# THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

## HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON PROCEDURE

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THIRD REPORT

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# THE STANDING ORDERS AND PRACTICES WHICH GOVERN THE CONDUCT OF QUESTION TIME

NOVEMBER 1986

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## Terms of reference of the committee

To inquire into and report upon the practices and procedures of the House generally with a view to making recommendations for their improvement or change and for the development of new procedures.

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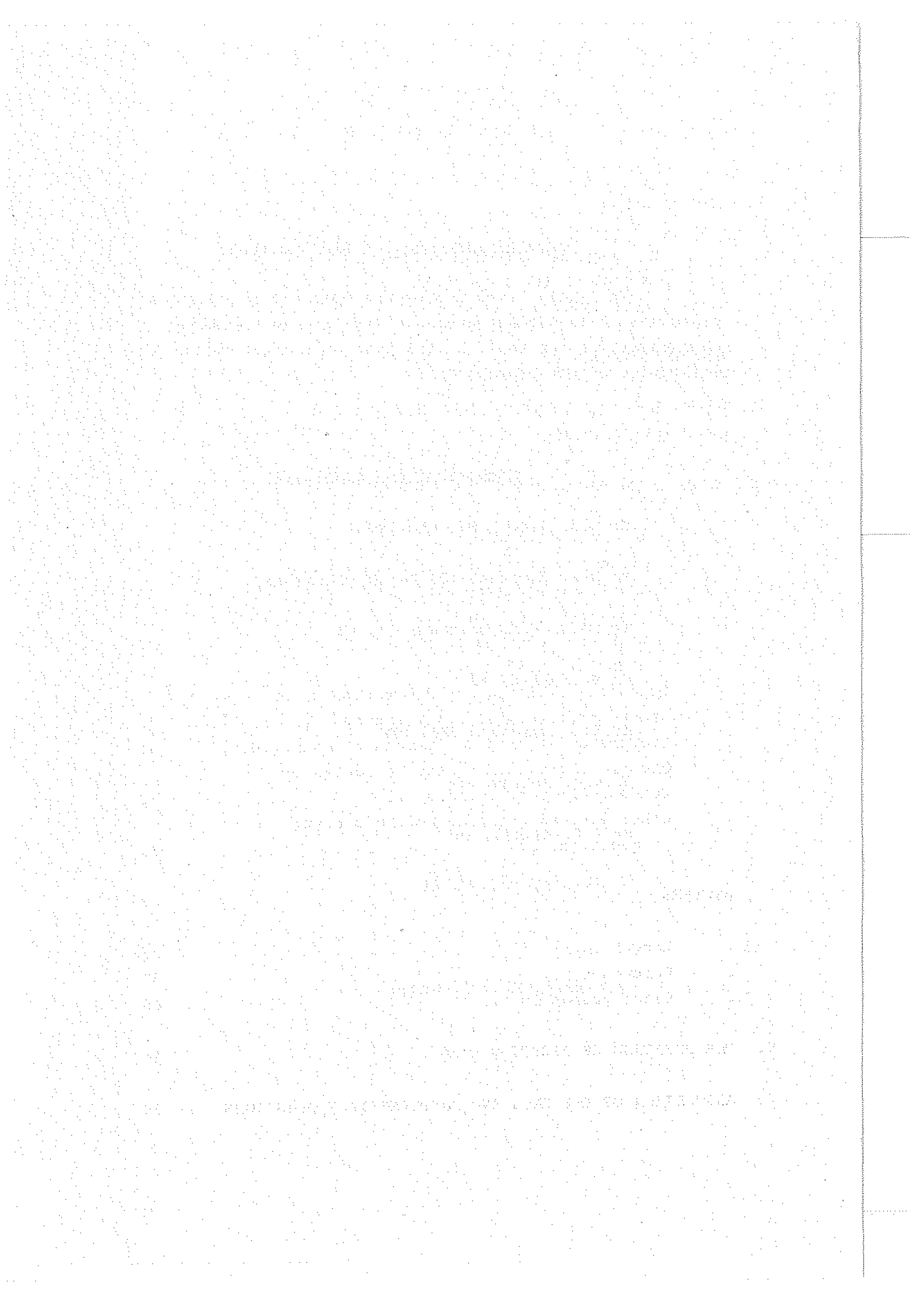

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# CHAPTER 1

## INTRODUCTION

1. Questions without notice are an important part of the parliamentary day in the House of Representatives. It is the occasion when the accountability of the Government is most clearly and publicly displayed and the importance in which it is held is demonstrated by the fact that at no other time in a normal sitting day is the House so well attended and subject to so much media and public expectation and interest.

2. The operation of Question Time has been the subject of some adverse comment in recent years. Criticism has been focused on the length and relevance of Ministers' answers and the decreasing opportunities for Members to ask questions, particularly with the recent increase in the number of Members from 125 to 148. Members' frustration has been seen to be directed at the Chair and the Government has accused the Opposition of attempting to disrupt matters and casting aspersions on the running of Parliament.

3. These matters were raised in the House on 20 and 22 October last, with the Opposition calling on the Speaker to intervene and curtail the length of Ministers' answers in line with precedents referred to her. Madam Speaker, in response, doubted the procedural authority for such action, referred to the inquiry being undertaken by this committtee and placed the matter in the hands of the House.[1]

4. The opportunities for Members to question Ministers have definitely diminished in recent years. In 1970 there was an average of 16.7 questions asked on days on which questions were asked and this had been reduced to 12 by 1985. Over the same period the average length of Question Time had increased from 43 to 47 minutes.

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1. H.R. Deb. (20.10.86) 2329-31 and (22.10.86) 2524-27.

5. Figures in this report indicate that it is the increasing length of answers rather than questions (the length of questions have fallen not increased) that is the primary cause for the reduction in the number of questions asked per day. This reduction in opportunities has been compounded by the increase in the number of Members of the House and, for Opposition Members, the reduction is further compounded by the increased involvement of leaders in the share of Opposition questions.

6. The increasing length of answers and the problem of defining relevancy in answers are not the only issues that have been raised in the House in recent months and been brought to the committee's attention. Other problems are the lack of opportunities for Members to ask immediate supplementary questions, the need to investigate the possibility of rostering Ministers, the increasing incidence of the use of unsubstantiated allegations and Members' behaviour generally.

7. The criticisms of the operation of Question Time are not a recent phenomenon. On 25 February 1982 the House agreed to a motion moved by the then Leader of the Opposition (Mr Hayden) referring the standing orders and practices governing the conduct of Question Time to the Standing Orders Committee.[2] In moving his motion Mr Hayden saw Question Time (and other procedures) as having become "debased to the stage of becoming pretty much meaningless to the administration of the affairs of this country". The Standing Orders Committee had not reported to the House by the dissolution of the 32nd Parliament and the matter was not referred to the committee subsequently, nor did the committee pursue it in its own right (details of Mr Hayden's motion are given at Appendix 2).

8. On 20 February 1986 this committee resolved to conduct an inquiry into the standing orders and practices relating to Question Time. This is the first comprehensive review by a parliamentary committee of Question Time in the House of

2. VP 1980-83/748; H.R. Deb. (25.2.82)595-98.

Representatives. In reaching this decision the committee was not only mindful of the fact that, when surveyed by the committee last year, almost 67% of Members of the House responding rated Question Time very highly as one segment of the House's procedures meriting investigation[3] but also the continuing concern being expressed by Members, the press and public at the effectiveness of the House's procedures for questions without notice.

The purpose of Question Time

9. During the course of its deliberations the committee agreed that any proposals it advances for the alteration of Question Time procedures must be based on an agreed view of what the purpose of Question Time should be.

10. House of Representatives Practice argues that "It is fundamental in the concept of responsible government that the Executive Government be accountable to the Parliament.... The accountability of the Government is demonstrated most clearly and publicly at Question Time". This critical function of questions includes "criticism of the Executive Government, bringing to light abuses, ventilating grievances, exposing, and thereby preventing, the Government from exercising arbitrary power, and pressing the Government to take remedial or other action.".[4]

11. However, House of Representatives Practice also notes that while the ostensible purpose "is to seek information and press for action", Question Time is often a time for political opportunism. David Solomon reaches a similar but more forthright conclusion: "Seeking information has ceased to be a real function of questions without notice. Almost all questions are asked for overtly political reasons and almost all answers seek to score points rather than provide information - unless the giving of information is itself a political exercise. Question Time

3. 'Alternative opportunities for Members to concisely address the House', First Report of the House of Representatives Standing Committee on Procedure, PP 207 (1985) 11.
4. J.A. Pettifer (ed.), House of Representatives Practice, AGPS, Canberra, 1981, p. 479.

provides an opportunity for the Government and the Opposition to confront one another and for several dozen backbenchers and Ministers to expose their political skills on what are generally the most important or sensitive political subjects of the day.".[5] William Byrt and Frank Crean state that "...officially, at Question Time the government submits itself to probing on its administrative performance and gives objective information about issues. In reality, it is the focus of the game of politics, the point scoring by both sides of the House.".[6]

12. This view is more fully explored by John Uhr in his study of Question Time. In this study Uhr traces the view of the Canadian J.B. Stewart that responsible government being reflected in Question Time is not tenable any longer and has been debunked by modern scholarly opinion.[7]

13. The argument runs that the process of accountability is played out elsewhere and that responsible government is opposed by an organised minority party whose object is not to improve the Government's administration but to replace it as the governing party. The Government and Opposition are thus seen as "institutionalised adversaries" and "Question Time can thus be promoted as a procedural reinforcement of the institutionalised adversary system".

14. The committee has considered these views and agreed that, whatever other purposes Members may have in regard to Question Time, its basic purpose must be to enable Members to seek information and press for action. Question Time should be the time when the accountability of Government to Parliament is demonstrated clearly and publicly and the committee's conclusions and recommendations should be based on this view.

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5. David Solomon, The People's Palace - Parliament in modern Australia, Melbourne University Press, 1986, p. 31.
6. William Byrt and Frank Crean, Government and Politics in Australia - Democracy in Transition, 2nd Edn, McGraw-Hill Book Company, Sydney, 1982, p. 137.
7. John Uhr, Questions without Answers: An Analysis of Question Time in the Australian House of Representatives, APSA/ Parliamentary Fellow Monograph No. 4, May 1982, pp. 14-15.

Conduct of the inquiry

15. As mentioned above, the committee resolved to conduct this inquiry on 20 February 1986. On 6 March the Chairman wrote to all Members and the Clerk informing them of the inquiry and inviting them to make submissions should they so wish. A press release was issued on 11 March.

16. The committee's deliberations on the inquiry were delayed pending the completion of the committee's inquiry into days and hours of sitting and the effective use of the time of the House. The report on that inquiry was tabled on 29 May.

17. On 6 May 1986 Madam Speaker wrote to the committee referring to discussion in the House relating to the use and withdrawal of offensive words and inquiring whether the committee would consider extending its inquiry to include a number of procedures and practices which have a bearing on Members' behaviour in the House, and hence the standing and dignity of the House in the eyes of the community. She suggested other procedures could be identified which were traditionally the source of quarrels between Members or where the Chair had difficulty maintaining a standard of behaviour befitting the House.

18. Madam Speaker appreciated any improvement in Members' attitudes or behaviour could not be achieved simply by amendment of the standing orders, however, she felt that any committee conclusions on those matters may have some salutory effect, or at least inspire Members to note the level of standards regarded as unacceptable by a group of their peers. She noted that in some cases there may be a need to strengthen the hand of the Chair in certain specific ways.

19. Many of the matters raised by Madam Speaker had been raised in other submissions to the Committee. At its meeting on 25 September the committee agreed to take the matters raised into account during its current inquiry.

20. Submissions were received from Members, the Manager of Opposition Business and Madam Speaker. In addition, a number of general submissions received earlier contained relevant comments and proposals (see Appendix 1). The Clerk of the House also submitted a detailed background paper on the inquiry.

21. On 9 April the committee held informal discussions on the procedures relating to questions for oral answers in the Dáil Éireann with the Ceann Courhairle (Chairman) Mr Tom Fitzpatrick and other members of the visiting delegation from the Parliament of Ireland. Also, on 21 August the committee held informal discussions on the conduct of Question Period and other procedural developments in the Canadian House of Commons and Senate with Senator the Hon. Guy Charbonneau, Speaker of the Canadian Senate and the Hon. John Bosley, Speaker of the Canadian House of Commons and other members of the visiting Canadian parliamentary delegation.

22. The committee also examined the rules governing Question Period in the Canadian House of Commons (the only comparable national legislature with a 45 minute period of questions without notice) and viewed with interest videotaped extracts from proceedings.

23. The Australian figures on the opportunities for Members to ask questions compare unfavourably with those of the Canadian House of Commons where, in a 45 minute Question Period of questions without notice, there is an average of 38 to 42 questions and answers dealt with (including supplementaries) as a result of a self-imposed discipline.

Major conclusions

24. The committee believes the standing orders and practices governing Question Time in the House of Representatives are essentially sound and should be observed. In this report it makes a number of recommendations concerning the rules governing

the content of questions, has proposed a strengthening of the relevancy provision regarding answers and the introduction of limited opportunities for immediate supplementary questions.

25. In regard to the major problem of the reduced opportunities for Members to ask questions, the committee has recommended that the duration of Question Time remain approximately 45 minutes but it be extended, if required, until 16 questions are asked (excluding disallowed questions and supplementaries) unless major interruptions to Question Time occur.

26. In regard to the problems associated with Members' behaviour and other matters raised by Madam Speaker, the committee has reached a number of conclusions and made certain recommendations. In particular it has expressed certain views on the conduct of Members and has recommended that the provision for motions of dissent from rulings of the Chair be removed from the standing orders, the practices relating to indulgence granted by the Chair and Members making personal explanations pursuant to standing order 64 be altered and the Chair be given the power to order the withdrawal of disorderly Members for short periods.

27. The committee has also recommended that standing orders be amended to remove pronouns importing one gender.

# CHAPTER 2

## RECOMMENDATIONS

### Length of questions

It is recommended that standing orders be amended to require that questions be brief and confined to a single issue. (Paragraph 79).

### Questions anticipating matters before the House

It is recommended that the prohibition on questions anticipating discussion of an order of the day or other matter be modified to exclude matters of public importance and the main or supplementary appropriation bills and in enforcing the rule the Chair have regard to the matter anticipated being brought before the House within a reasonable time but not so as to alter the practice regarding questions directed to private Members. (Paragraph 90).

### Questions relating to "friendly" countries

It is recommended that the practices relating to reflections on governments or heads of governments other than the Queen or her representatives in Australia be discontinued in so far as they apply to both questions and debate. (Paragraph 96).

### Questions critical of the character or conduct of other persons

It is recommended that the current prohibition on questions without notice critical of the character or conduct of other persons be retained but, to avoid confusion, standing order 153 be re-numbered and inserted following standing order 144. (Paragraph 109).

Matters relating to the content of questions

It is recommended that:

- in view of the prohibition on questions containing argument contained in standing order 144(b) the provision that questions which seek information on matters of past history for the purpose of argument are inadmissable be removed from practice;

- standing orders be amended to make it clear that a question on the Notice Paper does not constitute a "public matter connected with the business of the House, of which a Member has charge" for the purpose of standing order 143, and

- the prohibition on questions without notice which are substantially the same as questions already on the Notice Paper be retained. (Paragraph 118)

Relevance of answers

It is recommended that standing orders be amended to provide that answers to questions 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. (Paragraph 138).

Duration of Question Time

It is recommended that the duration of Question Time remain approximately 45 minutes but be extended until a minimum of 16 questions (excluding disallowed and supplementary questions) are asked unless major interruptions occur. (Paragraph 153).

Supplementary questions

It is recommended that:

- standing orders be amended to allow for one immediate supplementary question. Immediate supplementary questions would be restricted to the questioner, they must arise out of the Minister's response, should need no preambles, should not introduce new matter and should be put in precise and direct terms without any prior statements or argument;

- immediate supplementary questions be regarded as a part of one question, rather than a second question, for the purpose of the allocation of the call, and

- subject to the qualifications permitting immediate supplementary questions, current provisions remain unchanged for the allocation of the call. (Paragraph 168).

Personal explanations

It is recommended that the practices relating to Members making personal explanations pursuant to standing order 64 be altered to ensure that:

- Members give advice to the Speaker of their intention to seek leave to make a personal explanation, briefly setting out in writing the circumstances of the matter it is wished to explain;

- the advice is submitted through the Clerk, and

- Members granted leave to make personal explanations be called on as soon as practicable after Question Time although the Speaker may, where special circumstances exist, grant leave at other times when Members are not addressing the House.

The committee also recommends no change be made to the procedure whereby Members may explain themselves in a debate in regard to some material part of their speech that has been misquoted or misunderstood (standing order 66). (Paragraphs 184 and 185).

Personal reflections

It is recommended that, in determining whether words are offensive or, in particular, disorderly, the Chair not only take into account the nature of the words and the context in which they are used and the practice as set out at page 460 and 461 of House of Representatives Practice, but also the state of the House. If a reference or statement is regarded as so insulting by a section of the House that were it to stand unchallenged it might provoke disorder, there would be ground for requiring its withdrawal. (Paragraph 198).

Indulgence of the Chair

It is recommended that leave of the House be sought in lieu of seeking the indulgence of the Chair.and the practice of seeking the indulgence of the Chair be discontinued. (Paragraph 203).

Dissent from rulings

It is recommended that the provisions for dissent from rulings of the Chair (standing orders 100 and 281) be removed from the standing orders and a specific provision be inserted prohibiting any objection to, debate on, or appeal against any ruling of the Chair on a matter of order. (Paragraph 213).

