

Questions

One of the more important functions of a Parliament is its critical function. This 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. Questions are a vital element in this critical function.

It is fundamental in the concept of responsible government that the Executive Government be accountable to the Parliament. The capacity of the House of Representatives to call the Government to account depends, in large measure, on its knowledge and understanding of the Government's policies and activities. Questions without notice and on notice play an important part in this search for information.

The accountability of the Government is demonstrated most clearly and publicly at Question Time when, for approximately 45 minutes on most sitting days, questions without notice are put to Ministers.¹ The importance of Question Time is demonstrated by the fact that at no other time in a normal sitting day is the House so well attended. Question Time is usually an occasion of special interest not only to Members themselves but to the news media, the radio broadcast audience and visitors to the public galleries. It is also a time when the intensity of partisan politics can be clearly manifested.

The purpose of questions is ostensibly to seek information or press for action.² However, because public attention focuses so heavily on Question Time it is often a time for political opportunism. Opposition Members will be tempted in their questioning to stress those matters which will embarrass the Government while government Members will be tempted to provide Ministers with an opportunity to put government policies and actions in a favourable light or to embarrass the Opposition.³

However, apart from the use of Question Time for its political impact, the opportunity given to Members to raise topical or urgent issues is invaluable. Ministers accept the fact that they must inform themselves through a coverage of press, television or private sources of questions that may be asked of them in order that they may provide a satisfactory answer. A well informed Ministry thus results in an informed House and through it the nation.

SOME HISTORICAL FEATURES

A form of Question Time has been a feature of the House since the first sitting days of the 1st Parliament. It has been stated that:

Influences were derived from both the Westminster and Colonial Parliaments. But more importantly, the Australian system of parliamentary questioning was adapted to circumstances as they arose. This was made possible by the relative simplicity of the machinery of government in the early years of Federation.⁴

1 For statistics on questions see Appendix 29. Questions without notice may also, from time to time, be put to the Speaker and to private Members; see pp. 483-6.

2 May, p. 327.

3 Questions which Ministers have arranged for government Members to ask in order to provide such oppor-

tunities are known colloquially as 'Dorothy Dixes'. The allusion is to a famous magazine column of advice to the lovelorn.

4 J.H. Howard, 'Question Time: Myth or Reality?', *Australian Journal of Public Administration*, 31 (4), December 1972, p. 364.

Although the original standing order covering the routine of business of the House referred only to 'Questions on notice', in practice both questions on notice and without notice were answered from the outset. On 3 July 1901 the Speaker made the following statement in reply to a query from the Leader of the Opposition as to whether a practice of asking questions without notice should be created:

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.⁵

Thus the practice of Members asking questions without notice developed and, usually after these were dealt with, Ministers read to the House answers to questions the terms of which had been printed on the Notice Paper.⁶ This basic method was retained until 1931, when, in order to save the time of the House, a new standing order was adopted to provide that the reply to a question on notice could be given by delivering it to the Clerk, who would supply a copy to the Member concerned and arrange for its inclusion in Hansard.⁷ Until September 1932 the answers to questions on notice delivered to the Clerk were printed in Hansard immediately after questions without notice, but thereafter they were added at the end of the report of proceedings.

Prior to the introduction of the daily Hansard in 1955, related questions without notice were grouped together in Hansard in order to avoid repeated similar headings. This meant that, until 1955, the order in which questions appeared in Hansard did not necessarily reflect the order in which they were asked.

It was not until 1962⁸ that a reference to questions without notice was made in the Votes and Proceedings. This long term absence from the official record of proceedings is indicative of some vagueness in the procedural history of Question Time, its features having always been heavily influenced by practice and convention.

The original standing orders adopted in 1901 provided that questions could 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'. It was further provided that, in asking questions, 'no argument or opinion shall be offered, nor any facts stated, except so far as may be necessary to explain such Question' and that 'in answering any such Question a Member shall not debate the matter to which the same refers'. These provisions governing questions and answers were held to apply equally to both questions on notice and without notice⁹, and remained substantially unchanged until 1950.

