Senate Brief

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Questions

One of the ways in which the Senate seeks to hold the government accountable for its actions is by questioning ministers. The procedures of the Senate provide a number of opportunities for senators to ask questions of ministers—during question time, through written questions on notice and at committee hearings, especially when estimates of expenditure are being considered. This brief focuses on questions asked without notice in question time each sitting day and on questions on notice submitted in writing.

Question time

Question time in the Senate is scheduled to begin at 2.00 p.m. on each sitting day and usually continues for an hour. The number of questions (including supplementary questions) asked at question time in recent years has averaged around twenty-eight.

The procedure is as follows. The President asks if there are any questions without notice and senators wishing to ask questions rise in their places. It is the practice for the President to 'give the call' first to an opposition senator. After the question has been asked the President calls on the appropriate minister to answer. The chair calls senators alternately from the government and non-government sides of the chamber to ask questions, and ensures that the allocation among senators is as wide as possible. For this purpose, the President keeps a list of senators who have been called at question time during a sitting week. When the Leader of the Opposition rises to ask a question, he or she is accorded priority over all other non-government senators. The call is given to senators who have not asked questions before calling any senator for a second time on any one day.

Rules for questions and answers

The basic requirements of question time were outlined in 1976 by President Laucke:

- Questions must relate to matters for which a minister is responsible.
- Questions and answers should be brief.
- Requests for statistical information should be placed on the Notice Paper and should not be sought on the floor of the chamber on any occasion. Requests for detailed information requiring lengthy preparation should be sought by a motion for documents (see below).
- Quoting should be avoided, except to the degree necessary to make a question clear.
- Replies should be confined to giving information, and no debate should be entered into.

Senate standing order 73 prescribes the following rules for questions:

- Questions shall not contain:
  (a) statements of fact 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 shall not ask:
  (a) for an expression of opinion;
  (b) for a statement of the government's policy; or
  (c) for legal opinion.
- Questions shall not refer to:
  (a) debates in the current session; or

Quotation in questions

On 11 May 1950 President Brown ruled that 'it is not permissible to quote from newspapers, books or periodicals when asking questions'. During the debate on an unsuccessful motion of dissent from this ruling two main reasons were cited for the prohibition on the use of quotations. One concerned the equitable use of time and the other concerned the obligation for questions to seek information rather than to make a statement. A 1918 ruling of President Givens was cited:

> *It is contrary to the Standing Orders for an honourable senator to make a statement in asking a question. No one outside Parliament can have a greater right than a member of the Senate in this regard and to give permission for the honourable senator to read the statement he has referred to would give the newspaper correspondent that greater right.*

In 1971 President Cormack ruled as follows:

> *I remind the Senate that it has been ruled on many occasions that while questions may be based on newspaper or other reports, quotations are not in order. The purpose of questions is to obtain information. Questions should be brief so that as many as possible may be asked within the time allotted. I therefore reaffirm that senators must frame their questions in such a way as not to contain quotations.*

In practice the chair exercises a discretion and may allow a senator to make a quotation to the extent necessary to make the question clear.

(b) proceedings in committee not reported to the Senate.

- Questions shall not anticipate discussion upon an order of the day or other matter which appears on the Notice Paper.
- The President may direct that the language of a question be changed if it is not in conformity with the standing orders.

The conduct of members of either house should not be reflected on in a question. It is within the discretion of the President to direct that long and involved questions be placed on the Notice Paper.

The rule concerning anticipation is not interpreted narrowly because, if it were, it could block questions on a wide variety of subjects. The practice is to allow questions seeking information regarding matters on the Notice Paper but which do not necessarily amount to anticipating discussion. Similarly, the rule that questions shall not refer to proceedings in committee which have not been reported to the Senate is not interpreted too narrowly because, if it were, the rule might block questions on a wide variety of subjects under consideration by committees. The working rule is that senators should not be restricted from asking questions on subjects which may be under examination by a committee, provided that they do not refer to non-public committee proceedings which have not been reported to the Senate.

In applying the rule that a question shall not ask for a statement of government policy, in most cases the chair leaves it to the minister to say whether a question involves a statement of government policy. However, it has been ruled that it is in order for a question:

- to seek an explanation of government policy;
- to ask a minister about the effects of a proposal on his or her portfolio;
- to ask about the government's intentions and the reasons for those intentions;
- to seek clarification of a statement made by a minister.

A question which invites a minister to comment on opposition policies is out of order unless the question is linked to the government's intentions in some other matter of ministerial responsibility.

To whom questions may be addressed

Questions may be put 'to ministers relating to public affairs, and to other senators relating to any matter connected with the business on the Notice Paper of which such senators have charge' (standing order 72). A senator may be asked about his or her items of business on the Notice Paper but the question and answer must not debate the items. While the overwhelming majority of questions are directed to

Senator the Hon. Joe Ludwig answering a question during question time

ministers, questions are sometimes addressed to other senators. Questions are sometimes directed to the President about matters concerning the conduct of business or the administration of the Senate or Parliament House.