Power of the Chair to order the withdrawal of a Member

It is recommended that a provision be inserted in the standing orders enabling the Chair to order a Member whose conduct is disorderly to withdraw from the House for one hour or the remainder of the sitting (whichever is the lesser period) and the Chair's direction not be subject to a resolution of the House or a motion of dissent. (Paragraph 228).

References to office holders and Members in the standing orders

It is recommended that standing orders be amended where necessary to remove pronouns importing one gender. (Paragraph 230).

## CHAPTER 3

## DEVELOPMENT OF QUESTION TIME IN THE HOUSE OF REPRESENTATIVES

28. A form of question time has been a feature of the House since the first sitting days of the Parliament. The original provisional standing orders, derived from both Westminster and colonial Parliaments, made no specific provision for questions without notice in the routine of business. However, standing order 92 stipulated that "questions may be put to Ministers of the Crown ..." in similar terms to current standing order 142.

29. Questions without notice were allowed by the Speaker, who stated "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 addressed chooses to answer it, I do not think that I should object.".[1] At the same time it was held that Ministers were not required to answer questions, Prime Minister Barton stating the Government would "answer questions without notice only when they concern some matter so urgent that the Minister feels justified in giving information upon it immediately.".[2]

30. In 1902, 1903 and 1905, amended rules and orders were recommended to the House after review by the Standing Orders Committee but on each occasion the reports were not considered by the House. The significance of the 1902 proposals for the purposes of this inquiry was that specific provision was made for questions without notice to be called on between the giving of notices and answers to questions on notice in the routine of business. The rules on questions seeking information were not extensive and in 1905 it was proposed they be altered slightly to reflect terminology and practice.

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1. H.R. Deb. (3.7.01) 1954-5.
2. H.R. Deb. (3.7.01) 1955.

31. Question Time revolved mainly around questions on notice as Ministers read to the House answers to questions, the terms of which had been printed on the Notice Paper. In 1931, in order to save time, a new standing order was adopted which provided for answers to questions on notice to be handed to the Clerk for printing in Hansard. At the same time the level of questions without notice was increasing to the point where, by 1932 up to 18 and 19 questions (over periods of 22 and 20 minutes, respectively)[3] were being asked on some days as opposed to the one or two questions per day in the earlier years.[4]

32. Thus it was that when further proposals were produced in 1937 for a complete set of standing orders, the orders on questions were significantly different from the 1905 proposals on which deliberations were based. It appears that by 1937 more extensive rules were being applied to questions without notice in line with the set of rules in force for questions on notice printed on the reverse side of the notice of question form and probably based on United Kingdom House of Commons practice. The set of general rules proposed in 1937 for questions without notice certainly reflected the rules for questions on notice.

33. Our current standing orders are based on these 1937 proposals which were not adopted at the time, the only action taken by the House on the report was to order that it be printed.[5] It was not until 1950, when major changes were made to the standing orders and permanent standing orders were first adopted, that questions without notice were mentioned specifically in the routine of business of orders in use by the House and the 1937 rules for questions were adopted.

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3. H.R. Deb. (22.9.32) 658-61; (28.9.32) 814-17.
4. House of Representatives Practice, pp. 480-81. It is also noted there that on 8 August 1940, 43 questions without notice were asked in approximately 50 minutes; the questions "in the main were short and to the point, as were the answers". On one day at least the Government declined to answer questions without notice (preferring to proceed with debate on a trade bill).
5. VP 1937/47. The report is HR 1 (1937) at VP 1937/131-181.

34. In 1943 and 1949 some alterations were proposed to the lapsed proposals of 1937, seeking firstly to prohibit questions seeking to verify accuracy of reports or statements, and secondly to require that notice be given of questions regarding the character or conduct of individuals. Consideration of these proposals also lapsed[6] but they, together with the proposals of 1937 were adopted with the permanent standing orders in 1950. In addition, provision was proposed in 1949 and 1950 for one supplementary[7] question at the discretion of the Speaker. (Details on all developments from 1901 are included at Appendix 2).

35. The next general review of standing orders, the report on which was presented in 1962, proposed further changes. Proposed amendments to standing order 144 to prohibit questions which contained precise extracts from certain published material and prohibit questions which contained discourteous references to friendly countries were rejected by the House. Proposed clarification of the provisions prohibiting questions which asked for statements of government policy or legal opinion and questions which anticipated a question on the Notice Paper or discussion upon orders of the day were also rejected. The clarification on questions relating to government policy was adopted in 1965 when an amendment to standing order 144 made provision for explaining, but not announcing, government policy.[8]

36. The proposals of 1962 that were adopted by the House included:

- a stipulation that an answer must be relevant to the question;
- removal of the stipulation that questions be on important matters calling for immediate attention;
- removal of the restriction that only <u>one</u> supplementary question could be asked;
- a provision that questions could be put to the Speaker regarding his administration, and

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6. VP 1940-43/475, ciii; VP 1948-49/417, lxxxiii.
7. The original purpose of this provision was not to allow an immediate supplementary question but to allow more than one question on a particular subject to be asked at Question Time. (<u>See</u> paragraph 160).
8. VP 1964-66/266.

- clarification of rules regarding questions reflecting on the character or conduct of individuals.[9]

37. The proposal and adoption of these standing orders is important in identifying the changing nature of Question Time. Some of these rules are at the heart of problems raised in submissions to this inquiry.

38. Firstly, the provision of questions to the Speaker (proposed to formalise practice) indicated the growing awareness *of Parliament as an administered body that should also be* monitored. The questioning of its administration was no more sacrosanct than any other area of public accountability.

39. Secondly, the removal of the stipulation that questions be on important matters which call for immediate attention (the rationale being it was inconsistent with practice) indicated a shift to a recognition that the world was becoming smaller, life moved faster and that day to day matters therefore carried a greater significance. Moreover, it meant that the emphasis on accountability was further acknowledged as it gave questioners the opportunity to turn "a searchlight upon every corner of the Public Service".[10] Question Time was the occasion to raise these issues and it was impractical to try to limit such questions.

40. The stipulation that answers must be relevant may indicate that, with the increasing flow of questions and probing, Ministers had resorted to attempt to evade the point of the question. The removal of the restriction on supplementary questions was a further indication of the need to provide a mechanism for Members to pursue an issue. The practice had originally been that only one question could be asked on an issue.[11] The introduction of one supplementary was to provide a means of asking another question in Question Time on that same

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9. HR 1 (1962-63) pp. 32-33.
10. Ibid, p. 33.
11. House of Representatives Practice, p. 497.

issue. The removal of restrictions on supplementaries meant that now, theoretically at least, all questions asked could be on the one issue.

41. Only one further amendment of significance has been made to standing orders with regard to questions and that occurred in 1972 when standing order 143 was amended to effect the prevention of questioning of Assistant Ministers, it being the intention of the Government that only Ministers should answer questions. A further proposal was put to the Standing Orders Committee to consider the distribution of the call with a view to providing a greater proportionate opportunity for Opposition Members to ask questions as for those on the Government side. After considering the evidence, the committee recommended the existing procedure for allocating the call not be altered. This issue has been raised again and is considered at Chapter 7 of this report.

42. In 1974 the matter of rostering of Ministers was considered by the Standing Orders Committee. That committee recommended a proposal to trial the rostering of Ministers to answer questions in both Houses. This recommendation was never considered by the House. In 1978 Mr Hayden gave notice of a motion to insert a provision in the standing orders limiting answers to 3 minutes but proposing that after 3 minutes the answer may, by leave, be extended. Consideration of this notice lapsed at dissolution but was revived in part by Mr Braithwaite, in 1983, who gave notice of a motion to amend standing orders to limit answers to 3 minutes. This notice, too, lapsed at dissolution.

43. A more substantial motion was put to the Standing Orders Committee by Mr Hayden in 1982. He moved that a range of matters be considered including relevancy, length of answers, supplementary questions, rostering of Ministers between the Senate and the House, specified days to question specified

Ministers and the length of Question Time. The motion reflected the concern of the Opposition that change was due to the rules of Question Time to allow a more sustained and probing approach to questioning and to enforce the perceived responsibility of the Ministry to provide adequate answers. The matter was considered by the Standing Orders Committee but the committee did not report prior to dissolution. Nevertheless, the issues raised are essentially the same issues being raised today and are pertinent to this committee's inquiry.

## CHAPTER 4

## RULES RELATING TO QUESTIONS

44. House of Representatives standing orders stipulate that questions may be asked without notice and contain a number of provisions relating to who may ask them, to whom they may be directed and their form and content.

45. In the course of its deliberations the committee has reviewed these standing orders and the practices of the House governing questions, assessed proposals put forward and made a number of recommendations.

### Who may ask questions

46. The current practice of the House of Representatives is that questions without notice may be asked by private Members and, in the past, have been asked by Assistant Ministers (on matters outside the portfolio in which they were assisting), Parliamentary Under-Secretaries and Parliamentary Secretaries. It is not the practice for questions to be asked by the Speaker.[1]

47. There were no proposals put to the committee to alter these provisions and, having reviewed these practices, the committee agreed that it make no proposals for alteration of the current practice.

### To whom may questions be directed

48. Questions without notice may be put to Ministers (relating to public affairs with which they are officially connected, to proceedings pending in the House, or to any matter of administration for which they are responsible)[2], to private

1. House of Representatives Practice, p. 482.
2. S.O. 142.

Members (relating to any bill, motion or other public matter connected with the business of the House, of which the Member has charge)[3] and to the Speaker (relating to any matter of administration for which he or she is responsible)[4]. Assistant Ministers cannot be questioned[5] and, in the past, a question directed to a Parliamentary Under-Secretary has been ruled out of order.[6]

49. There were no proposals put to the committee to alter these provisions, nor the strict limitations placed by standing order 143 and practice on questions directed to private Members[7] and, after review, the committee agreed that it not recommend any change.

Rostering Ministers

50. On a related matter though, there were proposals put to the committee for:

- requiring some form of notice of questions and setting down specific sitting days on which questions would be directed to particular Ministers on a roster basis, and
- establishing procedures whereby all Ministers, not their representatives, could be questioned by all Members and Senators either by a joint Question Time or enabling Ministers to attend the other Chamber for this purpose.

51. The Clerk, in his background paper for the committee, drew attention to a proposal for a Wednesday Private Members' Question Period (when party leaders would be excluded from asking questions). Ministers would be unofficially rostered (as the initial questions would be on notice) but the Prime Minister would not be expected to attend.

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3. S.O. 143.
4. S.O. 152.
5. S.O. 143.
6. House of Representatives Practice, p.483.
7. Ibid, pp. 483-84.

52. The committee considered the proposals to roster House Ministers within the House and the "Wednesday Private Members' Question Period". The practice of rostering in the United Kingdom House of Commons (where the initial question is on notice and where, generally, there is not the same immediacy about questions with the exception of the Prime Minister's part of Question Time and private notice questions) was also examined.

53. The committee believes that, for rostering to work well, it must be implemented together with a requirement that notice be given of questions, a proposal that the committee has considered but rejected (<u>see</u> paragraphs 66 to 73). Ideally, related questions could be grouped on the Notice Paper and could be called on in accordance with the particular portfolios rostered.

54. The principal disadvantage of rostering House Ministers to answer questions in the House is that it could handicap the Opposition and private Members. Their opportunities to ask questions on topical matters could actually be reduced. Almost 50% of questions without notice asked by the Opposition in the years 1980-85 were directed to the Prime Minister and Treasurer. The absence of such key Ministers, or any Minister should an issue relevant to his or her portfolio be the subject of particular interest (especially taking into account the limited number of days each year the House currently sits) would not only handicap Members by limiting their opportunities to direct questions to the relevant Minister but could also leave the government open to charges of treating the House with disdain.

55. Proposals for the second type of rostering, the rostering of Ministers to answer questions in both Houses, have been advanced before. The matter was considered by the Standing Orders Committee in 1974 but prior to that several attempts had been made to secure the attendance of Senators or Members in the other Chamber.

56. In 1920 the House received a message from the Senate requesting concurrence in a resolution proposing that the standing orders committees of both Houses be requested to consider the question of preparing standing orders providing that a Minister in either House may attend and explain and pilot through the other House any bill of which the Minister has charge in his own House. Consideration of the message was set down for a future sitting (under general business) but the matter was not dealt with prior to the prorogation of the House some 20 months later.[8]

57. In 1921 Prime Minister Hughes suggested that the Minister for Repatriation (Senator Millen) be heard on the floor of the House regarding the administration of his Department. However, as the suggestion did not receive the general support of Members, Mr Hughes did not formalise his proposal in any positive manner.[9] In 1973 the House negatived a motion proposing that a message be sent to the Senate requesting that the Senate give leave to the Attorney-General to attend the House of Representatives for examination.[10]

58. In May 1973 Prime Minister Whitlam informed the House that the Government was hoping to proceed with a proposal, to which his party was committed, to have Ministers in each House regularly rostered to answer questions without notice in the other House.[11] He had originally submitted the matter to the Standing Orders Committee as Leader of the Opposition during the previous Parliament.[12]

59. The Standing Orders Committee considered the matter and, in its report of 18 March 1974,[13] recommended that, for a trial period and subject to the concurrence of the Senate, Senate Ministers be rostered for attendance in the House and

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8. VP 1920-21/163, ci.
9. H.R. Deb. (2.12.21) 13583-9; House of Representatives Standing Orders Committee, Report together with recommendations, 18 March 1974, PP 63(1974)10.
10. VP 1973-4/106.
11. H.R. Deb. (16.5.73) 2168.
12. PP 63(1974) 8.
13. PP 63(1974).

House Ministers be rostered for attendance in the Senate for the purpose of answering questions without notice. That committee proposed that the House consider a motion which proposed, inter alia, that the Prime Minister and Leader of the Government in the Senate determine a roster which shall, depending upon the availability of Ministers, provide for one Senate Minister to attend in the House and up to 4 House Ministers to attend in the Senate at any one time. Relevant extracts from the committee's report are given at Appendix 4.

60. The report was tabled on 19 March 1974 and consideration set down as an order of the day for the next sitting. The report was never debated, consideration of the order of the day lapsing at the dissolution of the House on 11 April 1974.[14]

61. The report considered the standing orders of other Parliaments where provision is made for a Minister to attend in the Chamber of which he or she is not a Member and listed other countries where such provision existed. It also referred to section 43 of the Australian Constitution, the only section which appeared to have a bearing on the proposal. Section 43 states:

> A member of either House of the Parliament shall be incapable of being chosen or of sitting as a member of the other House.

The report stated:

> A Member of one House of the Australian Parliament, therefore, cannot sit as a Member of the other House. In that other House, he could not vote, be counted for quorum purposes or act in any way whatsoever to initiate any motion or item of business. But there would appear to be no reason why he could not attend in the other House with the status at least of a witness. The standing orders of each House already provide complementary machinery for this purpose.[15]

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14. VP 1974/57,115.
15. PP 63(1974) 9.

62. The report did refer to some practical problems including the following:

- as each House had paramount right to the services of its own Members, difficulties could arise if the question periods are conducted simultaneously in the two Houses, though the staggering of question period would help in this respect;
- the problem of determining the availability of Ministers and the basis upon which the roster arrangements should be determined;
- the extent to which a Minister can be made subject to the rules and orders of the House he or she is attending;
- the need for a Minister to be able to leave the Chamber at any time to undertake responsibilities in his or her own House or to fulfil other business engagements, and
- the infrequency of opportunities to ask questions, particularly in the House of Representatives "which will continue to frustrate Members at a time when they may well be optimistically anticipating the opportunity to ask a question of a particular Minister".

63. To these could be added the problem that, without the requirement that notice be given of questions, there is no guarantee that a Senate Minister attending the House will be asked questions because the issues of the day, not the roster, will determine which Ministers are asked questions.

64. These problems are not insurmountable. The 1974 report itself makes suggestions to solve the rostering and disciplinary problems.

65. The committee, however, does not support proposals put to it for the rostering of Ministers between the Houses nor for that matter, the proposal for a joint Question Time. It is the committee's opinion that all Ministers should be Members of and responsible to the House of Representatives, the House directly elected by the people. The committee notes that standing orders and practices of both Houses have complementary provisions for Members and Senators to appear before the other House or its committees as witnesess but believes that, as far as the accountability of Ministers at Question Time is concerned, Ministers who are Members of the House of Representatives should be responsible to the Parliament and the people through the House of Representatives only.

On or without notice?

66. The original standing orders of the House temporarily adopted in 1901 made no specific provision for questions without notice in the routine of business though they did make provision for questions to be put to Ministers and others and, in practice, both questions without notice and on notice were answered from the outset. In 1902 and 1903 proposed permanent standing orders made provision for "giving notices and questions without notice" in the routine of business between the presentation of petitions and questions on notice.

67. It was usually after questions without notice were dealt with that Ministers read to the House answers to questions, the terms of which had been printed on the Notice Paper. This practice continued until 1931 when, in order to save the time of the House, a new standing order was adopted to provide that a reply to a question on notice could be given by delivering a copy of its terms to the Clerk who would supply a copy to the Member concerned and arrange for its printing in Hansard.[16]

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16. See Chapter 3 and House of Representatives Practice, pp. 479-82, for a brief account of the development of Question Time in the House.

68. A number of suggestions have been made to the committee regarding the desirability of introducing a system of oral answers to questions on notice. These were made in conjunction with proposals to introduce immediate supplementary questions or the rostering of Ministers to answer questions on set days, one former Member seeing "the introduction of the UK House of Commons procedure for pursuing written answers to questions on notice with oral questions without notice" as the only way to probe for information.