From the outset it was held that Ministers could not be compelled to answer questions without notice.¹⁰ Rulings were also given to the effect that questions without notice should be on important or urgent matters, the implication being that otherwise they should be placed on the Notice Paper, particularly if they involved long answers.¹¹ This requirement presented difficulties of interpretation for the Chair and the rule was not enforced consistently.¹²

When major changes were made to the standing orders in 1950, questions without notice were specifically mentioned as part of the routine of business for the first time. It was also provided that questions without notice should be 'on important matters which call for immediate attention'. These qualifying words were omitted in 1963, the Standing Orders Committee having stated:

5 H.R. Deb. (3.7.01)1954-5.

6 H.R. Deb. (3.7.01)1954-5; H.R. Deb. (29.10.20)6090-1.

7 VP 1929-31/693; H.R. Deb. (25.6.31)3029-30; H.R. Deb. (26.6.31)3127-9. There were however earlier instances of incorporation, H.R. Deb. (10.9.15)6913,6924.

8 VP 1962-63/10.

9 H.R. Deb. (3.7.01)1955.

10 H.R. Deb. (3.7.01)1954-5; H.R. Deb. (2.10.13)1762.

11 H.R. Deb. (29.9.20)5079.

12 H.R. Deb. (21.4.21)7595.

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 recognised as a proceeding during which private Members can raise matters of day-to-day significance.¹³

The basic standing order providing for questions without notice¹⁴ has not been amended since then and questions without notice now range over all areas of Commonwealth responsibility.

The Government has traditionally enjoyed certain powers in relation to Question Time, for example, in relation to the length of the period.¹⁵ In certain circumstances Question Time has not taken place at all on some sitting days, for example, due to a desire to proceed with other business¹⁶, while a want of confidence amendment to the Address in Reply was debated¹⁷ and while a want of confidence amendment to the budget was debated.¹⁸ In a contemporary sense the circumstances in which Question Time would not be held are limited principally to days on which want of confidence or censure motions or amendments have been given precedence (*see also* p. 486).

The proportion of the time of the House spent on Question Time and the number of questions dealt with has varied considerably (*see also* p. 486). On some days in the early Parliaments no questions without notice were asked¹⁹, and on others there were only one or 2 questions. From the first Parliament questions without notice were given priority over answers to questions on notice.²⁰ By the time of World War I several questions without notice were usually dealt with on a typical sitting day.²¹ No doubt many factors contributed to the level of activity, and the period gradually tended to lengthen. On 22 September 1932, when 18 questions without notice were asked, the Prime Minister stated it was not intended in future to 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.²² Nevertheless considerable variations in the period continued, and on 28 September 1932, 19 questions without notice were asked.²³ However on 11 November 1932, immediately after prayers, the Prime Minister indicated the Government's wish to proceed with debate on a trade bill and asked that questions be placed on notice. This action did not appear to attract criticism.²⁴ On 8 August 1940, 43 questions without notice were asked in approximately 50 minutes.²⁵ As could be expected the questions in the main were short and to the point, as were the answers.

During the 1950's, on the first sitting day in a week (usually Tuesday) approximately one hour was spent on Question Time, 45 minutes on Wednesdays and 30 minutes on Thursdays. This pattern was not maintained.²⁶

In 1960 Speaker McLeay made a detailed statement to the House on questions without notice. In particular he asked for the co-operation of Members and Ministers in keeping questions and answers respectively as concise as possible.²⁷ Guidelines were re-issued in 1962.²⁸ Since 1958 the average Question Time has exceeded 40 minutes although by the mid 1970's a daily average of less than 18 questions was being recorded (*see also* p. 486), and the time taken for individual questions and answers was becoming a matter of concern.²⁹

13 *Standing Orders Committee Report*, H of R 1(1962-63)33.