Senators usually comprise about one-third of the ministry, the remaining ministers being members of the House of Representatives. In addition to answering questions concerning their own portfolios, each Senate minister also represents one or more ministers in the House and responds to questions concerning matters for which House ministers are responsible. A list of Senate ministers and the portfolios they represent is published in the Notice Paper.

Questions may be put to a minister relating to the public affairs with which he or she is officially connected, to proceedings pending in Parliament, or to any matter of administration for which the minister is personally responsible or in respect of which he or she represents another minister. A question must seek information, or press for action within a minister's responsibility. The chair will disallow any question where it is clear that it is not within a minister's responsibility. For example, questions concerning private or party matters, or matters which are the exclusive responsibility of state governments are not permitted. There are occasions, however, when it is difficult for the chair to decide whether a matter comes within ministerial responsibility; in such cases, according to President Young, 'It is the right and responsibility of ministers in this chamber to decide who will answer questions and in whose area of responsibility a particular question lies.'

From time to time senators have been appointed by the government to assist ministers in their work. They are known as parliamentary secretaries, and while they may perform many of the functions of a minister in the Senate they may not be asked or answer questions without notice relating to matters within the responsibility of ministers.

Time limits on questions and answers

Since September 1992 time limits have been imposed on questions and answers at question time. Senate standing order 72 provides that:

> (a) the asking of each question shall not exceed one minute and the answering of each question shall not exceed four minutes; and
>
> (b) the asking of each supplementary question shall not exceed one minute and the answering of each supplementary question shall not exceed one minute.

In November 2009 the Senate agreed to modify the rules for question time so that:

(a) primary questions are limited to one minute and answers to them to two minutes;

(b) two supplementary questions are allowed to each questioner, each limited to thirty seconds and the answers to them to one minute each; and

(c) answers are to be directly relevant to each question.

Duration of question time

While the standing orders prescribe no limit to question time it usually lasts for an hour. It is a long-established practice for question time to be terminated by the Leader of the Government in the Senate asking that further questions be placed on notice. The basis of the practice is that it is competent for ministers to ask that any questions be placed on the Notice Paper and that ministers, in any case, are not bound to answer questions.

Ministers not obliged to answer questions

While senators have the right to ask questions of ministers there is no corresponding obligation on those questioned to give an answer, except that answers are required to be 'directly relevant' to each question. President Baker ruled on 26 August 1902 that there was 'no obligation on a Minister or other member to answer a question', and in 1905 he ruled: 'It is a matter of policy whether the Government will answer a question or not. There are no standing orders which can force a Minister or other senator to answer a question'. Other Presidents have stated that answers are 'optional' or 'discretionary'. However, political reality dictates that ministers must seek to demonstrate that they have a firm understanding and command of the matters for which they are responsible by answering questions in a competent manner. In party political terms it is important that a minister performs well at question time.

Supplementary questions

Following a minister's reply, the questioner or any other senator may be called to ask two supplementary questions in order to elucidate the reply. Supplementary questions must be actually and accurately related to the original question and must relate to or arise from the answer. It is not in order to ask a supplementary question of another minister. Any supplementary question must be directed to the minister initially answering the question and when a minister has asked that a question be put on notice a supplementary question may not be asked.

Answers

A minister may reply to a question relating to matters for which he or she is officially responsible in a personal or representative capacity and replies must be confined to those areas of responsibility. Ministers must accept full personal responsibility for answers given on behalf of others, and ministers have been censured by the Senate on this basis.

As noted earlier, since September 1992 time limits have been imposed on answers: the answer to a question may not exceed two minutes and the answering of each supplementary question may not exceed one minute.

The rules which apply to questions also apply to answers. For example, if a question may not ask for a legal opinion, it follows that an answer may not give one. Questions with or without notice are permissible only for the purpose of obtaining information, and answers are limited to supplying the information asked for by the questions. In answering a question, a senator must not debate it (standing order 73(4)). Thus an answer should be confined to giving the information asked for, and should not contain any argument or comments. An answer must also be relevant to the question. On 22 August 1973 President Cormack ruled that in answering a question:

> *...the Minister should confine himself to points contained in the question with such explanation only as will render the answer intelligible. In all cases an answer must be relevant to the question.*

However, should the Senate seek a full statement of a case, latitude is allowed to a minister in answering a question; but if it is desired to debate the matter, this should be done only on a specific motion (ruling of President Gould, 1908). In relation to relevance, the Procedure Committee in 1994 observed as follows:

> *It is clear that, in answering a question, a minister must be relevant to the question. It is for the President to make a judgment whether an answer is relevant to a question. If the answer is not relevant, the President requires the minister to be relevant.*

It is not the responsibility of the chair to tell ministers how they should respond to questions: 'That is purely a matter for Ministers, provided their answers are within the Standing Orders', ruled President McClelland in 1985. It is also not for the

chair to determine whether an answer is correct. Challenges to the accuracy of an answer should not take the form of a point of order. It is in order for a minister to answer part of a question without notice and ask that the remainder be placed on the Notice Paper. As noted earlier, questions without notice relating to matters within the responsibility of ministers may not be directed to a parliamentary secretary.