69. The committee has considered these proposals and also examined the questions procedure in comparable parliaments. The committee has concluded that, whilst the giving of notice of questions for oral answer may lead to a better informed response from a Minister and more effective questioning if linked with immediate supplementary questions, there are a number of potential drawbacks which do not justify the replacement of the current questions without notice procedure.

70. The major advantage of the current practice is that the absence of any requirement for notice of questions for oral answer allows questions to be asked on important matters of topical interest and also gives Members and parties a versatility *in planning and implementing strategies for Question Time should* they so wish.

71. Should notice of questions be required there would most likely be far too many questions to fit into the time available. There could be subsequent difficulties in devising a system of selection of questions to be asked that would be both fair and ensure sufficient opportunities are given to raise important matters of topical interest.

72. To some extent these disadvantages can be overcome by the use of immediate supplementary questions and procedures such as the private notice question in the United Kingdom House of

Commons or questions of the day in the New Zealand House of Representatives. The committee however is not convinced that the advantages of the notice of questions procedure outweigh the advantages of immediacy and versatility offered by the current system of questions without notice and therefore does not propose any change to the current practice.

Length of questions

73. It was put to the committee that there was "a growing tendency for questioners to quote large ammounts of material from statements made by Ministers and others outside the House and media, presumably to make a political point rather than seek information.". It was also proposed that where excessive detail is mentioned questions should be placed on the Notice Paper.

74. The standing orders of the House do not contain any specific provisions in regard to the length of questions although the general rules set out in standing order 144 do place restrictions on the inclusion of statements of facts or names of persons in questions and thus attempt to restrain questioners from giving unnecessary information or inviting argument and thereby initiating a debate.

75. It has been the practice for the Speaker to direct that lengthy questions without notice be placed on the Notice Paper.

76. Although the time taken to ask and receive an answer to a question without notice in recent years has increased by 45% (from 2.8 minutes to 4.1 minutes between 1981 and 1985), figures supplied by the Clerk indicate that it is the increasing length of answers rather than questions that is the cause. (see Table on page 40).

77. Nevertheless, the committee believes that questions without notice must be brief, preambles must be kept to a minimum and the query itself confined to a single issue.

78. All too often lengthy preambles and multi-faceted questions invite or necessitate lengthy answers and thus add to the problem of the reduction in the opportunities for Members to ask questions. Madam Speaker alluded to this problem in her statement to the House on 22 October last when she related the difficulties in controlling the length of answers to the length and breadth of questions.

Recommendation

**79. It is recommended that standing orders be amended to require that questions be brief and confined to a single issue.**

Content of questions

80. The rules and practices governing the content of questions are set down in the standing orders and House of Representatives Practice. Originally, the standing orders contained few provisions relating to the content of questions, stipulating only that in putting a question "no argument or opinion shall be offered, nor any facts stated, except so far as may be necessary to explain such Question.". However, by the time the 1937 report of the Standing Orders Committee was presented a full set of rules, presumably based on the then United Kingdom House of Commons practice had been in circulation and these have since developed into the standing orders we have today (see Chapter 3).

81. The committee has reviewed the rules and practices governing the content of questions and has recommended certain changes. Within this review the committee considered the proposal by the Opposition that the committee consider strengthening the prohibition on questions without notice critical of individuals contained in standing order 153.

82. The committee considers these rules to be basically sound and designed to ensure an effective Question Time if observed by Members. Provided Members exhibit care in drafting their questions the restrictions are minimal. There are a number of changes the committee is proposing and these are set out below.

Questions anticipating discussion of an order of the day or other matter

83. Standing order 144 stipulates that questions cannot anticipate discussion upon an order of the day or other matter. The anticipation rule is one basic to proceedings and set down in standing order 63 which states that a matter on the Notice Paper must not be anticipated by another matter contained in a less effective form of proceeding.

84. The principle established in the House of Representatives is that questions seeking to elicit information about proceedings pending in the House are permissable provided they do not anticipate discussion itself or invite the Minister to do so.[17]

85. The committee was concerned that this rule may be too restrictive in certain cases and proposes that 2 specific exceptions be made: questions relating to budgetary matters and questions seeking information on topics that may be listed for discussion as matters of public importance.[18] In the case of other orders of the day and notices listed for discussion, the committee proposes that the Chair have regard to the probability of the matter anticipated being brought before the House within a reasonable time.

86. The committee, however, does not wish to alter the strict limitations placed by standing order 143 and practice on questions to non-Ministers.

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17. House of Representatives Practice, p. 492.
18. In its second report, Days and hours of sitting and the effective use of the time of the House, (PP 108(1986)), this committee recommended the public importance procedure be re-named "Matter of Public Interest".

87. Matters of public importance are one of the few measures by which the Opposition and private Members may raise issues of current concern in the House. They are usually on matters of topical interest, often the very same matters Members wish to direct questions to Ministers on. In fact, it is clear that Oppositions often use questions without notice together with matters of public importance as part of their campaigns to test the credibility of Governments and the committee believes that to enforce the implementation of the anticipation rule would unnecessarily inhibit Oppositions and private Members in their questioning.

88. Likewise, budgetary matters are of crucial interest and importance and to prohibit Members asking questions on these matters whilst major appropriation bills were before the House would, in the view of the committee, be too severe a restriction on Members.

89. Briefly, the committee's view is that the fact that the terms of a matter of public importance on the subject, for example, of health insurance have been circulated should not block the asking of questions without notice on health insurance. Similarly, the fact that the main or supplementary appropriation bills are before the House should not block the asking of questions without notice on budgetary matters.

Recommendation

90. It is recommended that the prohibition on questions anticipating discussion of an order of the day or other matter be modified to exclude matters of public importance and the main or supplementary appropriation bills and in enforcing the rule the Chair have regard to the matter anticipated being brought before the House within a reasonable time but not so as to alter the practice regarding questions directed to private Members.

Questions relating to "friendly" countries

91. One of the principal rules governing questions as set down in House of Representatives Practice is that "Questions should not be asked concerning the activities, character or antecedents of representatives in Australia of countries in amity with Her Majesty.".[19] It also states that "... it is the general practice of the House that opprobrious reflections may not be cast in questions on sovereigns and rulers over, or on governments of, independent Commonwealth countries or other countries friendly with Australia, or on their representatives in Australia" though noting that "The application of this rule has tended to vary according to diplomatic considerations at the time.".[20]

92. In 1951 Speaker Cameron made a statement to the House on the matter informing it that the standing orders did not contain directions concerning attacks on other governments and referring to the rule cited in May declaring that opprobrious reflections may not be cast on governments of dominions or countries in amity with His Majesty and stating that the House was bound by that usage but that references to other governments were not prohibited.[21]

93. The matter was considered in the major review of the standing orders in 1962 and the Standing Orders Committee cited May and Speaker Cameron's rulings on the matter when it recommended the insertion of a provision that questions should not contain "discourteous references to a foreign country or its representatives" amongst certain proposed amendments to standing order 144.[22] These proposals were rejected by the House.[23]

19. Ibid, p. 489.
20. Ibid, p. 495.
21. VP 1951-53/117, 327.
22. HR 1 (1962-63) 32.
23. VP 1962-63/455, H.R. Deb. (1.5.63) 893-930; and see H.R. Deb. (19.8.76) 368.

94. This prohibition, to the committee, is unwieldy and restrictive. It believes the Speaker should not be required to determine which country was friendly and which not and why questions (or debate) should be considered out of order on matters that may be important and of topical interest (e.g. references to wheat sales by the United States of America).

95. As the proposal to codify the practice was rejected by the House in 1963 and as the committee believes the practice is unduly restrictive, it has concluded that it recommend the practice be discontinued in so far as it applies to both questions and debate.

Recommendation

**96. It is recommended that the practices relating to reflections on governments or heads of governments other than the Queen or her representatives in Australia be discontinued in so far as they apply to both questions and debate.**

Questions critical of the character or conduct of other persons

97. Standing order 153 stipulates:

> Questions shall not be asked which reflect on or are critical of the character or conduct of those persons whose conduct may only be challenged on a substantive motion, and notice must be given of questions critical of the character or conduct of other persons.

98. The purpose of the rule is to protect a person against criticism which could be unwarranted, a question on notice not receiving the same publicity and prominence as a question without notice and the reply can be more considered. The rule has also been applied to unnamed but readily identifiable persons.

99. Whilst the committee received no comment on or proposals regarding the prohibition on questions reflecting on or critical of those persons whose conduct may only be challenged on a substantive motion, there were proposals put to the committee regarding questions critical of the character or conduct of "other persons".

100. The practice of the House regarding the naming of persons in questions without notice arose in the House on 19 February this year where a possible conflict was identified between the general rules contained in standing order 144 (where questions may contain the names of persons if they are strictly necessary to render the question intelligible and can be authenticated) and standing order 153 which requires that notice must be given of questions critical of the character or conduct of persons other than those whose conduct may only be challenged on a substantive motion (there being a total prohibition on questions reflecting on or critical of the latter group).[24]

101. The committee considered in detail a submission stating that it was essential to ensure that persons outside the House were not maligned under privilege without a substantive motion, and that the Speaker be required strictly to enforce standing order 153 to prevent the asking of questions without notice which are critical of the character or conduct of other persons. The ruling of 19 February was seen as appearing to open the way for the naming of people in questions, provided names were judged necessary to make the question intelligible.

102. A further submission considered by the committee proposed that where specific persons are mentioned the question should go on the Notice Paper.

103. The background to standing order 153 is that a proviso that questions "regarding the character or conduct of individuals other than Ministers and Members" must go on notice was first proposed by the Standing Orders Committee in 1943, inserted in the standing orders in 1950 and amended in 1963 to remove ambiguities and to permit genuine laudatory references to

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24. H.R. Deb. (19.2.86) 841, 847-9.

outsiders in questions without notice.[25] It is understood that the provision was devised to prevent reckless allegations against persons not covered by the standing orders.[26]

104. In considering this matter the committee examined the 1984 report of the Joint Select Committee on Parliamentary Privilege and the provisions of comparable parliaments.

105. The practice in the United Kingdom House of Commons (where all initial questions are on notice) is that it is not permissable to reflect on the conduct of other persons otherwise than in their official or public capacity.[27] In the Canadian House of Commons the standing orders say little on the content of questions but Beauchesne's Parliamentary Rules and Forms lists traditional restrictions on questions which, inter alia, prohibit questions which reflect on or relate to character and conduct of persons other than in a public capacity and contain or imply charges of a personal character.[28]

106. The 1984 report of the Joint Select Committee on Parliamentary Privilege dealt with the question of misuse of privilege and drew particular attention to the fundamental importance of freedom of speech, the dangers of misuse of privilege and the fact that, in any robust assembly there will be instances of misuse. That report recommended that, for an initial (trial) period of one year, a mechanism be established to deal with complaints by members of the public that they have been subject to unfair or groundless parliamentary attacks on their good names and reputations and that also each House agree to resolutions stressing the need to exercise the privilege of freedom of speech responsibly.[29]

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25. HR 1 (1962-63) 33.
26. See comments by Mr Spender at H.R. Deb. (14.3.45) 612-3; (21.3.45) 760-2.
27. Erskine May, Treatise on the Law, Privileges, Proceedings and Usage of Parliament, 20th Edn, Sir Charles Gordon, (ed.), Butterworths, London, 1983, p. 338.
28. Alistair Fraser, G.A. Birch and W.F. Dawson, Beauchesne's Rules and Forms of the House of Commons of Canada with Annotations, Comments and Precedents, 5th Edn, The Carswell Company Limited, Toronto, 1978, p. 130.
29. Final Report, Joint Select Committee on Parliamentary Privilege, PP 219 (1984) 53-60.

107. Having reviewed current practice and considered the proposals advanced, the committee has concluded that it recommend no change to the House's self-imposed prohibition on questions without notice critical of the character or conduct of individuals but that possible confusion be cleared up by moving standing order 153 forward and inserting it following the general rules governing the content of questions (standing order 144) so that they are complementary.

108. The committee has also concluded that the terms of the standing order should remain as they are at present. That is, reference to specific persons can be made in questions without notice provided they are strictly necessary to render the question intelligible and can be authenticated and are not critical of the character or conduct of the individual.

Recommendation

**109. It is recommended that the current prohibition on questions without notice critical of the character or conduct of other persons be retained but, to avoid confusion, standing order 153 be re-numbered and inserted following standing order 144.**

Other matters relating to the content of questions

110. In its examination of the rules and practices governing the content of questions there were a number of other matters the committee has noted.

111. The first of these is the prohibition on questions which seek information on matters of past history for the purpose of argument which is set down at page 489 of <u>House of Representatives Practice</u>. A search of precedents has found no precedent of the rule being invoked in the House of Representatives and it is assumed the prohibition is taken from United Kingdom House of Commons practice. The authority cited in the current edition of <u>May</u> is a private ruling of 1961.[30]

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30. <u>May</u>, p. 344.

112. As there is already a prohibition on questions containing argument in the general rules governing questions,[31] the committee has concluded that there is no reason why the prohibition should be retained as House practice.

113. Another matter the committee considered was the provision of standing order 143 enabling questions to be put to non-Ministers relating to any bill, motion, or "other public matters connected with the business of the House, of which the Member has charge", a query having been raised as to whether a *question without notice could be asked relating to a question on* notice.

114. Given the limited extent to which a Member has charge of a question on the Notice Paper (only a Minister can determine when it will be answered), the limited restrictions placed by the House on questions to private Members (which the committee supports as mentioned at paragraph 48)and the fact that questions set down on the Notice Paper do not, in the view of the committee, come within the spirit of the meaning of "business of the House" in this case, the committee has concluded that it recommend that a provision be inserted in the standing orders to make it clear that a question on the Notice Paper does not constitute a "public matter connected with the business of the House, of which a Member has charge" for the purpose of standing order 143.

115. In considering the practice of the House that questions substantially the same as questions already on the Notice Paper are not permissable,[32] and notwithstanding a precedent to the contrary,[33] the committee has decided that the practice should be retained that where a question is on the Notice Paper, all Members, including the Member who placed the question on the Notice Paper, will be prevented from asking the question without notice.

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31. *S.O. 144 (b), first occurring.*
32. House of Representatives Practice, p. 497.
33. H.R. Deb. (25.9.86) 1433, 1484.

116. Another matter considered relating to the content of questions was the possible modification of the provision of standing order 144 that questions should not contain hypothetical matter, it being felt that the provision may be too restrictive on Members wishing to seek information from or test the Government on the application of its policies.

117. Having reviewed the rationale behind and operation of the provision, the committee has concluded that the provision should stand as it is. The committee believes that, provided Members exhibit a little care in drafting questions, the proviso does not unduly restrict Members in their questioning and testing of Ministers.

Recommendations

118. It is recommended that:

- in view of the prohibition on questions containing argument contained in standing order 144(b) the provision that questions which seek information on matters of past history for the purpose of argument are inadmissable be removed from practice;

- standing orders be amended to make it clear that a question on the Notice Paper does not constitute a "public matter connected with the business of the House, of which a Member has charge" for the purpose of standing order 143, and

- the prohibition on questions without notice which are substantially the same as questions already on the Notice Paper be retained.

## CHAPTER 5

## ANSWERS

119. The rules relating to answers to questions in the House of Representatives are minimal. Standing order 145 stipulates "An answer shall be relevant to the question". It is the practice of the House that a Minister cannot be required to answer a question and that the Minister may undertake to supply a Member with requested information in writing at a later date or suggest the Member place the question on the Notice Paper.[1]

120. As mentioned in the introduction, the committee concluded that it is the increasing length of answers and the resultant restriction on private Members' opportunities to ask questions that is the major problem with Question Time. The other major problem relating to answers is relevancy, a subject that has attracted much comment in the House and a rule (standing order 145) referred to by a former Speaker as being "effectively so wide as to be almost incapable of enforcement".

### Length

121. Figures supplied by the Clerk and reprinted in this report at Appendixes 5 to 7 indicate that:

- there is a clear trend of reduction in the average number of questions asked per sitting day in the last decade (from 19.3 in 1976 to 12 in 1985 and 1986), despite a slight increase in the average duration of Question Time;
- there has been a correspondingly clear increase in the time taken to ask and receive an answer, the time increasing by 45% (from 2.8 to 4.1 minutes) between 1981 and 1985;

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1. House of Representatives Practice, pp. 499-500.

- the sample survey printed below indicates it is the increasing length of the answer rather than the question that is the primary cause in the reduction of the number of questions, and
- the reduction in the average number of questions asked each year is compounded for Opposition Members by the dominance of party leaders in the allocation of Opposition questions. It is compounded even further when, as at present, there are 2 Opposition parties in coalition, the priority of call thus being given to 4 party leaders instead of just 2. In 1984 and 1985 the average number of questions asked <u>each</u> year by Opposition Members (less leaders) being 2.9 and 3.5 respectively compared to 5.2 and 6 for Government backbenchers.

AVERAGE LENGTH OF QUESTIONS AND ANSWERS 1980-85

| | Average length of question and answer | | Average length of question only | | Average length of answer only | |
|---|---|---|---|---|---|---|
| | Lines | index(a) | Lines | index | Lines | index |
| 1980 | 54 | 100 | 15 | 100 | 40 | 100 |
| 1981 | 42 | 78 | 13 | 87 | 29 | 73 |
| 1982 | 47 | 87 | 14 | 93 | 33 | 83 |
| 1983 | 56 | 104 | 11 | 73 | 45 | 113 |
| 1984 | 71 | 131 | 11 | 73 | 60 | 150 |
| 1985 | 69 | 128 | 11 | 73 | 57 | 143 |

<u>Note</u>:

(a) Index numbers have been used to observe trends. The actual figures were obtained by counting the number of Hansard lines from a 10% sample of the days on which questions were asked (1980-85). Then, using 1980 as the base year (1980=100) the other index numbers were derived from the actual figures.