14 S.O. 151.

15 H.R. Deb. (28.10.54)2410.

16 H.R. Deb. (11.11.32)2268.

17 VP 1962-63/31,33,35.

18 VP 1962-63/525.

19 H.R. Deb. (5.6.01)688.

20 H.R. Deb. (29.10.20)6090-1.

21 H.R. Deb. (8.7.15)4714-21.

22 H.R. Deb. (22.9.32)661.

23 H.R. Deb. (28.9.32)814-17.

24 H.R. Deb. (11.11.32)2268.

25 H.R. Deb. (8.8.40)329-37.

26 H.R. Deb. (13.3.73)465-6.

27 H.R. Deb. (27.9.60)1329.

28 H.R. Deb. (27.2.62)221-2.

29 H.R. Deb. (13.9.79)1070-2.

There appears to have been a greater tendency in the past than now to interrupt question time with other matters, such as the presentation of papers³⁰, statements by leave and sometimes replies thereto³¹, motions³² and even the presentation of a bill³³ despite rulings that such interruptions were irregular.³⁴ In addition there have been instances where Ministers, on being asked a question, offered or were prompted by the Chair, to make a statement by leave on the matter during Question Time.³⁵ Nevertheless Question Time has always been in both a parliamentary and a political sense a highlight of the day's proceedings³⁶, just as it is today.

QUESTIONERS

Private Members

Any private Member, having received the call, may ask a question without notice. He may also place an unlimited number of questions on the Notice Paper. There is no limit placed on the length of a question on notice.

Assistant Ministers

In 1972, following the appointment of Assistant Ministers who were sworn as Executive Councillors, the Prime Minister stated that Assistant Ministers could ask questions of Ministers on matters outside the portfolio in which they were assisting.³⁷

Parliamentary Under-Secretaries or Parliamentary Secretaries

Parliamentary Under-Secretaries (1950-55) and Parliamentary Secretaries (1956-61), who were not members of the Executive Council, were permitted by the Government to ask questions, and, from time to time, addressed questions to Ministers they were appointed to assist.³⁸ Parliamentary Secretaries were again appointed in 1980.

Speaker

It is not the practice for questions to be asked by the Speaker. Nevertheless Speaker Nairn, who was a member of the Opposition, placed questions on notice during the period 1941 to 1943.³⁹

DIRECTION OF QUESTIONS

To Ministers

All but a minute proportion of questions are directed to Ministers. Questions may not be put to one Minister, other than the Prime Minister, about the ministerial responsibilities of another⁴⁰ except that questions may be put to Ministers acting in another portfolio.⁴¹ Where a question may involve the responsibility of more than one Minister, it should be directed to the Minister most responsible.

30 H.R. Deb. (12.2.43)651.

31 H.R. Deb. (17.3.43)1864-7.

32 H.R. Deb. (29.10.20)6079-80.

33 H.R. Deb. (22.11.20)6770.

34 H.R. Deb. (9.9.13)942.

35 H.R. Deb. (29.10.41)18-19.

36 H.R. Deb. (26.11.20)7092; Howard, *Australian Journal of Public Administration*, 31(4), 1972.

37 H.R. Deb. (7.3.72)590.

38 H.R. Deb. (28.2.50)121; H.R. Deb. (3.10.51)244; NP 44(13.6.56)252.

39 NP 48(29.10.41)173; NP 131(17.3.43)441.

40 H.R. Deb. (6.10.76)1538.

41 H.R. Deb. (9.10.79)1719.

A Minister may refuse to answer a question.⁴² He may also transfer a question to another Minister and it is not in order to question his reason for doing so.⁴³ In many instances the responsibilities referred to in a question may be shared by 2 or more Ministers and it is only the Ministers concerned who are in a position to determine authoritatively which of them is most responsible.⁴⁴ It is common practice for the Prime Minister to refer questions addressed to him to the Minister directly responsible. Misdirected questions on notice are transferred by the Table Office, upon notification by the departments concerned.

Questions relating to the responsibilities of a Minister who is a Senator are addressed to the Minister in the House representing the Senate Minister.