It is established practice for ministers at the end of question time to make additional responses to questions without notice. They then provide orally, or by incorporation in Hansard, information which they were unable to provide at the time the question was asked. Motions to take note of such answers may be moved but supplementary questions may not be asked in response to them.

Motions to take note of answers

Motions to take note of answers provide the Senate with an opportunity to debate answers which are regarded as unsatisfactory or which raise issues requiring debate. Procedures to regulate such motions were first introduced in September 1992 and were incorporated into the standing orders in February 1997. Such a motion may be moved without notice or leave at the conclusion of question time and may relate to one or more of any answers given that day. A senator may speak for not more than five minutes on a motion and the total time for debate on all such motions on any day must not exceed 30 minutes, not including any time taken in raising and determining any points of order during the debate. The procedure is used on most sitting days, usually by non-government senators.

Question time and party politics

Question time provides non-government senators with the opportunity to gain political advantage by asking questions which seek to embarrass the government. Most opposition questions are therefore aimed at exposing perceived weaknesses in government administration and policies. A strategy frequently used by the opposition is to ask a coordinated sequence of questions on a topic on which the government is seen to be vulnerable, or to focus its questions on a particular minister. Many reputations have been made and lost at question time.

Government backbenchers, on the other hand, have nothing to gain by directing difficult or embarrassing questions to ministers at question time. It is in the government's interest to have its own backbenchers ask questions which enable ministers to give

Senator the Hon. Stephen Conroy during question time

answers which boost the government's image. Ministers therefore frequently provide their backbench colleagues with questions which, when asked at question time, enable a minister to make an announcement or statement to the government's advantage. Such questions are known colloquially as 'Dorothy Dixers' after a newspaper columnist, Dorothy Dix, who published answers to questions purportedly from readers, but which she allegedly wrote herself.

Questions on notice

In addition to the questions asked orally in the Senate chamber each sitting day, senators may also at any time address written questions on notice to ministers and other senators. In a typical year senators ask about 1110 questions on notice. These questions and the answers to them are not usually read in the chamber, though they are published in Hansard.

Questions on notice may be submitted to the Clerk through the Senate Table Office where the questions are checked to ensure they are in conformity with the standing orders before being placed on the

Notice Paper. If a question contains material which does not conform with standing orders, it is for an officer of the Senate to discuss the matter with the senator who submitted it. The problem is usually resolved at this point by the rephrasing or withdrawal of the question. If the matter cannot be resolved at this level the question may be referred to the President of the Senate for determination.

Each question on notice is allocated a number and the text of each questions is published in the next issue of the Notice Paper. As soon as practicable, questions are forwarded to the appropriate ministers' offices and to the relevant departments where replies are drafted for consideration by the minister. When a reply is approved by the minister it is delivered to the Clerk, again through the Table Office. The Table Office supplies a copy to the senator who asked the question and arranges for the question and the reply to be printed in Hansard. A senator who has received a copy of a reply to a question on notice may, by leave, immediately after question time, ask the question and have the reply read in the Senate, but this procedure is seldom used.

Thirty day rule

Unless a question is withdrawn it remains on the Notice Paper until it is answered or the Parliament is prorogued. Questions which remain unanswered have their numbers listed in the Notice Paper and those that have remained unanswered for 30 or more days are noted. On Thursdays the list of numbers in the Notice Paper is replaced by a summary showing the date asked, number, senators responsible for providing answers and the topic of unanswered questions. A senator who asks a question on notice and does not receive an answer within 30 days may, at the end of question time, seek an explanation. If an explanation is provided by the responsible minister the senator may move a motion to take note of the explanation. If the minister does not provide an explanation as to why the question has not been answered the senator may move a motion, usually a motion ordering that the answers and explanations be tabled by a specific date. Ministers may be censured for the delay in answering. This procedure encourages ministers to ensure that questions are answered within the 30 day limit.

Orders for production of documents

Senators seeking detailed information which may require considerable preparation should not do so by way of questions on notice. It has been ruled that such information should be sought by a motion for documents under standing order 164 which provides that documents may be ordered to be produced and presented to the Senate. The rationale for this ruling is that because an order for a document must be approved by the Senate this procedure enables the Senate to consider whether the cost of preparing the information is justified.

Further reading

Harry Evans and Rosemary Laing (eds.), *Odgers' Australian Senate Practice*, 13th edn, Department of the Senate, Canberra, 2012, available on the internet at: http://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/odgers

Standing Orders and Other Orders of the Senate, Department of the Senate, Canberra, September 2009 available on the internet at: http://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/standingorders/b06

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