122. It is not surprising that there have been a number of proposals advanced to control the length of answers. In 1978 Mr Hayden, as Leader of the Opposition, gave notice of a motion proposing the adoption of a new standing order setting the time limit for an answer to a question without notice at 3 minutes but providing for it to be extended by leave of the House.[2] In moving his 1982 motion to refer the matter of Question Time procedures to the Standing Orders Committee, Mr Hayden argued in favour of a time limit on answers and referred to "these endless dissertations that produced very little.".[3] Also, in 1983, Mr Braithwaite gave notice of a motion proposing to limit the length of answers to a maximum of 3 minutes.[4]

123. Proposals put to the committee on this matter were often linked with those relating to altering the duration of Question Time. Those raised which specifically referred to the length of answers proposed:

- placing a time limit on the length of an answer (3, 5 and 7 minutes were specifically mentioned) together with (a) giving the Chair discretion to extend the time if the subject matter warrants further time and suits the wishes of the House, or (b) requiring Ministers to seek leave of the House to proceed beyond the limit;
- the Speaker be given discretion to terminate lengthy answers, and
- the Speaker be given power to vary the allocation of the call (and thus signal displeasure at lengthy answers).

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2. NP 74 (24.11.78) 4118. The notice was never called on and lapsed at dissolution.
3. *H.R. Deb.* (25.2.82) 596.
4. NP 32 (19.10.83) 1442-3. Mr Braithwaite's notice also proposed that any answer longer than 3 minutes be treated as a statement and handled accordingly. As with Mr Hayden's notice, this notice was never called on and lapsed.

124. In considering these proposals the committee saw problems with the placing of restrictions on answers. Speaking to his 1982 motion Mr Hayden recognised that a time limit would be "extraordinarily hard to define and administer"[5] and, in discussion in the House on 20 October last he recognised the fact that an answer he had given that day was a little long but saw "a substantial and compelling case that some questions require detail".[6]

125. The view of the committee is that there does need to be flexibility for the answering of questions and that the setting of time limits is not necessarily the most appropriate method of dealing with unnecessarily long answers. The proposals to give the Chair discretion to extend the time or to require Ministers to seek the leave of the House to proceed beyond a certain time would be unwieldy in their operation and place the Chair in the difficult position of having to discern whether an answer merited extension or not.

126. To give the Speaker the discretion to terminate lengthy answers or power to vary the allocation of the call (to signal displeasure at lengthy answers and possibly provoke government backbench pressure on Ministers to ensure answers to them are shortened) are not options the committee supports, though the committee believes that the Speaker should terminate answers that contravene relevancy provisions (<u>see</u> paragraph 137).

127. The committee has concluded that the most appropriate method of increasing Members' opportunities to ask questions is to set a minimum number of questions to be answered each day (<u>see</u> paragraphs 150 to 153). This, together with enforcement of the requirement that answers be relevant and questions be brief should lead to a significant improvement in Members' opportunities.

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5. H.R. Deb. (25.2.82) 596.
6. H.R. Deb. (20.10.86) 2331.

128. Linked to the issue of length of answers is the matter of ministerial statements. At times, answers are either so long they take the form of ministerial statements or Ministers arrange for innocuous questions the answers to which are a statement of the Government's action, intended or completed. House of Representatives Practice records that as far back as 1941, Ministers offered or were prompted by the Chair to make a statement in response to an answer. One submission stated: "While formerly, long answers had been used as an occasional parliamentary political tactic, they are now becoming the norm and more akin to ministerial statements". It is interesting to note Redlich's comment on questions to Ministers stating that "they are often arranged by the Government itself so as to give them an opportunity of making announcements in a somewhat informal way".[7] It would seem to the committee that it is more in the abuse rather than the use of this type of answer where the problem lies and that, in the event of the committee's recommendation on the minimum number of questions being adopted, the problem should be self-regulating.

Relevance

129. As stated above, the only provision of the standing orders dealing specifically with the form and content of answers to questions is standing order 145 which requires an answer to be relevant to the question.

130. There have been calls for an examination of the *definition of relevancy, most notably in the 1982 debate on* Mr Hayden's motion when he suggested it be defined in accordance with legal definition and the matter was explored further by Mr Bowen in seconding the motion. Mr Bowen suggested the legal definition was "a question of facts being related to each other. If there is to be some clear ascertainment of what is sought in the question, the answer ought to relate to the question and to nothing else." adding that "Other parliaments are able to do this, and I think it can certainly be developed here."[8]

7. Joseph Redlich, The Procedure of the House of Commons, Vol II, Archibald Constable, London, 1908, p. 242.
8. H.R. Deb. (25.2.82) 597.

131. Proposals put directly to the committee on relevancy of answers to questions without notice have been:

- to amend standing order 145 to define more strictly the requirement of relevance (incorporated in this proposal was the view that adequate powers to control length and relevancy be given to the Speaker, with reference to the Canadian House of Commons practice), and
- to delete standing order 145 as it is virtually unworkable and any attempt by the House to place the Chair in a position of judgement over the content of answers would place the Chair in an intolerable position with the possible effect of partiality of the Chair becoming a reality rather than illusory.

132. In his background paper the Clerk noted that, to achieve relevance the House could either move to the oral question period that exists in the United Kingdom, India and New Zealand where the original question is placed on notice which allows the Speaker to monitor better the relevance of an answer and any supplementary questions; or voluntarily accept short and concise questions and answers as happens in Canada where question time is by custom dominated by the Opposition; or amend standing order 145 and thereby give the Speaker an explicit power to terminate an answer that is not relevant to the question.

133. The committee considered the provisions in comparable parliaments. In regard to United Kingdom House of Commons practice, _May_ states:

> An answer should be confined to the points contained in the question, with such explanation only as renders the answer intelligible, though a certain latitude is permitted to Ministers of the Crown .... The Speaker has suggested that lengthy answers should be circulated with the Official Report instead of being given orally.[9]

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9. _May_, pp. 345-46.

134. New Zealand House of Representatives standing order 84 states:

> "The reply to any questions shall be concise and confined to the subject-matter of the questions asked, and shall not contain -
>
> (a) Arguments, imputations, epithets, ironical expressions; or
> (b) Discreditable references to the House or any member thereof or any offensive or unparliamentary expressions; or
> (c) Controversial matter."

135. In 1964 the Canadian Special Committee on Procedure recommended guidelines to the House of Commons (subsequently adopted) which included the proviso that "Answers to questions should be as brief as possible, should deal with the matter raised, and should not provoke debate.".

136. Ministers in the House have been asked to resume their seats as the answers were not relevant, though in response to recent comments in the House regarding the length and relevance of answers Madam Speaker referred to previous examples of intervention of the Chair and stated:

> ...the procedural authority for such action is not very strong, and the further along the path of intervention the Chair goes the more open the Chair is to criticism for exercising an authority and control beyond that laid down in the Standing Orders.[10]

137. Having considered the practice in Australia and comparable parliaments and all proposals advanced, the committee has concluded that the relevancy requirement should be retained and strengthened. The committee also considers that, in the event of any Minister contravening these provisions, the Speaker should direct the Minister to resume his or her seat.

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10. H.R. Deb. (22.10.86) 2525.

Recommendation

138. It is recommended that standing orders be amended to provide that answers to questions 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.

Other proposals

139. Other proposals put to the committee concerning answers were:

- that standing order 321 (relating to documents quoted from by a Minister) be amended to require that at least that part of the document read to the House should be tabled (but leaving the balance to the discretion of the Speaker subject to no claim of confidentiality), and
- Ministers be required to answer questions on notice within a set time.

140. The committee has considered these matters and has agreed that it recommend no change to current provisions.

# CHAPTER 6

## THE DURATION OF QUESTION TIME

141. The question of the length of Question Time is linked with the preceding chapter on the the length and relevance of answers. It is also a fact that there is no standing order prescribing a set amount of time. Question Time, by practice, is terminated by the Prime Minister, or senior Minister present, requesting that further questions be placed on the Notice Paper. There is an agreed practice that Question Time should run for 45 minutes, but the conclusion is still subject to the Prime Minister's discretion. Column 6 in Appendix 5 shows the average length of time taken for Question Time since 1970 and shows that since 1972 Question Time has never averaged less than 45 minutes. In recent years there has been a slight increase in the duration of Question Time, the average length now being 47 minutes.

142. If Question Time is interrupted by such matters as the naming of a Member, a motion of dissent from the Speaker's ruling or a motion to suspend standing orders, it is not usual for the Prime Minister to extend Question Time to compensate for time lost. When substantial time is spent on such a matter as a want of confidence motion prior to questions without notice being called on, it is common for Question Time not to be proceeded with.[1]

143. In the early years of the Australian Parliament the length of Question Time was not an issue; the issue was whether questions without notice should be allowed at all. On some days no questions were asked at all. By the 1930s up to 18 questions were sometimes being asked in one day. On one such day, the Prime Minister indicated that it was not intended in future to

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1. House of Representatives Practice, p. 486.

allow so much time for questions without notice as he claimed that most questions asked were not urgent and should have been placed on notice.

144. The 1950s saw a system where an average of 45 minutes each day was given to Question Time, where, in the 3 day sitting week, one hour was spent on Tuesdays, 45 minutes on Wednesdays and 30 minutes on Thursdays. Since 1958 the average Question Time has exceeded 40 minutes although by the mid 1970s a daily average of less than 18 questions was being recorded and the time taken for individual questions and answers was becoming a matter of concern.

145. As shown in the preceding chapter and the appendixes to this report, the opportunities for private Members to ask questions have become severely limited to the stage where just over 12 questions are asked each day and an Opposition backbencher will average only 3.5 questions per year while the coalition is in Opposition. At the last election the House size increased by 23 Members, thus further proportionally reducing opportunities for private Members to ask questions. The prolonging of the time available for questions without notice and proposal to limit the length of answers are thus obvious possibilities to increase opportunities for private Members to ask questions.

146. The proposal to limit the length of answers has been covered in Chapter 5. Two major proposals specifically on the duration of Question Time have been put to the committee. They are:

- increase the duration of Question Time (one hour being suggested as an appropriate period), and
- the duration of Question Time remain approximately 45 minutes but be extended, if required, until a fixed number of questions is asked, unless major interruptions occur.

147. The Clerk also drew the committee's attention to the possibilities of (a) the duration of Question Time being fixed or comprising a fixed number of questions, which ever happens first and (b) placing the termination of Question Time at the discretion of the Speaker, not the Prime Minister.

148. In relation to the second major proposal put to the committee, the specific suggestions were that a minimum of 9 primary questions (excluding supplementaries) be set, that a minimum of 16 questions be set and that a minimum of 18 questions be set (excluding supplementaries).

149. To increase the length of Question Time to one hour would assist by providing the opportunity for more questions to be asked (given the current time taken, a mere 4 to 5 questions and answers) but may not tackle the key problem of unnecessarily lengthy answers.

150. The proposal to retain the duration of Question Time at 45 minutes but extend it if necessary until a fixed number of questions is asked has merit and was the one that most attracted the committee. A rule such as this would mean that there would be informal pressure on Ministers to restrict the length of their answers and unnecessarily long answers would mean that Ministers would be responsible if Question Time went on for too long a period. In effect, in so far as lengthy answers are concerned, the operation of Question Time would be self-regulating. In considering an optimum number of questions the committee was mindful of the facts that an average of 38 to 42 questions without notice (including supplementaries) are dealt with in a 45 minute Question Period in the Canadian House of Commons and, in the past, up to 43 questions were asked in a 50 minute Question Time in the House.[2]

151. The committee has concluded that the minimum number in the House of Representatives should be 16 questions in 45 minutes (excluding disallowed and supplementary questions) and this requirement, together with the implementation of the committee's

2. Ibid, p. 481.

proposals for brief questions and relevant answers, should significantly increase Members' opportunities.

152. The committee has also concluded that the discretion to terminate Question Time should remain with the Prime Minister and that the rule on the minimum number of questions not necessarily operate if major interruptions occur.

Recommendation

**153. It is recommended that the duration of Question Time remain approximately 45 minutes but be extended until a minimum of 16 questions (excluding disallowed and supplementary questions) are asked unless major interruptions occur.**

## CHAPTER 7

## *ALLOCATION OF THE CALL AND SUPPLEMENTARY QUESTIONS*

154. The practice of the House of Representatives in allocating the call at Question Time is for the Speaker to first call an Opposition Member, usually the Leader of the Opposition, with the call then alternating from the right to the left of the Chair. It is also the practice that priority is given to the leaders and deputy leaders of the Opposition parties when it is the Opposition's call. These practices have not always been so. Speaker Cameron in the 1950s believed "every member has an equal right to information. During Question Time I do not recognize any party. Quite frequently I give three calls ... on my left to one ... on my right. That is largely due to the fact that there is a very much smaller demand for the call by Liberal members than there is by Labor members and Australian Country Party members".[1]

155. In the most comparable national legislature, the Canadian House of Commons, the allocation of the call is weighted heavily in favour of Opposition Members. Government backbenchers in Canada are limited to approximatly 10% of questions asked.

156. The Australian situation is different. From 1980 to 1985 the Opposition asked between 51% and 54% of questions and the Government Members between 49% and 46%.[2] The priority given to Opposition leaders in the House of Representatives has meant a reduction in the opportunity for private Members in the Opposition to ask questions. Appendix 7 shows that from 1983 to 1985 close to 50% of Opposition questions have been asked by their executive.

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1. *H.R. Deb.* (25.5.50) 3280.
2. However figures provided by the Clerk show that the Opposition "share in the length of Question Time" (that is the <u>time</u> devoted to Opposition questions), is falling from a high of 56% in 1981 to 50% (1982), 43% (1983), 42% (1984) and 47% (1985). That is, answers to Government Members' questions are, generally, significantly longer than answers to questions asked by the Opposition.

157. The committee considered the proposal that some amendment to the practice of the allocation of the call would provide Opposition Members with more opportunities to ask questions and discourage lengthy answers to questions from Government Members. One submission did suggest that the Speaker could be given the powers to vary the allocation of the call so as to ensure that both sides of the House and private Members were treated more fairly. The committee concluded, however, that the apportioning of questions within parties was a matter for parties to decide internally. The committee also concluded that the current provisions for the allocation of the call remain unchanged as the problem of unnecessarily lengthy answers could be dealt with by other means (see paragraphs 150 to 153).

158. The Standing Orders Committee has considered a proposal to alter the allocation of the call. In 1971 Mr Keating made the complaint that private Members on the Government side had more opportunities to ask questions without notice than Opposition Members. The point was made that when the Speaker, Ministers and any Assistant Ministers were subtracted from the total number of Government Members, in most parliaments there would be significantly fewer questioners from the Government benches than from the Opposition benches. Mr Keating suggested that each side of the House be allotted questions on the basis of the number of "backbench Members" it had. The House referred the matter to the Standing Orders Committee.[3]

159. The Standing Orders Committee, having noted the figures for the years 1968 to 1971, observed that the Opposition in fact had asked significantly more questions as normally the first, and often the last, question was asked by the Opposition. The committee recommended that no change be made to the existing procedure.[4] The House considered the committee's decision and referred the matter back to it for further consideration but the committee did not further report on the matter.[5]

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3. H.R. Deb. (23.8.71) 511-12.
4. PP 20 (1972) 12-13.
5. H.R. Deb. (18.4.72) 1745-50; VP 1970-72/1013-14.

160. A second point of contention regarding the allocation of the call concerns the application of standing order 151 on supplementary questions. The original purpose of the standing order was to provide for more than one question on a particular subject being asked at Question Time as previously there had been concern that series of questions could develop into debate. That is, Members could henceforth ask questions without notice based upon answers to earlier, but not necessarily immediately preceding questions.[6]

161. In more recent times the term supplementary has been redefined in people's minds to coincide with the practice in the United Kingdom House of Commons, Canadian House of Commons and the Australian Senate where supplementary questions are immediate supplementary questions following the answer to the original question. The wording of standing order 151 would certainly not preclude this interpretation and a number of attempts have been made to allow this interpretation to be carried. However, Speakers have ruled that the practice of the House has been to alternate the call and that that principle should be maintained. The current practice with regard to supplementaries, then, is that no immediate supplementary questions can be asked. Members of the Opposition executive can follow up questions on a particular issue as often as their side receives the call within the boundaries of the apportionment of questions within their own party ranks. It is usually only the leaders of the parties that are able to utilise this provision.

162. A number of submissions have presented arguments ranging from a need for a clearer definition in the standing orders regarding the practice of supplementary questions to a provision for several immediate supplementary questions.

163. The majority of submissions advocating immediate supplementary questions suggested some form of notice should accompany the original question, whether it be a system such as that in the United Kingdom where a number of sitting days notice

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6. House of Representatives Practice, p. 497.

is required, or some other form of notice to be devised. One suggestion was that Ministers be given advance notice of questions with a written response incorporated in Hansard to which supplementary questions could be asked to sharpen the response. Only one submission rejected the notion of supplementary questions, citing the fact that the number of Members asking questions was too great in the already limited time given over to Question Time.

164. The committee observed that immediate supplementary questions have been permitted in the Senate since 1972 to permit elucidation of answers. The first opportunity to seek the call for a supplementary is given to the questioner and within the discretion of the Chair other supplementary questions may be allowed. The committee took into account the fact that a smaller number of Members, a longer question period (1 hour) and only 6 Ministers to represent the Government meant the circumstances in the Senate are somewhat different.