The Australian Parliament has made no provision for Ministers in one House to attend the other House to answer questions without notice. In 1974, the Standing Orders Committee recommended that, for a trial period and subject to the concurrence of the Senate, Senate Ministers be rostered to attend in the House and House of Representatives Ministers be rostered to attend in the Senate to answer questions without notice.⁴⁵ A notice of motion proposing that the House agree in principle to such a roster was placed on the Notice Paper but the notice was not called on and lapsed at the dissolution of the Parliament on 11 November 1975.⁴⁶ The proposal has not been revived.

To Parliamentary Under-Secretaries or Parliamentary Secretaries

A question directed to a Parliamentary Under-Secretary has been ruled out of order even though it concerned a matter relating directly to his work.⁴⁷ The Prime Minister had previously stated that he had never envisaged that Parliamentary Under-Secretaries should have the right to answer questions on behalf of a Minister.⁴⁸

To Assistant Ministers

In 1972 the relevant standing order was amended to prevent Assistant Ministers from being questioned.⁴⁹ This action was taken because of the concern of the Standing Orders Committee, and of Prime Minister McMahon, that no action should be taken which would tend to lessen a Minister's responsibility in the House for the administration of his department or which would affect his answerability or enable him to evade his responsibility by having an Assistant Minister act for him.⁵⁰

To private Members

Only rarely are questions directed to private Members and even then they are often disallowed for contravention of the strict limitations imposed by standing orders and practice. Standing order 143 provides that questions may be put to a Member, who is not 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. As it is the established practice of the House not to permit questions on notice to private

42 H.R. Deb. (12.5.70)1949; *May*, p. 332.

43 H.R. Deb. (5.3.47)352-3; H.R. Deb. (4.4.62) 1264-73; H.R. Deb. (22.8.79)428-30. In the 1962 instance a motion of dissent from the Speaker's ruling, which upheld the practice that Ministers may transfer questions to other Ministers, was defeated; see also *May*, p. 326.

44 See *The Table XXIX*, 1960, pp. 150-1 for reference to House of Commons practice and its rationale.

45 *Standing Orders Committee Report*, PP 63(1974)5.

46 NP 17(24.9.74)1407.

47 H.R. Deb. (16.9.52)1451. See Ch. on 'The structure of the House' for duties of Parliamentary Under-Secretaries.

48 H.R. Deb. (27.8.52)620.

49 S.O. 143; and see *Standing Orders Committee Report*, PP 20(1972)6.

50 PP 20(1972)6; H.R. Deb. (29.4.71)2244; see also Ch. on 'The structure of the House'.

Members, the standing order is considered to refer to questions without notice only. Questions not meeting the conditions of standing order 143, such as questions concerning party policies and statements made inside or outside the House, notably by the Members to whom such questions are directed, have been ruled out of order. The following cases are illustrative of the type of question which may not be asked:

- to a private Member asking if he had been correctly reported in a newspaper⁵¹;
- to a private Member regarding his statement outside the House on customs imports⁵²;
- to the Leader of the Opposition as to whether he will give a lead to the members of his party who are opposed to graft and corruption⁵³;
- to the Leader of the Opposition with regard to his conduct in connection with a Royal Commission⁵⁴;
- to a private Member concerning a petition he had just presented on the ground that the Member was no longer in charge of it once it had been presented⁵⁵;
- to the Leader of the Opposition regarding his statements on television⁵⁶;
- to the Deputy Leader of the Opposition regarding a statement he had made in the House⁵⁷, and
- to the Deputy Leader of the Opposition concerning the platform of his party.⁵⁸

Questions most often allowed have concerned private Members' bills listed as notices on the Notice Paper.⁵⁹ However, if the answer to such a question would require the Member to anticipate what he might say in his second reading speech, the question is anticipating debate and is therefore out of order. A question asking when the bill will be introduced, whether the bill has been drafted, or whether the questioner could see a copy of the bill would be in order⁶⁰ (*see* p. 492).

It is not in order to question a private Member concerning his actions as a former Prime Minister or Minister as such Members ceased to be responsible to the House for their ministerial actions when they ceased to be Ministers. The question would also clearly contravene standing order 143.⁶¹

It is not in order to question a private Member about matters with which he is concerned as a member of a body outside the House.

