committee recommend that

- the Speaker make a ruling similar to the Ruling by Speaker Coghill but adding a provision enabling the government to publicly decline an answer on the grounds of the administration of justice or national security;
- After a trial period of the operation of the above Ruling, Standing Orders be amended to make similar provision, with any amendment found to be desirable;
- Prime Minister issue revised guidelines for ministers supportive of and complementary to the above Ruling, e.g.

Questions without Notice

Questions asked at question time are to be answered fully by ministers except where the Prime Minister or Government Leader in the Senate declares the answer would require the disclosure of the deliberations of Cabinet or matters endangering the

⁴ Coghill, K (1992) *Victorian Parliamentary Debates (Hansard)*, 11 August, p.13)

administration of justice or national security. In fully answering a question, a minister must be directly responsive, relevant, succinct and limited to the subject matter of the question.

From time to time, a minister may undertake to provide further information. This undertaking is regarded as taking the question (whether in part or in whole) "on notice". The minister may provide the further information or answer:

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

Corrections

Any answer found to be incorrect should be corrected as soon as the error is found, using the procedures of the chamber concerned.

The role of the Parliament in holding the Executive of the day to account must be restored and respected. These reforms would be major steps in that direction.

Recommendations:

That:

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