165. Appendix 8, however, shows that over the past 3 years the effect of supplementaries in the Senate question period has been minimal in terms of extra time taken. The unknown factor in the House would be the extent to which Members, particularly the leaders of the Opposition, would utilise the provision.

166. There was general agreement that the provision for immediate supplementary questions would better assist Members in probing for information and sustain the purpose of a question. They might also remove ambiguities or omissions in the original answer. Answers to supplementary questions could be expected to be short, thereby resulting in more questions being asked. The concern that a series of supplementaries could develop into a debate or be abused in some way has led to the committee concluding that only one immediate supplementary question should be allowed, that only the questioner should be allowed to ask the supplementary, and that certain guidelines be placed on supplementary questions.

167. The issue of the allocation of the call raises itself *again because it is important to determine whether the* supplementary question would be classified as a second question and thus the other side be eligible for an extra question. The committee concluded that, considering the strictures it proposes be placed on the supplementary questions, they should be regarded as a subset of the original questions rather than a second question. The principle of alternating the call for each question will be thus maintained.

Recommendations

168. *It is recommended that:*

- standing orders be amended to allow for one immediate supplementary question. Immediate supplementary questions would be restricted to the questioner, they must arise out of the Minister's response, should need no preambles, should not introduce new matter and should be put in precise and direct terms without any prior statements or argument;

- *immediate supplementary questions be regarded as a* part of one question, rather than a second question, for the purpose of the allocation of the call, and

- subject to the qualifications permitting immediate supplementary questions, current provisions remain unchanged for the allocation of the call.

# CHAPTER 8

## MATTERS RAISED BY MADAM SPEAKER

169. On 6 May 1986 Madam Speaker wrote to the committee regarding the inquiry. She referred to discussion in the House relating to the use and withdrawal of offensive words and inquired whether the committee would consider extending its inquiry to include a number of procedures and practices which have a bearing on Members' behaviour in the House, and hence the standing and dignity of the House in the eyes of the community. She also referred to the many comments she received concerning behaviour in the House. Other submissions of a more general nature had raised some of these issues earlier in the committee's existence.

170. Matters Madam Speaker suggested might come within the general overview additional to Question Time were:

- discretionary powers of the Chair generally;
- personal explanations (standing orders 64 and 66);
- personal reflections, etc. (standing orders 75 to 79 specifically);
- the procedures for naming and suspending Members, and
- indulgence or preference granted to party leaders.

171. At its meeting on 25 September 1986 the committee agreed to take the matters raised into account during its current inquiry. In reaching this decision the committee took into account the fact that a number of these issues had already been raised and, as Question Time is often a volatile period where

words of heat are exchanged and disorder may arise, it is important that the rules relating to Members' behaviour and the maintenance of order be examined. It is notable that 19 of the 27 occasions when Members have been named and suspended since 1980 occurred during Question Time.

172. The committee reviewed the range of discretionary powers available to the Chair and other matters raised by Madam Speaker and others and agreed to concentrate its consideration on the procedures for personal explanations, the practices of the House relating to personal reflections, indulgences granted to party leaders, the dissent from rulings procedure and the procedures available to the Chair to discipline disorderly Members.

Personal explanations

173. The 2 standing orders relating to the issue of personal explanations are standing orders 64 and 66, viz.:

> 64. Having obtained leave from the Chair, a member may explain matters of a personal nature, although there be no question before the House; but such matters may not be debated.
>
> 66. A Member who has spoken to a question may again be heard, to explain himself in regard to some material part of his speech which has been misquoted or misunderstood, but shall not introduce any new matter, or interrupt any Member in possession of the Chair, and no debatable matter may be brought forward nor may any debate arise upon such explanation.

174. Personal explanations are not formally part of the business of the House; they arise mainly from what is reported about or concerning a Member in the media and through what is said in debate, and are therefore not normally recorded in the formal record of proceedings, the Votes and Proceedings. When a personal explanation gives rise to some futher proceedings, e.g. the tabling of a paper or the naming of a Member, it may then be recorded.

175. It is the practice of the House that any Member wishing to make a personal explanation should approach the Speaker beforehand and inform the Speaker of his or her wish. It is usual for the Speaker to then call on the Member as soon as practicable after the presentation of papers. This practice does not preclude Members making personal explanations at other times.

176. On some occasions the Speaker has refused leave to allow a Member to make a personal explanation when prior notice has not been given or when the leave is used to enter into a general debate. In circumstances where the Speaker refuses leave to make a personal explanation or directs a Member to resume their seat during the course of an explanation, a motion "That the Member be now heard" is not in order, nor may the Member move a motion of dissent from the Speaker's ruling as there is no ruling.[1]

177. One of the reasons for personal explanations being permitted soon after Question Time is that, when a personal explanation is made in rebuttal of a misrepresentation made in a question or answer, the question and answer are excluded from any delayed broadcast of Question Time.[2]

178. The terms of the standing orders make it quite clear that it is only matters of a personal nature that can be raised and that these matters cannot be debated in the context of the personal explanation. It is also the practice of the House that personal explanations may not deal with matter affecting a Member's party. Over the years the abuse of these provisions has led to increasing problems for the Chair.

179. It is clear that the matters raised in personal explanations are often more of a party rather than personal nature (Members not wishing to let a matter that may have some impact on their standing or the standing of their party go unchallenged) and the procedure becomes subject to further tactical considerations, with a representative of the other party

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1. House of Representatives Practice, p. 445.
2. Ibid.

responding. These exchanges can often escalate and in fact develope into "mini-debates". This, of course, then contravenes the standing order.

180. Despite the fact that the practice of the House is for Members wishing to make personal explanations to approach the Speaker beforehand, there is often little opportunity for the Speaker to satisfy herself that the matters fall within the ambit of the procedure and problems for the Speaker are exacerbated when Members from each side "jump" immediately to respond to the personal explanation from the other side.

181. In considering this matter the committee has concluded that a formalisation of the practice regarding personal explanations is needed. It was concluded that spurious personal explanations could be avoided by Members having to give written advice to the Speaker of their intention to seek leave to make a personal explanation, setting out the circumstances of the misrepresentation. The advice should be submitted through the Clerk. Although this process could become cumbersome were there to be numerous personal explanations, particularly those arising out of Question Time, the committee decided that the debate and acrimonious exchanges often ensuing could thus be avoided as the Speaker would have a clear idea of the matter in question and be able to refuse or withdraw leave should a Member step beyond the bounds of his or her personal explanation as expressed in writing. This conclusion, however, is meant to have no effect on circumstances arising from debate where the provisions of standing order 66 would still apply.

182. Obviously, if personal explanations develop into mini-debates or heated exchanges across the Table it requires the Chair's intervention to enforce order. However, the purpose of the personal explanation procedure is quite limited and if a Member exceeds the provisions of standing order 64, the Chair should withdraw the leave ordering the Members to resume their seats and, if necessary, invoke the provisions of standing order 79.

183. The committee has also concluded that personal explanations be called on as soon as practicable after Question Time (given the committee's earlier recommendation regarding the presentation of Government papers) and be restricted to this time unless there are exceptional circumstances.

Recommendation

184. It is recommended that the practices relating to Members making personal explanations pursuant to standing order 64 be altered to ensure that:

- Members give advice to the Speaker of their intention to seek leave to make a personal explanation, briefly setting out in writing the circumstances of the matter it is wished to explain;
- the advice is submitted through the Clerk, and
- Members granted leave to make personal explanations be called on as soon as practicable after Question Time although the Speaker may, where special circumstances exist, grant leave at other times when Members are not addressing the House.

185. The committee also recommends no change be made to the procedure whereby Members may explain themselves in a debate in regard to some material part of their speech that has been misquoted or misunderstood (standing order 66).

Personal Reflections

186. The principal standing orders relating to personal reflections are standing orders 75 to 79, viz.:

> 75. No Member may use offensive words against either House of the Parliament of any Member thereof, against any member of the Judiciary, or against any statute unless for the purpose of moving for its repeal.

76. All imputations of improper motives and all personal reflections on Members shall be considered highly disorderly.

77. When any offensive or disorderly words are used, whether by a Member who is addressing the Chair or by a Member who is present, the Speaker shall intervene.

78. When the attention of the Speaker is drawn to words used, he shall determine whether or not they are offensive or disorderly.

79. The House will interfere to prevent the prosecution of any quarrel between Members arising out of debates or proceedings of the House or of any committee thereof.

187. In considering the standing orders and practices regarding personal reflections and offensive words the committee concentrated on the questions of who determines whether words are offensive, what is offensive and what is disorderly.

188. It is the view of the committee that the standing orders are quite clear that it is the responsibility of the Chair to intervene whenever offensive or disorderly words are used, either by the Member addressing the Chair or a Member present. When the Chair's attention is drawn to words used, it is the Chair who determines whether they are offensive or disorderly.

189. There is occasional confusion on this matter and in the past there had been conflicting rulings as to the position of the Speaker when attention is drawn to offensive words. In 1963 the standing orders were amended on the recommendation of the Standing Orders Committee to clear up the confusion.[3]

190. In judging whether words are offensive the committee was influenced in its conclusion by the explanation of Acting Deputy President Wood when he stated in the Senate:

> ...offensive words must be offensive in the true meaning of that word. When a man is in political life it is not offensive that things are said

3. HR 1 (1962-63) 20.

> about him politically. Offensive means offensive in some personal way. The same view applies to the meaning of "improper motives" and "personal reflections" as used in the standing order. Here again, when a man is in public life and a member of this Parliament, he takes upon himself the risk of being criticised in a political way.[4]

191. Another question in judging offensive words has been the extent to which words considered offensive or unparliamentary when applied to an individial Member should be considered unparliamentary when applied to a group of Members. The committee has been influenced on this issue by the ruling of Speaker Snedden in 1981 when he stated that:

> In the past there has been a ruling that it was not unparliamentary to make an accusation against a group as distinct from an individual. That is not a ruling which I will continue. I think that if an accusation is made against members of the House which, if made against any one of them, would be unparliamentary and offensive, it is in the interests of the comity of this House that it should not be made against all as it could not be made against one. Otherwise, it may become necessary for every member of the group against whom the words are alleged to stand up and personally withdraw himself or herself from the accusation ... I ask all honourable members to cease using unparliamentary expressions against a group or all members which would be unparliamentary if used against an individual.[5]

192. The committee has considered that, in determining whether words are offensive or, in particular, disorderly, the Chair should not only take into account the nature of the words and the context in which they are used, but also the state of the House as in New Zealand practice.[6] If a reference or statement is regarded as so insulting by a section of the House that, were it to stand unchallenged it might provoke disorder, there would be ground for requiring its withdrawal. Also, there may be cases

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4. S. Deb. (2.6.55) 629.
5. H.R. Deb. (12.3.81) 709, House of Representatives Practice, p. 461.
6. David McGee, Parliamentary Practice in New Zealand, Government Printer, Wellington, 1985, pp. 139-40.

where it may be better to let a remark pass but, if there is a likely possibility that disorder will arise if a statement is let pass, the Chair should intervene.

193. In examining the question of offensive and disorderly words the committee gave attention to some of the problems that can arise when offensive words are used against, or reflections made, on the character or conduct of or imputations of improper motives made against both Members and individuals outside the House.

194. Even though these words may be ordered to be withdrawn if the words themselves are offensive, great damage may be done to the person's reputation when the allegation or words used are reported in the media.

195. The committee has considered the comments made in the 1984 report of the Joint Select Committee on Parliamentary Privilege on this subject and noted that committee's recommendations regarding the misuse of the privilege of freedom of speech (reflections on non-Members). The Joint Select Committee on Parliamentary Privilege proposed that a complaints mechanism be established for a trial period to deal with complaints made by members of the public to the effect that they have been subject to unfair or groundless parliamentary attacks, that at the commencement of each session each House agree to a resolution stressing the need to use the freedom of speech responsibly and that the laws of qualified privilege as they apply to reports of proceedings in Parliament be modified to produce uniformity through out Australia in respect of the publication of fair and accurate reports of proceedings and extracts from or abstracts of papers.[7]

196. This committee believes the 1984 report of the Joint Select Committee on Parliamentary Privilege and the Parliament (Powers, Privileges and Immunities) Bill 1985 should be given early consideration by the House.

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7. Final Report, Joint Select Committee on Parliamentary Privilege, PP 219 (1984). *See*, in particular, recommendations 3, 4 and 7.

197. The committee also stresses that the privilege of freedom of speech must be used responsibly, that Members must observe the standing orders at all times in the House (even during divisions) and the reporting by the media should be of a responsible nature. The committee has a concern regarding the standard of debate and the need to use privilege responsibly and believes there is an obligation on both Members and the media to ensure this is so.

Recommendation

198. It is recommended that, in determining whether words are offensive or, in particular, disorderly, the Chair not only take into account the nature of the words and the context in which they are used and the practice as set out at page 460 and 461 of House of Representatives Practice, but also the state of the House. If a reference or statement is regarded as so insulting by a section of the House that were it to stand unchallenged it might provoke disorder, there would be ground for requiring its withdrawal.

Indulgence granted to party leaders

199. The regular granting of indulgence by the Chair is a relatively recent phenomena. The earliest precedent listed in House of Representatives Practice occurred in 1979. There are no clear guidelines for its use, its principal advantages being its versatility and the fact that the Chair maintains the power to direct a Member to resume his or her seat. The principal disadvantage is that, with the lack of guidelines, indulgence could possibly be misused, party leaders and others using the procedure to avoid the proper constraints contained in the standing orders.

200. The committee has noted that the major use of "indulgence" has occurred:

- in the period immediately following or during Question Time when indulgence may be used (incorrectly) to make personal explanations;

- by Ministers to add to or correct answers given in Question Time that day or on previous days;
- by Ministers and party leaders to make short statements in the House, and
- to raise or seek guidance or comment on matters of order or to comment on matters of privilege.

201. The disadvantages of this recent practice are that party leaders often assume indulgence and place the Chair in a difficult position, and, as mentioned above, indulgence is often used to avoid using other, more appropriate, procedures.

202. The committee believes that the relatively recent practice of Members, particularly party leaders, seeking and often assuming the indulgence of the Chair for a variety of purposes is a usurpation of the proper forms and rights of the House. In particular, the proper and more appropriate procedure of seeking leave of the House is often ignored.

Recommendation

**203. It is recommended that leave of the House be sought in lieu of seeking the indulgence of the Chair and the practice of seeking the indulgence of the Chair be discontinued.**

Maintenance of order

204. The basic rule of the House regarding the maintenance of order is standing order 52 which squarely places the responsibility for maintaining order in the House and committee on the Speaker and Chairman of Committees. The standing orders give the Chair specific powers and duties in the maintenance of order but also place constrictions on the Chair.

205. Two matters in particular the committee wishes to comment on are the dissent from rulings procedure and the disciplinary powers available to the Speaker to assist in the maintenance of order.

Objections to rulings of the Chair

206. Standing orders 98 to 100 set out the procedures by which Members may raise points of order, the proceedings to be followed once a point of order has been raised and the procedure if objection is taken to a ruling. The objection must be taken at once, submitted in writing, moved and seconded and must be proposed and debated forthwith. Standing order 281 sets out the procedure to be followed in committee, the principal difference being the fact that the question must be forthwith decided by the committee without debate.

207. The House of Representatives has always had a procedure for dissent. Prior to 1950 the standing orders made provision for the Speaker to make rulings or decisions on matters of order and provision was made for an objection to be taken "to the ruling or decision" and "a motion" made (the word dissent was not mentioned), recorded and proposed to the House. Debate thereon had to be forthwith adjourned to the next sitting day. The consideration of many in fact lapsed.

208. It is the view of the committee that the dissent procedure has minimal advantages and considerable disadvantages. The practice is not shared by comparable parliaments and, in outlining the disadvantages, the committee can do little better than to quote Phillip Laundy in commenting on the past procedure for appealing rulings in the Canadian House of Commons (abolished in 1968):

> If the rule had any advantage at all, it was that it created the possibility of challenging a ruling without having to resort to a motion of censure. In practice the rule had little to recommend it. In an essay written prior to the abolition of the rule, Professor Aitchison made the following observations:
>
> The case for the abolition of appeals is overwhelming even in the absence of a permanent Speakership. Appeals are almost always made by Opposition Members and are almost always lost.

> When the ruling is a good one, an appeal adds nothing to the prestige of the Speaker; when the ruling is bad, a bad ruling is confirmed by a vote of the House. The use that I have suggested Opposition Members have latterly discovered for appeals is an illegitimate one and should be denied them. Appeals are ineffective as a means of obstruction, for the Canadian closure, once invoked, is inexorable. There has, however, been a persistent belief among Opposition Members that the appeal procedure affords them some protection. Since there is always a possibility that the Government will avail itself of it, the procedure, on the contrary, is a positive danger to Opposition Members. It has also been frequently asserted in the Canadian House that the abolition of appeals would be inconsistent with the position of the Speaker as a servant of the House and the fact that the House is master of its own procedure. But there are no appeals in the British House where the Speaker is equally the servant of the House and the House the master of its procedure. The Speaker best serves the House if his rulings cannot be reversed, and the House best serves its own interest by controlling its procedure through the deliberate amendment of the rules when necessary, and not through the determination by majority vote of the application of the rules to particular cases.[8]

209. The number of successful motions of dissent in the House of Representatives has been minimal. Since 1901 there have been over 200 motions of dissent from rulings of the Chair. Eight of these have been successful (<u>see</u> Appendix 9).