On 2 occasions a question without notice has been permitted to a Member in his capacity as chairman of a committee. In the first instance the Member, as Chairman of the Privileges Committee, was asked when a particular report would be tabled.⁶² On the second occasion the Member, as Chairman of the Public Accounts Committee, was asked if the committee intended to inquire into certain serious allegations contained in the Auditor-General's report.⁶³ The latter question would not have been acceptable in the House of Commons and was not in accord with an earlier ruling in the House of Representatives. The Speaker of the House of Commons has ruled privately 'that a Member may not seek by means of a question to the chairman to interfere in the proceedings of a Select Committee by suggesting a particular subject for inquiry . . .'.⁶⁴ In 1953 the Chair ruled out of order a question to the Chairman of the Public Accounts Committee which asked that the committee examine defence accounts to ascertain the

51 H.R. Deb. (3.8.26)4769.

52 H.R. Deb. (21.6.12)68.

53 H.R. Deb. (25.11.53)475.

54 H.R. Deb. (9.9.54)1099.

55 H.R. Deb. (21.5.24)778.

56 H.R. Deb. (14.5.58)1758.

57 H.R. Deb. (31.8.61)696.

58 H.R. Deb. (21.9.67)1183-4.

59 H.R. Deb. (1.3.72)410-12; H.R. Deb. (25.2.76)259; H.R. Deb. (26.2.76)313-15; H.R. Deb. (16.3.76)625.

60 S.O. 144; H.R. Deb. (16.3.76)625.

61 *May*, p. 327.

62 H.R. Deb. (18.2.48)6. The Chairman was also Attorney-General.

63 H.R. Deb. (16.10.57)1393-4.

64 *May*, p. 327.

reason for excessive defence expenditure.⁶⁵ A question to the chairman of a sub-committee of the Joint Committee on Foreign Affairs was also ruled out of order on the ground that the chairman is responsible to the committee and not to the House.⁶⁶ In any question to a chairman of a committee it should be borne in mind that a chairman should not make public pronouncements on behalf of the committee unless he has consulted the committee beforehand.

To the Speaker

A question without notice may be put to the Speaker relating to any matter of administration for which he is responsible⁶⁷ or on an urgent matter which concerns the proceedings of the House for which he is responsible.⁶⁸ However, questions on matters of order or privilege must be raised as such.⁶⁹

Occasionally Speakers have suggested that Question Time is an inappropriate time to deal with minor or detailed matters of parliamentary administration and that they would be better dealt with by an approach to the relevant domestic committee, by correspondence or by personal interview with the Speaker.⁷⁰

Occurrences in the committee of the whole House or in other committees may not be raised in questions to the Speaker as he has no official cognisance of such proceedings.⁷¹

Until recently it was not the practice for questions on notice to be directed to the Speaker. In order that Members might obtain information relating to the Parliament, the practice had grown up for a question to be directed to the Leader of the House or the Prime Minister requesting that the information be obtained from the Presiding Officer(s). On 28 February 1980 Speaker Snedden made the following statement which reflects the current practice:

I have given consideration to several questions placed on the Notice Paper by the honourable member for Melbourne (Mr Innes) and the honourable member for Melbourne Ports (Mr Holding). The questions are directed to the Prime Minister (Mr Malcolm Fraser) and ask whether he will obtain certain information from the Presiding Officers. The information required relates to the operation and administration of the parliamentary departments for which the Presiding Officers are responsible.

The honourable members in directing their questions through the Prime Minister have acted in accordance with past practice of the House not to direct questions on notice to the Speaker. The questions of the honourable members are related to the functioning of the House and seek detailed information regarding the operation of the joint departments — the Library and the Joint House Department. It is quite inappropriate that questions of this nature should be directed through the Prime Minister yet that is the only way in which the required information can be publicly obtained according to present practice. Accordingly, I have reviewed the past practice and decided to adopt a method which enables a request for detailed information to be made.