210. There is an obvious temptation to use the procedure for tactical reasons. Also, it is occasionally used in circumstances where the Chair exercises a discretion or makes a determination where dissents are not appropriate. Examples of such occasions are where the Chair has exercised a discretion pursuant to standing order 107, determined whether precedence over other business should be given to a motion on a matter of privilege pursuant to standing order 96 and named a Member pursuant to standing order 303 (a matter which had already been tested by a vote of the House).[9]

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8. Phillip Laundy, <u>The Office of Speaker in the Parliaments of the Commonwealth</u>, Quillon Press, London, 1984, pp. 119-20.
9. VP 1985-86/ 548; VP 1985-86/ 203 and VP 1983-84/ 664.

211. The committee has concluded that it should recommend that the dissent procedure should be removed from the standing orders of the House. It is a procedure that has little real advantage for any Member or section of the House and its use could possibly be prone to abuse for tactical considerations or in situations of frustration and heat, achieving little more than serving as a means of protest.

212. The committee does not believe that the fully independent Speakership (as in the United Kingdom House of Commons) is a prerequisite for the abolition of the procedure. If the actions of any occupant of the Chair are such that, in the view of any Member, he or she does not warrant the confidence of the House, the procedure for giving notice of motion of want of confidence in the Chair is always available. Short of that, if there is a continuing problem with some matter, a proposal that standing orders be amended or a practice be altered is always an option.

Recommendation

**213. It is recommended that the provisions for dissent from rulings of the Chair (standing orders 100 and 281) be removed from the standing orders and a specific provision be inserted prohibiting any objection to, debate on, or appeal against any ruling of the Chair on a matter of order.**

Power of the Chair to order the withdrawal of a Member

214. In the House of Representatives the Chair currently has several disciplinary options which it may invoke to ensure the orderly conduct of the business of the House. Firstly, a Member may be named pursuant to standing order 303 (and a motion is then put for his or her suspension). Secondly, where the conduct of a Member is considered to be of such a grossly disorderly nature the Speaker or Chairman may invoke standing order 306 and order the Member to withdraw immediately from the Chamber. The Member must then forthwith be named. Thirdly, in the case of grave disorder, the Speaker may adjourn the House or suspend the sitting pursuant to standing order 308.

215. Prior to 1963 provision for dealing with grossly disorderly behaviour was contained in (then) standing order 303 which obliged the Chair to order the immediate withdrawal of a Member whose conduct was grossly disorderly and the Member could not return during the same sitting except by permission of the Chair. This provision had been adopted by the House in 1950.

216. The operation of the provision was reviewed by the Standing Orders Committee and in 1962 the committee recommended that the standing order be re-drafted to make it quite clear that (a) its provisions would apply only in cases which are so grossly offensive that immediate action is imperative and (b) that the standing order could not be used for ordinary offences. In addition, provision was made for the House to judge the matter by requiring the Chair to name the Member immediately after his withdrawal.[10]

217. It should be noted that the provisions now contained in standing order 306 for dealing with grossly disorderly behaviour have never been used.

218. The committee has reviewed these procedures and also considered certain propositions on the matter. One submission viewed it as regrettable that where a Member has flagrantly misbehaved or disregarded the direction of the Chair and is named, it is common practice for the House to divide on the question of his or her suspension. This was seen as generally making it a party political matter which it should not be and placed the Speaker in an unnecessarily invidious position.

219. It was proposed that the heat could be often taken out of these situations if the Speaker had the discretion, not requiring a resolution of the House and not capable of attracting a motion of dissent, to suspend a Member from the service of the House for a short period.

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10. HR 1 (1962-63) 55.

220. It was also proposed that, as well as giving the Chair the capacity to order the withdrawal of a Member for a short period, the authority of the Chair could be considerably strengthened by providing that, upon being named, a Member is automatically suspended without a motion being moved and the question being proposed to the House for the relevant period which should be expressed in sitting days, not calendar days.

221. The Canadian House of Commons has recently reviewed the disciplinary powers of the Chair, the Special Committee on Reform (having recommended the Speaker be elected by secret ballot) considering whether they should be clarified and strengthened.[11] Their procedures were similar to those in the House of Representatives. The committee recommended the Speaker be empowered to order the withdrawal of a Member for the remainder of a sitting and to suspend a sitting or to adjourn the House in cases of grave disorder, and the proceedings consequent upon the naming of a Member be set out in the standing orders.

222. Standing order 16(6)(a) of the Canadian House of Commons now provides that the Speaker be vested with the authority to maintain order by naming individual Members for disregarding the authority of the Chair and, without resort to motion, ordering their withdrawal for the remainder of that sitting.

223. In the New Zealand House of Representatives the Chair may order any Member whose conduct is highly disorderly to withdraw immediately from the House for such a period (up to the remainder of that day's sitting) as the Chair may appoint. Members so ordered to withdraw forfeit their right of access to the Chamber during the period of withdrawal but are not disqualified from participating in any division that may be held.

224. Also, the Chair may name any Member whose conduct is grossly disorderly and thereby call on the House to adjudge upon the conduct of such a member. Proceedings following are similar

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11. Report of the Special Committee on Reform of the House of Commons, (James A. McGrath, PC,MP, Chairman), Third report, June 1985, pp. 37-8.

to those in the Australian House of Representatives (suspension is for 24 hours on the first occasion, 7 days on the second occasion during the same session and 28 days on the third occasion during the same session).

225. Having considered the matters raised, the committee has concluded that the adoption of a procedure by which the Chair may order the withdrawal of a Member for disorderly behaviour for a short period has considerable merit. It was agreed that the committee recommend that a provision be inserted in the standing orders enabling the Chair to order a Member whose conduct is disorderly to withdraw from the House for one hour or the remainder of the sitting (whichever is the lesser period) and that the Chair's direction not be dependent on a resolution of the House, nor should an appeal by way of the dissent procedure be available.

226. The committee envisages that the procedure will act as a "circuit breaker" when situations become heated. It will be a sensible mechanism which could defuse potential disorder and the continued disruption which occasionally follows the naming of a Member. It could also mean that the use of tactics by Members to draw attention to issues will be lessened.

227. The committee has also concluded that the current procedures for the naming and suspension of Members should be retained and it not be mandatory that the proposed procedure for the ordering the withdrawal of Members be used as a progressive power in conjunction with the existing provisions.

Recommendation

228. It is recommended that a provision be inserted in the standing orders enabling the Chair to order a Member whose conduct is disorderly to withdraw from the House for one hour or the remainder of the sitting (whichever is the lesser period) and the Chair's direction not be subject to a resolution of the House or a motion of dissent.

## CHAPTER 9

### REFERENCE TO OFFICE HOLDERS AND MEMBERS IN THE STANDING ORDERS

229. As there are a number of female Members in the House of Representatives the committee believes that the use of pronouns in the Standing Orders should reflect this fact.

Recommendation

230. **It is recommended that standing orders be amended where necessary to remove pronouns importing one gender.**

231. The committee envisages that this amendment, if agreed to, would be incorporated at the next reprint of the standing orders.

LEN KEOGH
Chairman

Parliament House
25 November 1986

# DISSENTING REPORT BY THE HON. W.M. HODGMAN, QC, MP.

The proposed removal of the dissent from rulings procedure is a recommendation I can not support, and I therefore oppose.

I believe it is essential that Members retain the opportunity to appeal rulings of the Chair. As Phillip Laundy states in his distinguished work on the office of Speaker in the Commonwealth, "The complete political detachment which is such an important feature of the speakership at Westminster is not characteristic of the office in Australia"[1] and this fact, together with the large number of Members who perform Chair duty in our House, has led me to conclude that the removal of the dissent provision is totally inappropriate.

Whether we like it or not, there are sometimes, questionable rulings and it is essential that Members retain their fundamental right to query or appeal these rulings.

I am of opinion that, should the proposal be adopted by the House, the Chair will inevitably be exposed to an increasing number of unwarranted censure or want of confidence motions and its stature will be inevitably diminished.

On another matter, I do not agree with the committee's recommendation regarding the removal of the practice of granting indulgence by the Chair.

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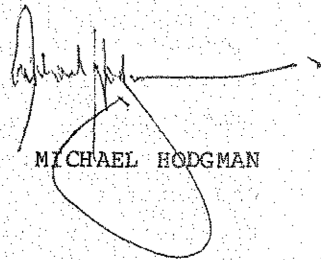
1. Laundy, p. 143.

Whilst I agree that indulgence should never be presumed and leave of the House should often be sought in lieu of seeking indulgence, I believe there is a case for retaining the procedure. It is useful, is totally within control of the Chair, and can often be used to dispense with matters briefly and expedituously without exposing those wishing to comment to the possibly fickle use by any Member of his right to refuse the leave of the House.



MICHAEL HODGMAN

26 November 1986

# DISSENTING REPORT OF MR E.J. LINDSAY, RFD, MP.

I dissent from the recommendations of the committee which propose that the provisions for dissent from rulings of the Chair be removed from the standing orders (paragraph 213) and the proposal that a provision be inserted in the standing orders enabling the Chair to order a Member to withdraw from the House for one hour (paragraph 228).

Basic to my dissent is my strong view that there should be no changes to the standing orders countenanced which infringe upon the existing rights of Members of the House. Both these proposals, if implemented, will diminish the rights of ordinary Members of the House.

## Objections to rulings of the Chair

I dissent from the recommendation that the provisions for dissent from rulings of the Chair (standing orders 100 and 281) be removed from the standing orders and a provision be inserted prohibiting any objections to, debate on, or appeal against any ruling of the Chair on a matter of order.

The dissent procedure is one this Chamber has had since Federation and I believe it is one that has served it well. The right to query or appeal the rulings of the Chair is necessary and essential to the health of the Chamber.

No one is infallible and Members must have some form of defence against rulings that may be ill judged or hasty. I do not believe that the dissent from or appeal against a ruling should necessarily be seen as diminishing the stature of the Chair. It affords the House an excellent chance to pause and consider its own practice and often, as a by - product of this, the heat can be taken out of potentially explosive situations.

A glance at some of the precedents listed in Appendix 9 to this report will indicate how the mechanism has served the House well in the past.

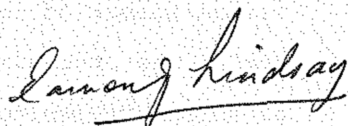
Power of the Chair to order the withdrawal of a member

The committee proposal that the Speaker be given the power to order a Member whose conduct is disorderly to withdraw from the Chamber for one hour is an unnecessary infringement of the rights of Members of the House.

The House is currently well served by the disciplinary provisions contained in the standing orders and I do not believe that there is any need to alter these.

I see a distinct possibility that sometime in the future the mechanism could be over utilised as a means of shoring up the authority of the Chair and the absence of any appeal provision could lead to its abuse. We do not have a non-Party Speaker as in the United Kingdom and have a relatively large panel of Deputy Chairmen of Committees compared to other parliaments.

The current procedures for dealing with disorderly Members are adequate, there is no necessity for divisions on every motion for suspension as is often assumed and there is a strong possibility that the use of the procedure proposed will get out of hand to the disadvantage of Members.



EAMON LINDSAY

26 November 1986

## *DISSENTING REPORT BY MR LEO MCLEAY, MP*

*After careful consideration I have decided to dissent from the House of Representatives Procedure Committee's report No 3. Although I support the report in all other respects, I believe the Committee has failed to provide any redress for members of the public who have in some way been harmed by statements made under the protection of parliamentary privilege.*

*My experience as Deputy Speaker and as chairman of one of the House of Representatives' largest committees has convinced me that the protection of individuals ranks with freedom of speech among the most important of parliament's responsibilities and rights.*

*In making these remarks I do not in any way wish to suggest that the free speech offered to Members of Parliament should be limited. This basic, essential right, must remain untrammelled as an indispensable element of the way in which our democratic system works. However, I cannot accept that this right should be unanswerable. I believe that the right of free speech in the parliament has in the past been abused, sometimes innocently because of poor information but also, regrettably, maliciously to the detriment of individuals who do not, in the current system nor in the procedures recommended in this report, have the power to defend themselves or to put their responses to a similar audience.*

*Standing order 153 stipulates that questions cannot be asked which reflect on, or are critical, of the character or conduct of persons whose conduct may only be challenged on a substantive motion and that notice must be given of questions critical of the character or conduct of other persons. That is, any question critical of an identifiable person must be placed on the Notice Paper.*

*The Committee has proposed the retention of these rules and I support without qualification that recommendation. I believe, however, that there is a basic flaw in our procedure whereby members of the public whose character has been questioned in a question or answer or in debate have no effective means of redress.*

*Members and certain other office holders are protected by the standing orders and practices of the House. Members can also refute any allegations or imputations made in the House. This defence is not open to non-Members.*

*I consider that it is essential that non-Members criticised in the House should have a means of placing on record an answer to any parliamentary attack made on them.*

*I note that in 1984 the Joint Select Committee on Parliamentary Privilege recommended that, for a trial period, a 'complaints mechanism' be implemented.*

*Whether this course is followed or a simpler mechanism whereby responses to attacks can be inserted in the records is adopted is not crucial. What is crucial is that there must be some procedure whereby citizens who believe they have been unfairly attacked or have had their name and/or reputation/s damaged should be given some justice and have available some mechanism whereby they can place their rebuttal in the records of the House should they so wish.*

*LEO McLEAY, MP*
*Deputy Speaker and*
*Chairman of Committees*

*26 November 1986*

APPENDIX 1

## SUBMISSIONS

Submissions were received from the following:

Mr M.A. Burr, MP
The Hon. R.J.D. Hunt, MP
The Hon. R.C. Katter, MP
The Hon. J.C. Kerin, MP
Mr R.F. Shipton, MP
The Rt Hon. I.McC. Sinclair, MP, Leader of the National Party of Australia and Manager of Opposition Business.
Mr J.H. Snow, MP

In addition, a background paper on Question Time was submitted by the Clerk of the House.

Prior to the commencement of the committee's second inquiry an invitation was extended to a range of groups and individuals to make a submission on matters they felt warranted the committee's examination. Replies from the following included comments on Question Time and the other matters covered by this report.

The Hon. J.F. Cope
Mr G. O'H. Giles
The Hon. A.J. Grassby
The Hon. P. Howson
Dr H.A. Jenkins
The Hon. M.J.R. MacKellar, MP
Mr J. Pender
The Hon. G.G.D. Scholes, MP
Mr B.D. Simon
The Hon. E.G. Whitlam

In addition the committee considered the published views of the former Speaker of the House, the Rt Hon. Sir Billy Snedden.

APPENDIX 2

# SCHEDULE OF PROPOSALS TO AMEND THE STANDING ORDERS RELATING TO QUESTIONS, 1901-1986

## EXTRACT FROM TEMPORARY STANDING ORDERS OF 1901 RELATING TO QUESTIONS

These were the temporary standing orders in use from the opening of Parliament in 1901 to the adoption of permanent standing orders in 1950.

### CHAPTER 11.

Questions seeking Information.
Questions respecting Public Business.

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

Such Questions not to involve Argument.

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

No debate allowed.

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

Notice of Question.

95. Notice of Question shall be given by a Member delivering the same at the table fairly written, signed by himself, and showing the day proposed for asking such Question.

When Notice given.

96. When Notices of Questions are given, the Clerk shall place them at the commencement of the Notice Paper, according to the order in which they are given.

# EXTRACTS FROM REPORTS OF STANDING ORDERS COMMITTEES RELATING TO QUESTION TIME AND OTHER PROPOSALS TO AMEND THE STANDING ORDERS

| Standing Order | Proposed amendment |
| --- | --- |
| **1902** | |
| | Add S.O. 119<br>No entry shall be made in the journals of the House respecting any questions asked without notice, nor of any reply thereto. |
| **1905** | |
| Temporary S.O. 92 (now S.O. 142 and 143)- After Notices have been called for, Questions may be put to Ministers of the Crown relating to public affairs... | Delete "Questions may be put to Ministers of the Crown relating to public affairs"<br><br>Substitute<br>"Questions relating to public affairs may be put to Ministers" |
| Proposed S.O. 119 from 1902 (no current equivalent)<br>No entry shall be made in the journals of the House... | Delete "journals"<br>Substitute "Votes and Proceedings" |

All these proposals from both 1902 and 1905 were ordered to lie on the table and were never brought on for debate.

**1931**

Add S.O. 96A
"The reply to a Question on Notice shall be given by delivering the same in writing to the Clerk at the Table, and a copy thereof shall be supplied to the Member who has asked the Question, and such question and reply shall be printed in Hansard."

Replies to questions on notice were given orally but, in order to save time, the House adopted the new standing order on 26 June 1931.

**1937**

The 1937 proposals were a major development and are set out on the following 2 pages.

## PROPOSED STANDING ORDERS RELATING TO QUESTIONS - EXTRACT FROM 1937 REPORT OF STANDING ORDERS COMMITTEE

These proposed standing orders were the first major proposals for change in standing orders relating to questions since 1901. These proposals were not adopted at the time but form the basis of our current standing orders relating to questions.

### Questions seeking Information

128. Questions may be put to a Minister ralating to Public affairs with wnich he is officially connected, to proceedings pending in the House, or to any matter of administration for which he is responsible.

129. Questions may be put to a member, not being a Minister, relating to any Bill, Motion, or other public matter connected with the business of the House, of which the member has charge.

130. The following general rules shall apply to Questions:-
Questions cannot be debated.
Questions should not contain -
(a) statements of facts or names of persons unless they are strictly necessary to render the question intelligible and can be authenticated;
(b) arguments;
(c) inferences;
(d) imputations;
(e) epithets;
(f) ironical expressions; or
(g) hypothetical matter.

Questions should not ask Ministers -
(a) for an expression of opinion;
(b) to state the Government's policy; or
(c) for legal opinion.

Questions cannot refer to -
(a) debates or answers to questions in the current Session; or
(b) proceedings in committee not reported to the House.

Questions cannot anticipate discussion upon an Order of the Day or other matter.

Questions cannot be asked whether certain things, such as statements made in a newspaper are true, but attention may be drawn to such statements if the member who puts the questions makes himself responsible for their accuracy.

131. A question fully answered cannot be renewed.

Alteration of question

132. The Speaker may direct that the language of a Question be changed if it seems to him unbecoming or not in conformity with the Rules of the House.

Notice of question

133. Notice of Question shall be given by a Member delivering the same to the Clerk at the table within such time as, in the opinion of the Speaker, will enable the Question to be fairly printed. The Question shall be fairly written, signed by the member, and shall show the day proposed for asking such Question.

Order of questions

134. The Clerk shall place Notice of Questions at the commencement of the Notice Paper in the order in which they were received by him.

Replies to questions

135. The reply to a Question on Notice shall be given by delivering the same in writing to the Clerk at the Table and a copy thereof shall be supplied to the member who has asked the Question, and such Question and reply shall be printed in Hansard.

Questions without notice

136. Questions may be asked without notice on important matters which call for immediate attention, provided such Questions conform to the general rules applying to Questions on Notice.

The committee commented that "The Standing Orders concerning 'Questions seeking information' have been redrafted and rearranged". Existing Standing Orders $92\text{-}96_A$ have been included as well as the rules governing questions which appear on the back of the forms for the Notice of Questions; provision has been made for Notices of questions to be lodged with the Clerk within a reasonable time.

| Standing Order | Proposed amendment |
| --- | --- |

1943

These proposed changes relate to the proposals contained in the 1937 report.

| Standing Order | Proposed amendment |
| --- | --- |
| Proposed S.O.130 (now S.O.144)<br>Questions cannot refer to -<br>a) debates or answers to questions in the current Session. | Delete "or answers to questions". |
| Questions cannot be asked whether certain things such as statements made in a newspaper are true, but attention may be drawn to such statements if the Member who puts the question makes himself responsible for their accuracy. | Delete |
| | Add S.O.136A (now S.O.153)<br>Questions regarding the character or conduct of individuals other than Ministers or Members of the House can only be asked upon notice. |

The report was made an order of the day and was once brought on for debate but, all proposals LAPSED at dissolution of the Parliament.

1950

| Standing Order | Proposed amendment |
| --- | --- |
| Proposed S.O.136 (now S.O.151)<br>S.O.148<br>Questions may be asked without notice on important matters which call for immediate attention, provided such questions conform to the general rules applying to Questions on notice. | Questions may be asked without notice on important matters which call for immediate attention.<br>At the discretion of the Speaker one supplementary question may be asked to elucidate an answer. |

All the proposals in 1950 were based on the 1937 report incorporating proposed amendments from 1943 and 1949. Standing orders concerning questions had been re-arranged and re-drafted slightly. The new S.O.148 is the only substantial change to the former proposals. All proposals were ADOPTED and became the standing orders of the House on 21 March 1950.

| Standing Order | Proposed amendment |
|---|---|

1962-63

General comment -

These standing orders proposals were to give effect to the practice of the House of Commons followed by the House. A further re-numbering occurred at this time.

| Standing Order | Proposed amendment |
|---|---|
| S.O.144 | |
| Questions should not contain -<br>(a) ... | Add<br>(aa) precise extracts from newspapers, news reports, books, speeches, etc.<br>(ab) discourteous references to a friendly country or its representatives; |
| Questions should not ask Ministers -<br>(a) ...<br>(b) to state the Governments' policy; or<br>(c) for legal opinion | Delete "Ministers", "(b) and (c)" |
| | Substitute<br>(b) for legal opinion;<br>(c) Ministers to state the Government'spolicy, but may seek an explanation regarding the intentions of the Government and may ask the Prime Minister whether a Minister's statement represents Government policy; or |

The Standing Orders committee considered that the revised wording stated practice better. See also the 1964-65 S.O.144 proposals, below.

| Standing Order | Proposed amendment |
|---|---|
| S.O. 144 | Add<br>(d) whether statements in newspapers, news reports, books, etc., or of private individuals or unofficial bodies are accurate. |

The report commented that "A Member may not ask whether statements in a newspaper, etc., are accurate and may not included extracts in his question but provided he makes himself responsible for its accuracy, he may draw attention to a statement in a newspaper, etc."

| Standing Order | Proposed amendment |
|---|---|
| S.O. 144 | |
| Questions cannot anticipate discussion upon an Order of the Day or other matter. | Questions cannot anticipate a a question on the Notice Paper or discussion upon an order of the day. |

Comment

The House REJECTED all proposed amendments to S.O.144.

| Standing Order | Proposed amendment |
|---|---|
| | Add S.O.144A<br>An answer shall be relevant to the question. |

S.O.144A ADOPTED

| | |
|---|---|
| S.O.150 (now S.O.151)<br>"Questions may be asked without notice on important matters which call for immediate attention. At the discretion of the Speaker one supplementary question may be asked to elucidate an answer." | Delete "on important matters which call for immediate attention", and "one supplementary question". Substitute "supplementary questions" after Speaker. |

The report commented that "The words proposed to be omitted are inconsistent with the practice followed in relation to Questions without Notice. Occupants of the Chair have found it impracticable to limit such Questions as required by these words. This difficulty is inherent in the nature of the Question without Notice session which has come to be recognized as a proceeding during which private Members can raise matters of day-to-day significance. The House of Commons Question Hour in which Questions without Notice supplementary to a Question on Notice are freely asked and answered is described by Campion in his Introduction to the Procedure of the House of Commons as "turning a searchlight upon every corner of the Public Service". The amendment substituting "supplementary questions" for "one supplementary questions" is proposed as, in practice, further questions may be and are asked provided they are not stated by the Member to be a supplementary question." This amendment ADOPTED.

| | |
|---|---|
| | Add S.O.150A (now S.O.152)<br>A question without notice may be put to the Speaker relating to any matter of administration for which he is responsible. |

This new standing order was added to express existing practice. This amendment ADOPTED.

| | |
|---|---|
| S.O.151 (now S.O.153)<br><br>"Notice must be given of questions regarding the character or conduct of individuals other than Ministers or Members of the House". | "Questions shall not be asked which reflect on or are critical of the character or conduct of those persons whose conduct may only be challenged on a substantive motion, and notice must be given of questions critical of the character or conduct of other persons." |

The report commented that "The existing Standing Order implies that a question critical of a Minister of Member may be asked without Notice and that questions critical of certain persons, e.g., the Crown, Speaker, Members, &c., whose conduct can be challenged only on a substantive motion (May 16/360) may be asked on Notice. In addition, the Standing Order has been applied as preventing genuinely laudatory references to persons outside the House. The new Standing Order is designed to clarify the rules. This amendment ADOPTED. All adopted amendments were agreed to on 1 May 1963 and operated from 13 August 1963.

| Standing Order | Proposed amendment |
|---|---|

1964-65

| | |
|---|---|
| S.O.144<br>...<br>Questions should not ask Ministers-<br>(a) ...<br>(b) to state the Government's policy; or | Replace (b) with<br>(b) to announce the Government's policy, but may seek an explanation regarding the policy of the Government and it's application and may ask the Prime Minister whether a Minister's statement in the House represents Government policy; or |

The committee considered that the rewording stated practice better. Amendment ADOPTED on 1 April 1965

1971

Distribution of the call

| | |
|---|---|
| On 23 August 1971 the House agreed to a motion moved by Mr Keating, viz: That the matter of the distribution of questions be referred to the Standing Orders Committee. | The Committee recommended NOT to vary the existing procedure for the distribution of the call during questions without notice. |

The report commented that "Over the period 1968-71 Opposition Members asked 2,383 questions as against 2,204 by Government Members. During part of this period the Government had a substantially greater number of members than at present. The Chair has adhered to a policy of calling Members alternately from the left and right of the Chair. Even if a Government Member were to rise each time the call passed to the Government side the Opposition would normally expect to receive, in total, additional questions as the first question, and often the last, would come from the Opposition."

1972

| | |
|---|---|
| S.O.143<br>Questions may be put to a Member, not being a Minister, relating to any bill, motion, or other public matter connected with the business of the House, of which the Member has charge. | Add "or an Assistant Minister" after "Minister". |

"Standing order 143 provides that a question may be put to a Member on specified matters which could, in certain circumstances, provide an opportunity for questions to be put also to an Assistant Minister. It being the intention of the Government that questions directed to the Government should be answered only by Ministers, the Committee agreed to the addition of words which would have the effect of preventing Assistant Ministers from being questioned." Amendment ADOPTED 31 March 1972.

1974

Details of the report on the proposal to roster Ministers between the House and the Senate are included in Appendix 4.

| Standing Order | Proposed amendment |
| --- | --- |

1978

Add S.O.151A - Notice of motion given

The time limit for an answer to a question without notice shall be 3 minutes but may, by leave, be extended.

Notice of motion given by Mr Hayden on 23 November 1978. Notice LAPSED at dissolution.

1982

Conduct of Question Time

On 25 February 1982 the House agreed to a motion by Mr Hayden, viz.: "That the following matter be referred to the Standing Orders Committee for examination, report and recommendation:

The standing orders and practices which govern the conduct of Question Time, taking particular account of:

(1) the definition of relevancy in answers to questions and the setting out of criteria to define relevancy in accordance with legal definition;

(2) length of answers to be subject to a time limit;

(3) the need for clearer definition in the standing orders about the practice in relation to supplementary questions;

(4) Senators who are Ministers to attend the House to answer questions;

(5) the appropriateness of setting down specified sitting days as days on which questions will be directed to Ministers about particular Departments, and

(6) Question Time to be a minimum of 45 minutes."

The committee considered the matter and invited submissions but had not reported when the 32nd Parliament was dissolved. The matter was not subsequently revived by the committee.

| Standing Order | Proposed amendment |
|---|---|
| 1983 | |
| | <u>Time limits for answers</u> - Notice of motion given |
| | That this House - |
| | (1) notes that in the 6 weeks of the current Budget sittings of this House, there has been time allocated for only 198 questions on the 18 sitting days, or an average of 11 questions per day; |
| | (2) condemns the Prime Minister and his Ministers in their abuse of Question Time in giving extensive irrelevant answers to pre-arranged questions, and their refusal to give appropriate answers to the Opposition's questions, and |
| | (3) resolves that the Standing Orders be amended to provide that answers to questions be limited to 3 minutes each (any answer of longer duration to be regarded as a statement and handled accordingly) so as to prevent the continuation of this abuse and that answers be relevant to the question at all times. |

Notice of motion given by Mr Braithwaite on 18 October 1983.

Notice LAPSED at dissolution.

APPENDIX 3

## CURRENT STANDING ORDERS RELATING TO QUESTIONS

### CHAPTER XI

### QUESTIONS SEEKING INFORMATION

**142.** Questions may be put to a Minister relating to public affairs with which he is officially connected, to proceedings pending in the House, or to any matter of administration for which he is responsible. *Questions to Ministers*

**143.** Questions may be put to a Member, not being a Minister or an Assistant Minister, relating to any bill, motion, or other public matter connected with the business of the House, of which the Member has charge. *Questions to other Members Am 13 Apr. 72 Op 20 Apr. 72*

**144.** The following general rules shall apply to questions: *Rules for questions Am 31 Mar. 65 Op 1 Apr. 65*

Questions cannot be debated.

Questions should not contain—

(*a*) statements of facts or names of persons unless they are strictly necessary to render the question intelligible and can be authenticated;

(*b*) arguments;

(*c*) inferences;

(*d*) imputations;

(*e*) epithets;

(*f*) ironical expressions; or

(*g*) hypothetical matter.

Questions should not ask Ministers—

(*a*) for an expression of opinion;

(*b*) to announce the Government's policy, but may seek an explanation regarding the policy of the Government and its application and may ask the Prime Minister whether a Minister's statement in the House represents Government policy; or

(*c*) for legal opinion.

Questions cannot refer to—

(*a*) debates in the current session; or

(*b*) proceedings in committee not reported to the House.

Questions cannot anticipate discussion upon an order of the day or other matter.

**145.** An answer shall be relevant to the question. *Answer to be relevant*

**146.** A question fully answered cannot be renewed. *Question answered*

**147.** The Speaker may direct that the language of a question be changed if it seems to him unbecoming or not in conformity with the standing orders of the House. *Alteration of question*

**151.** Questions may be asked without notice. At the discretion of the Speaker supplementary questions may be asked to elucidate an answer. *Questions without notice* *Supplementary questions*

**152.** A question without notice may be put to the Speaker relating to any matter of administration for which he is responsible. *Question to Speaker*

**153.** Questions shall not be asked which reflect on or are critical of the character or conduct of those persons whose conduct may only be challenged on a substantive motion, and notice must be given of questions critical of the character or conduct of other persons. *Questions regarding persons*

APPENDIX 4

# EXTRACT FROM 1974 REPORT OF THE STANDING ORDERS COMMITTEE RELATING TO THE ROSTERING OF MINISTERS TO ANSWER QUESTIONS IN BOTH HOUSES

## RECOMMENDATION BY THE COMMITTEE INVOLVING FURTHER ACTION BY THE HOUSE

**Rostering of Ministers to answer questions in both Houses**

7 (a) That for a trial period (subject to the concurrence of the Senate) Senate Ministers be rostered to attend in the House of Representatives and House of Representatives Ministers be rostered to attend in the Senate for the purpose of answering questions without notice.

(b) That, provided the House agrees in principle to the proposal, the following motion should be submitted for consideration by the House—

(1) That this House—

*Believing* that the interests of Senators and Members of the House of Representatives desiring to ask questions of Ministers would be better served if Senate Ministers were to attend in the House of Representatives and House of Representatives Ministers were to attend in the Senate during the respective periods of questions without notice;

*Authorises* the attendance in the Senate of its Ministers and the attendance in the House of Senate Ministers during periods when questions are asked of Ministers without notice;

*Agrees*, subject to the concurrence of the Senate, to the following procedural arrangements:

(a) The Prime Minister and the Leader of the Government in the Senate shall determine a roster which shall, depending upon the availability of Ministers, provide for one Senate Minister to attend in the House and up to four House Ministers to attend in the Senate at any one time.

(b) A Senate Minister when attending in the House and a House Minister when attending in the Senate in accordance with this resolution—

(i) may sit in the seats reserved for Ministers, and

(ii) shall in all relevant matters be subject to the standing orders and practices of the House in which he is attending, but he shall not vote, be counted for quorum purposes, attempt to move any motion, or act in any way to initiate any business whatsoever.

(c) Senators may address questions without notice to a House Minister attending in the Senate and Members of the House may address questions without notice to a Senate Minister attending in the House in like manner to those addressed to Ministers sitting in the Senate and the House, respectively; and

(d) A Senate Minister when attending in the House and a House Minister when attending in the Senate may, at his own discretion, withdraw from that Chamber at any time.

(2) That the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

(3) That a message be sent to the Senate acquainting it of this resolution and requesting that it concur and take complementary action accordingly.

*(Paragraphs 27 to 50)*

**Rostering of Ministers to answer questions in both Houses**

**27** The proposal that Ministers be available in either House for questioning was submitted to the Standing Orders Committee *during the last Parliament by the then* Leader of the Opposition (Mr Whitlam). At the close of the Parliament the matter had not been considered by the Committee and it was listed amongst other matters for consideration at the last meeting of the Committee.

**28** Although there are no precedents in the Australian Parliament for the attendance of a Minister in the Chamber of which he is not a Member, the principle is established in some Constitutions relating to other Parliaments. For instance the Victorian *Constitution Act Amendment Act* 1958, section 17, provides—

'(1) Notwithstanding anything contained in *The Constitution Act* or in this Act any responsible Minister of the Crown who is a member of the Council or of the Assembly may at any time with the consent of the House of Parliament of which he is not a member sit in such House for the purpose only of explaining the provisions of any Bill relating to or connected with any department administered by him, and may take part in any debate or discussion therein on such Bill, but he shall not vote except in the House of which he is an elected member.

(2) It shall not be lawful at any one time for more than one responsible Minister under the authority of this section to sit in the House of which he is not a member.'

29 This is supported by a joint standing order of the two Victorian Houses which states—

'7A. Any responsible Minister of the Crown who, under the provisions of section 9 of *The Constitution Act* 1903, may sit in the House of Parliament of which he is not a Member shall while doing so be subject to the standing orders of that House and to the law and practice of Parliament which is applicable to it.'

30 It is understood that no cases have occurred in Victoria under these provisions for very many years.

31 The principle of Ministers attending in both Chambers is also expressed in the Constitutions of a number of countries, e.g., India, the Netherlands, Portugal and Italy.

32 The only section of the Australian Constitution which appears to have a bearing on the proposal is section 43, which states—

'A member of either House of the Parliament shall be incapable of being chosen or of sitting as a member of the other House.'

33 A Member of one House of the Australian Parliament, therefore, *cannot sit as a Member* of the other House. In that other House, he could not vote, be counted for quorum purposes or act in any way whatsoever to initiate any motion or item of business. But there would appear to be no reason why he could not attend in the other House with the status at least of a witness. The standing orders of each House already provide complementary machinery for this purpose.

34 The relevant standing orders of each House are as follows:

SENATE

S.O. 387 'When the attendance of a Member of the House of Representatives, or any Officer of that House, is desired, to be examined by the Senate or any Committee thereof (not being a Committee on a Private Bill), a Message shall be sent to the House of Representatives to request that the House of Representatives give leave to such Member or Officer to attend, in order to his being examined accordingly.'