The Prime Minister has been informed that I will furnish replies directly to the honourable members after consultation with Mr President. Where a member desires to ask a detailed question relating to the administration of the departments of the Parliament he should indicate to the Clerk that he intends to lodge a request for information to the Speaker. After questions without notice I will call him to announce so. The procedure will be that such requests will be handed, in writing, to the Clerk. If the request is in order it will be printed in

65 H.R. Deb. (6.10.53)1004-05; H.R. Deb. (7.10.53) 1064-5.

66 H.R. Deb. (10.10.72)2242.

67 S.O. 152. For a description of the Speaker's administrative responsibilities see Ch. on 'The Speaker and Officers of the House'.

68 *May*, p. 326.

69 *May*, p. 326.

70 H.R. Deb. (1.12.53)707; H.R. Deb. (1.11.33)4117.

71 H.R. Deb. (16.4.64)1136,1138; H.R. Deb. (27.10.09)5049.

Hansard for that day and the Speaker will provide a written reply in due course, such reply to be printed in *Hansard*. The foregoing procedure is not meant to alter the existing procedure whereby less detailed requests for information may be asked orally of Mr Speaker.⁷²

QUESTION TIME

Duration

Question Time is a period during which only questions without notice may be asked and answered. While in recent years Question Time has normally been of 45 minutes duration on each sitting day it is entirely within the discretion of the Prime Minister or the senior Minister present as to whether Question Time will take place and, if so, for how long.⁷³ In order to bring Question Time to a conclusion the Prime Minister or the senior Minister present may, at any time, rise and ask that further questions be placed on notice, even if a Member has already received the call.⁷⁴ The Speaker is then obliged to call on the next item of business. If the Prime Minister does not want Question Time to take place on a particular sitting day, he asks, as soon as the Speaker calls on questions without notice, that questions be placed on notice. The basis of this discretion of the Prime Minister is that, as Ministers cannot be required to answer questions, it would be pointless to proceed with Question Time once the Prime Minister has indicated that questions, or further questions, without notice will not be answered.⁷⁵

Although the Prime Minister has effective control over the duration of Question Time he is, at the same time, subject to the influence of private Members from both sides of the House and public opinion. A Prime Minister who frequently refused to allow Question Time to proceed, or frequently restricted it to less than the usual 45 minutes, would expose himself to considerable criticism. Soon after a new Prime Minister took office in March 1971, points of order were raised on several occasions regarding the truncation of Question Time. The matter came to a head on 1 April 1971 when a Member moved:

That so much of the standing orders be suspended as would prevent the moving of a motion to amend the standing orders to provide for question time to extend for 45 clear minutes.⁷⁶

In speaking to the motion the Member pointed out that on the first day when there was a Question Time under the new Prime Minister Question Time had lasted 44 minutes. Since then it had lasted 42½, 40½, 34½, 38 and 41 minutes.⁷⁷ The motion was defeated but it is noteworthy that one government Member said 'the Prime Minister would be unwise if he did not pay regard to the sentiments that have been expressed in the course of this debate'.⁷⁸ On the following sitting day, and subsequently, a 45 minute period was allowed.

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 the 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.⁷⁹

⁷² H.R. Deb. (28.2.80)499; e.g. see H.R. Deb. (26.11.80)57-8,118; H.R. Deb. (24.2.81)43.

⁷³ H.R. Deb. (29.3.73)853-4.

⁷⁴ H.R. Deb. (4.5.60)1332-3.

⁷⁵ H.R. Deb. (4.10.33)3198.

⁷⁶ VP 1970-72/499-500; H.R. Deb. (1.4.71)1293-1300.

⁷⁷ H.R. Deb. (1.4.71)1293.

⁷⁸ H.R. Deb. (1.4.71)1297.

⁷⁹ VP 1974-75/1059-65; H.R. Deb. (29.10.75)2593.