S.O. 388 'Should the House of Representatives request by Message the attendance of a Senator before a Select Committee of the House of Representatives, the Senate may forthwith authorise such Senator to attend, if he think fit. The Senate, if similarly requested by the House of Representatives, may also instruct its own Officers to attend such Committees, if the Senate think fit.'

HOUSE OF REPRESENTATIVES

S.O. 359 'When the attendance of a Member of the Senate, or any officer of the Senate, is desired, to be examined by the House or any Committee thereof, a Message shall be sent to the Senate to request that the Senate give leave to such Member or officer to attend for examination.'

S.O. 360 'Should the Senate request by Message the attendance of a Member of the House before the Senate or any committee thereof, the House may forthwith authorise such Member to attend, if he thinks fit. The House, if similarly requested by the Senate, may, if the House thinks fit, also instruct its own officers to attend the Senate or any committee thereof.'

35 During the existence of the Australian Parliament several attempts have been

made to scure the attendance of Senators or Members in the other Chamber.

**36** In 1920 (Votes & Proceedings, p. 163) the House received a Message from the Senate requesting concurrence in the following resolution:

> 'That the Standing Orders Committees of the Senate and the House of Representatives be requested to consider the question of preparing standing orders providing that a Minister in either House may attend and explain and pilot through the other House any Bill of which he has had charge in his own House.'

**37** Consideration of the Message was set down for a future sitting, but the matter was not reached and lapsed at prorogation.

**38** In 1921 (2 December, *Hansard* pp. 13583-9) Mr Hughes (Prime Minister) put forward a suggestion that the Minister for Repatriation (Senator Millen) be heard on the floor of the House regarding the administration of his Department. However, as the suggestion did not receive the general support of Members, Mr Hughes did not formalise his proposal in any positive manner.

**39** Recently (10 April 1973, Votes & Proceedings, p. 106), Mr Gorton moved—

> 'That so much of the standing orders be suspended as would prevent the Right Honourable Member for Higgins moving that, in accordance with standing order 359, a message be sent to the Senate requesting that the Senate give leave to the Attorney-General to attend this House for examination.'

The motion was negatived.

**40** The proposal that Ministers be rostered to answer questions in both Houses, now under consideration, is not one which is contemplated by the standing orders, nor is it one which has previously been considered by either of the Australian Houses.

S.O. 98 of the Senate states—

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

S.O. 142 of the House of Representatives states—

> 'Questions may be put to a Minister relating to public affairs with which he is officially connected, to proceedings pending in the House, or to any matter of administration for which he is responsible.'

**41** While the Senate standing order infers that the Ministers of the Crown referred to be Senators, the House of Representatives standing order contains no similar inference that the Minister referred to in that standing order must be a Member of the House of Representatives.

**42** There does not appear to be, however, any insurmountable reason, provided the proposal is appropriately authorised by both Houses, why some roster or timetable should not be devised to make the proposal workable.

**43** It is suggested that no problem should arise in relation to the application of privilege to the participation in the Question period by a Minister from the other House. There would appear to be no doubt that such participation must be considered to be proceedings in Parliament.

**44** Some practical problems, however, do emerge, and among these may be listed the following points:

(a) The paramount right of each House to the services of its own Members. The staggering of the Question periods in the two Houses would help in this respect. Conversely, if the Question periods are conducted simultaneously in the two Houses difficulties will arise. The length of the Question period in the Senate may be a factor to be considered.

(b) The availability of Ministers and the basis upon which the roster arrangement should be determined. Who should make the determination and how should it be applied to the varying number of Ministers in the two Houses?
(c) The extent to which a Minister from the other House can be made subject to the rules and orders of the House which he is attending. For instance, the power of the Chair in relation to the Minister in matters of disorder.
(d) The need for the Minister to be able to leave the Chamber at any time to undertake responsibilities in his own House or to fulfil other business engagements, and
(e) the infrequency of calls to ask a question, particularly in the House of Representatives, which will continue to frustrate Members at a time when they may well be optimistically anticipating the opportunity to ask a question of a particular Minister.

**45** Having regard to the number of Ministers in the respective Houses, 6 in the Senate and 21 in the House of Representatives, a roster is suggested for consideration which would allow each Minister to appear in the other House possibly once in each 2 sitting weeks (6 sitting days). This would allow one Senate Minister to attend in the House of Representatives for each Question period and for, say, 3 or 4 House of Representatives Ministers to attend in the Senate for each Question period in that Chamber. It is suggested that the order of the roster should be determined by the Prime Minister and the Leader of the Government in the Senate. It may, of course, be felt desirable that some Ministers should appear in the other House more frequently than others. In any case it would be desirable for the convenience not only of the Ministers concerned, but also for the Senators or Members planning to ask questions, for the roster to be determined well in advance and, if at all possible, for it to be adhered to.

**46** Section 50 of the Constitution provides that:

> 'Each House of the Parliament may make rules and orders with the respect to . . . (ii). The order and conduct of its business and proceedings either separately or jointly with the other House.'

**47** It is submitted that under this power it should be competent for each House to make a joint rule requiring that a Minister from one House, while attending in the other House in the conduct of its proceedings, shall in all relevant matters be subject to the standing orders and practices of that other House. Such a rule would be consistent with the principle expressed in the joint standing order of the Victorian Parliament referred to in paragraph 29.

**48** The standing orders which would have particular application would, of course, be those dealing with the asking of questions. Those relating to disorder could also, in some circumstances, have application.

**49** It is obvious that the proposal could be put into operation only with the concurrence of both Houses.

**50** The Committee having considered the proposal recommends that it be given a trial and that initially it be implemented in accordance with enabling resolutions of the two Houses. Should the trial period prove successful suitable amendments to the standing orders could be proposed at some later stage. *(See Recommendation No. 7)*

## GENERAL STATISTICS ON QUESTIONS WITHOUT NOTICE (1970 - 86)

| Year | No. of sitting days | No. of days questions asked | Total No. of questions asked | Average No. of questions on days questions asked | Average length of question time (a) | Average time taken for question and answer (a) |
|---|---|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| 1970 | 73 | 71 | 1187 | 16.7 | 43.0 | 2.6 |
| 1971 | 74 | 72 | 1218 | 16.9 | 43.0 | 2.5 |
| 1972 | 60 | 58 | 1024 | 17.7 | 47.0 | 2.7 |
| 1973 | 81 | 75 | 1219 | 16.3 | 49.0 | 3.0 |
| 1974 | 62 | 56 | 782 | 14.0 | 46.0 | 3.3 |
| 1975 | 69 | 63 | 956 | 15.2 | 45.0 | 3.0 |
| 1976 | 79 | 75 | 1447 | 19.3 | 48.5 | 2.5 |
| 1977 | 68 | 62 | 1021 | 16.5 | 48.0 | 2.9 |
| 1978 | 75 | 68 | 1098 | 16.2 | 46.5 | 2.9 |
| 1979 | 68 | 64 | 1033 | 16.1 | 49.0 | 3.0 |
| 1980 | 51 | 49 | 752 | 16.0 | 49.5 | 3.1 |
| 1981 | 62 | 58 | 942 | 16.2 | 45.0 | 2.8 |
| 1982 | 53 | 46 | 708 | 15.4 | 45.0 | 2.9 |
| 1983 | 49 | 47 | 598 | 12.7 | 48.5 | 3.8 |
| 1984 | 52 | 49 | 594 | 12.1 | 48.0 | 4.0 |
| 1985 | 66 | 62 | 742 | 12.0 | 49.0 | 4.1 |
| 1986(b) | 68 | 67 | 803 | 12.0 | 48.0 | 4.0 |

Notes:

Column 5 - Figures rounded to first decimal point.

Column 7 - Derived by multiplying columns 3 and 6 then dividing answer by column 4, figures rounded to first decimal point.

(a) Minutes

(b) Up to 23 October 1986

APPENDIX 6

AVERAGE NUMBER OF QUESTIONS ASKED
BY OPPOSITION AND GOVERNMENT MEMBERS
(1980-86)

| Year | Average No. of questions asked by Goverment Members per year(a) | Average No. of questions asked per Opposition Member per year(b) | Average No. of questions asked by Opposition less leaders per year(c) | Average No. of questions asked by Opposition leaders per year(d) |
|---|---|---|---|---|
| | (1) | (2) | (3) | (4) |
| 1980 | 5.7 | 10.3 | 7.9 | 53 |
| 1981 | 8.3 | 9.9 | 7.7 | 63 |
| 1982 | 6.4 | 7.3 | 6.0 | 40 |
| 1983 | 5.4 | 6.3 | 3.6 | 37 |
| 1984 | 5.4 | 6.1 | 2.9 | 43 |
| 1985 | 6.1 | 5.7 | 3.5 | 41 |
| 1986(e) | 6.4 | 6.3 | 4.3 | 38 |

Notes:

(a) total number of questions asked by Government Members divided by size of Government minus Ministers and the Speaker, e.g. 60(1985-86)

(b) total number of questions asked by the Opposition divided by the size of the Opposition, e.g. 66(1985-86)

(c) total number of questions asked by the Opposition minus those asked by the leaders divided by total size of Opposition minus leaders.

(d) the total number of questions asked by Leader and Deputy Leader of the Opposition (1980-86) and the Leader and Deputy Leader of the National Party of Australia (1983-86), divided by 2 for 1980-82 and divided by 4 for 1983-86.

(e) Up to 23 October 1986 (comparable number of days to other years).

APPENDIX 7

## NUMBER AND PERCENTAGE OF QUESTIONS WITHOUT NOTICE ASKED BY GOVERNMENT MEMBERS, OPPOSITION MEMBERS AND OPPOSITION LEADERS (1980-86)

| | (1) Total number of questions asked - (a) | | | (2) Percentage share of Opposition and Government in questions - | |
|---|---|---|---|---|---|
| Year | Opp. Members | Govt. Members | Total | Opp. Members | Govt. Members |
| | No. | No. | No. | % | % |
| 1980 | 390 | 362 | 752 | 52 | 48 |
| 1981 | 504 | 438 | 942 | 54 | 46 |
| 1982 | 371 | 337 | 708 | 52 | 48 |
| 1983 | 314 | 284 | 598 | 53 | 47 |
| 1984 | 306 | 288 | 594 | 52 | 48 |
| 1985 | 378 | 364 | 742 | 51 | 49 |
| 1986(c) | 418 | 385 | 803 | 52 | 48 |

(3)
No. of Opposition questions asked by Opposition Leaders

| Year | Leader | D/Leader | Leader & D/Leader - N.P.(b) | Total | All Opposition Leaders |
|---|---|---|---|---|---|
| | No. | No. | No. | No. | % |
| 1980 | 79 | 26 | - | 105 | 27 |
| 1981 | 89 | 36 | - | 125 | 25 |
| 1982 | 57 | 22 | - | 79 | 21 |
| 1983 | 78 | 33 | 37 | 148 | 47 |
| 1984 | 94 | 39 | 38 | 171 | 56 |
| 1985 | 91 | 37 | 36 | 164 | 43 |
| 1986(c) | 92 | 25 | 36 | 153 | 37 |

Notes:

(a) excludes disallowed questions and questions addressed to the Speaker which were required to be handed to the Clerk.

(b) N.P. - National Party of Australia.

(c) Up to 23 October 1986 (comparable number of days to other years).

# SENATE - ANALYSIS OF QUESTIONS WITHOUT NOTICE (1984-86)

## AVERAGE NO. OF QUESTIONS PER DAY BY PERIOD OF SITTINGS AND % OF TOTAL NO OF QUESTIONS BY PERIOD OF SITTINGS.

| | First Question | | | | | | Supplementary | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | ALP | LIB | AD | NP | IND | SUB TOTAL | ALP | LIB | AD | NP | IND | SUB TOTAL | TOTAL |
| BUDGET 1984 (27)* | 9<br>48.4% | 7.2<br>38.7% | 1.5<br>8.1% | .7<br>3.8% | .2<br>1% | 18.6<br>- | .1<br>3.3% | 2.5<br>83.3% | .4<br>13.3% | -<br>- | .03<br>1.0% | 3<br>- | 21.6<br>- |
| AUTUMN 1985 (36)* | 9.5<br>47.7% | 7.4<br>37.2% | 1.6<br>8.0% | 1.3<br>6.5% | .1<br>.5% | 19.9<br>- | .1<br>3.4% | 2.4<br>81.4% | .4<br>13.5% | -<br>- | .05<br>1.7% | 2.95<br>- | 22.8<br>- |
| BUDGET 1985 (36)* | 9.06<br>46% | 7.25<br>36.9% | 1.58<br>8.0% | 1.25<br>6.4% | .53<br>2.7% | 19.67<br>- | .2<br>6.5% | 2.36<br>76.1% | .25<br>8.1% | .16<br>5.2% | .1<br>3.2% | 3.1<br>- | 22.7<br>- |
| AUTUMN 1986 (43)* | 9.35<br>46.1% | 7.56<br>37.3% | 1.56<br>7.7% | 1.3<br>6.4% | .5<br>2.5% | 20.27<br>- | .16<br>6.1% | 2.02<br>77.1% | .3<br>11.4% | .07<br>2.7% | .07<br>2.7% | 2.62<br>- | 22.89<br>- |

Percentages of Senators by party 1986

| | | | | | | Actual Number |
|---|---|---|---|---|---|---|
| All Senators | 43.4 | 38.2 | 9.2 | 6.6 | 2.6 | 76 |
| Without Ministers | 38.6 | 41.4 | 10.0 | 7.1 | 2.9 | 70 |

* Figures in brackets represent the number of days on which questions were asked.

APPENDIX 9

## SUCCESSFUL MOTIONS OF DISSENT FROM RULINGS OF THE CHAIR

1. On 23 July 1920, a point of order having been raised that the closure should not have been moved until a motion had been proposed or stated to the House, Deputy Speaker Chanter ruled the motion for the closure was in order. Mr T.J. Ryan (an Opposition Member) moved "That Mr Speaker's ruling that a motion 'That the question be now put', can be received before the question itself has been proposed or stated to the House by Mr Speaker - be disagreed to". The matter was debated the following day (as was required) and the motion agreed to 27 to 21.

   VP 1920-21/218, 220-21

   Note: Then standing order 262B stipulated the closure could be moved "After any question has been proposed ...".

2. On 10 September 1937, a point of order being raised by Mr Lyons (Prime Minister) that certain words used by the Member for East Sydney (Mr Ward) were untrue and offensive and should be withdrawn - Speaker Bell ruled that the statement was not unparliamentary because it was incorrect, and as the words used contained no unparliamentary expressions, he could not therefore ask for them to be withdrawn. Mr Lyons moved, that the ruling be disagreed with. The motion was agreed to 29 to 22.

   VP 1937/106-7

3. On 6 March 1953, Mr Calwell having asked for the withdrawal of certain words used by Prime Minister Menzies, and the Prime Minister having withdrawn one of the words and declined to withdraw one of the remaining words, Speaker Cameron ruled that the Prime Minister must withdraw all the words as it is customary for this to be done when a Member considers words to be personally offensive and ask for their withdrawal. Mr Menzies moved, that the ruling be dissented from, and the motion was agreed to 47 to 32.

   VP 1951-53/595

4. On 8 October 1953, a point of order was raised that the scope of the debate on a bill should permit a discussion of the ways in which the States may spend the sums granted - the bill was the States Grants (Special Financial Assistance) Bill 1953. Speaker Cameron ruled that the limits of the debate were narrow and confined the debate to whether the sums should be granted to the States or not. Mr Bate (a Government Member) moved, that the ruling be dissented from. The motion was agreed to, 49 to 47.

   VP 1951-53/714

5. On 2 December 1953 Mr Ward called attention to remarks made the previous day by the Prime Minister, claimed that it was offensive to him, and asked for a withdrawal. Speaker Cameron ruled the remark unparliamentary and called for its withdrawal. Mr E.J. Harrison (Vice-President of the Executive Council) moved that the ruling be dissented from. The motion was agreed to, 56 to 40.

VP 1953-54/65

6. On 4 May 1955, Dr Evatt (Leader of the Opposition), proposed to move a motion of dissent from the Speaker's ruling that no point of order was involved in his decision that he acted with authority the previous evening in preventing a Member from making a speech and calling upon a Minister as the next speaker in the debate. Speaker Cameron ruled that the proposed motion was not in order. Dr Evatt moved, that the ruling be dissented from. The House agreed to the motion, 63 to 48.

Dr Evatt then moved his motion which was eventually negatived. The Prime Minister, following the suspension of standing orders, moved that the House approve the action of the Speaker the previous evening in ordering the Member for East Sydney to be seated and in calling upon the Minister for Territories to speak. That motion was resolved in the affirmative.

VP 1954-55/184-87

7. On 12 May 1955 Speaker Cameron, having asked the House whether leave was granted to a Minister to move a motion without notice and Mr Calwell having called "Aye", the Speaker stated there was no point in calling "Aye" as the standing order required only objection to be indicated. Mr Calwell then raised a point of order that it was not a breach of order to say "Aye" when the House is asked if leave is granted. The Speaker then ruled that the Chair was obliged to carry out the standing order which did not provide for consent to be indicated. Mr Calwell moved, that the ruling be dissented from. The motion was agreed to, 61 to 15.

VP 1954-55/201

8. On 27 November 1962, Mr Whitlam having moved that a new clause be added to a bill, Chairman Lucock ruled that the proposed new clause was out of order as it was not within the title or relevant to the subject matter of the bill. Mr Whitlam moved - that the ruling be dissented from. The committee agreed to the motion, 55 to 54.

VP 1962-63/307-8