Allocation of the call

The Speaker first calls an opposition Member, and the call is then alternated from right to left of the Chair.⁸⁰ On the opposition side priority is given to the Leader and Deputy Leader of the Opposition. The Speaker records the number of calls given to each Member and, with the exception of the 2 opposition leaders, allocates the call as evenly as possible.

When there is more than one party in Government or Opposition some agreement is reached as to the ratio of questions to be permitted to the Members of each party. For example, in 1973, Speaker Cope announced that it had been decided that, with the agreement of the Leader of the Opposition (Liberal Party) and the Leader of the Australian Country Party (the other opposition party), questions from the Opposition would be allocated in the ratio of 2 Liberal Party questions to one Australian Country Party question.⁸¹

If the Speaker disallows a question he may permit the Member to re-phrase the question and to ask it again, immediately⁸² or later⁸³ in Question Time. This indulgence is not automatically extended.⁸⁴ Similarly the Speaker having ruled part of a question out of order may⁸⁵ or may not⁸⁶ choose to allow that part of the question which is in order.

As the allocation of the call is within the Speaker's discretion, subject ultimately to the will of the House, the Speaker may choose 'to see' or 'not to see' any Member. The Speaker's decision not to exercise his discretion in favour of a Member has been based on a desire to discipline him. For example, on 25 May 1950, a Member, during the adjournment debate, questioned the way in which Speaker Cameron had called Members during Question Time. The Speaker in reply said that the Member 'will come to my office in due course, examine the figures, and next week he will state the correct position'. He then gave figures showing the number of questions asked during the preceding weeks.⁸⁷ On subsequent sitting days, the Member sought to catch the Speaker's eye at Question Time. The Speaker said on one occasion 'I have decided that I shall not call the honourable Member . . . for another question until he corrects the unjustified and inaccurate charges that he made against me . . .' and on another 'I cannot see the honourable Member'. When the Member was the only one on the opposition side to rise for the call, the Speaker ignored him and gave the call to the government side. The incident was finally closed when the Member stated that he had not wished to cast any reflection on the Chair relating to the call or the Speaker's impartiality.⁸⁸ In the course of consideration of the matter, Speaker Cameron ruled out of order a motion, moved pursuant to standing order 61, 'That the Member be now heard', on the ground that the standing order applied only to speeches and not to questions without notice.⁸⁹

In 1971, the House referred the question of the allocation of the call at Question Time to the Standing Orders Committee. The reference resulted from a complaint by a Member that the rigid procedure of alternating the call from left to right resulted in private Members on the government side having more frequent opportunities to ask questions without notice than opposition Members. The Member stated that of the 65 government Members, excluding the Speaker, 22 were Ministers and 5 were Assistant Ministers, none of whom asked questions. On the other hand all 59 opposition Members

80 Speaker Cameron did not necessarily alternate the call. See H.R. Deb. (25.5.50)3280; H.R. Deb. (28.9.50)76; H.R. Deb. (21.4.55)75-6.

81 H.R. Deb. (31.5.73)2938.

82 H.R. Deb. (4.5.78)1780.

83 H.R. Deb. (28.8.79)625-6,627; H.R. Deb. (22.11.73)3679, 3681.

84 H.R. Deb. (6.6.78)3075.

85 H.R. Deb. (15.3.78)737-8.

86 H.R. Deb. (7.11.78)2441.

87 H.R. Deb. (25.5.50)3279-80.

88 See H.R. Deb. (31.5.50)3454-62; H.R. Deb. (1.6.50)3577-87, 3653-5.

89 VP 1950-51/107; H.R. Deb. (31.5.50)3455.

would normally seek to ask questions.⁹⁰ The Member suggested that each side of the House should be allotted questions on the basis of the number of 'backbench Members' it had. The Standing Orders Committee in reporting on the matter noted that from 1968 to 1971 opposition Members asked 2383 questions as against 2204 by government Members and that, during the period, the Government had a substantially greater number of Members than in 1971. The committee pointed out that, 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, more questions, as the first question, and often the last, would come from the Opposition. The committee decided that it would make no recommendation to vary the existing procedure for the distribution of the call.⁹¹ The House considered the committee's decision and referred the matter back to it for further consideration.⁹² The Standing Orders Committee has not reported on the matter again.

PRINCIPAL RULES GOVERNING QUESTIONS

Procedural difficulties

Questions without notice by their very nature raise significant difficulties for the Chair. The necessity for the Speaker to make instant decisions on the application of the many rules on the form and content of questions is one of his most demanding tasks. Because of the importance of Question Time in political terms, and because of the need to ensure that this critical function of the House is preserved in a vital form, Speakers tend to be lenient in applying the standing orders so that, for example, breaches of only minor procedural importance do not prevent questions on issues of special public interest. The extent of such leniency varies from Speaker to Speaker. In addition, some latitude is generally extended to the Leader and Deputy Leader of the Opposition in asking questions without notice and to the Prime Minister in answering them. The result of this liberality in the interpretation of the standing orders is that rulings have not always been well founded and inconsistencies have occurred. Several Speakers have commented that only a small proportion of questions without notice are strictly in order and that to enforce the rules too rigidly would undermine Question Time.⁹³ Only those rulings which are technically sound and of continuing relevance are cited in this chapter without qualification.

The rules governing questions are applied strictly to questions on notice which are submitted to the Clerk in writing before being placed on the Notice Paper (*see* p. 498).

Principal rules

The rules governing the asking of questions are set down in standing orders or have become established by practice. In addition the content of questions must comply with the general rules applying to the content of speeches. Before dealing with the specifics of the rules governing the form and content of questions and the interpretation of the rules, it is useful to bring them together in a summary to permit an overall perspective.

The purpose of a question is to obtain information or to press for action, and it should not be in effect a short speech, or limited to giving information, or framed so as to suggest its own answer or convey a particular point of view. Questions without notice of excessive length are not permitted. The facts on which a question is based may be stated briefly provided the Member asking the question makes himself responsible for their accuracy. Subject to this condition, a Member may direct attention to a statement,

90 H.R. Deb. (23.8.71)511-12.

91 PP 20(1972)12-13.

92 H.R. Deb. (18.4.72)1745-50; VP 1970-72/1013-14.

93 H.R. Deb. (31.8.61)691.

for example, in a newspaper or news report, but may not ask whether the statement is true and may not quote extracts. Statements not strictly necessary to render a question intelligible should not be included.

A Member need not disclose any personal interest he might have in the subject matter of his question.⁹⁴

Questions may not contain arguments, inferences, imputations, epithets, ironical expressions or hypothetical matter, and may not ask for an expression of opinion or for legal opinion. In addition, a question may not ask a Minister 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. It is not in order to ask a Minister to influence the actions of another Minister.

Questions may not be asked which reflect on, or are critical of, the character or conduct of those people whose conduct may only be challenged on a substantive motion, for example, the Sovereign, the Royal Family, the Queen's representative, the Speaker, the Chairman of Committees, Members and Senators, and members of the judiciary. Questions which are critical of the character or conduct of other people should only be asked on notice, but notice is not required of questions which are laudatory of persons.

Questions should not be asked concerning the activities, character or antecedents of representatives in Australia of countries in amity with Her Majesty.

Questions are inadmissible which seek information on matters of past history for the purpose of argument.

Lengthy questions seeking detailed answers or which call for the quotation of figures should be placed on the Notice Paper.

A question on notice is written or typed on the form provided, signed by the Member, and delivered to the Clerk in time to enable it to be printed on the Notice Paper. In practice signing is not insisted on if it is delivered personally by the Member, the main purpose of the signing being to authenticate the question. The question continues to appear on the Notice Paper until it is fully answered and the reply is delivered to the Clerk.

QUESTIONS WITHOUT NOTICE—FORM AND CONTENT

To relate to Minister's public responsibilities

The principle of ministerial responsibility

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.⁹⁵

The underlying principle is that Ministers are required to answer questions only on matters for which they are responsible to the Parliament. Consequently Speakers have ruled out of order questions to Ministers which concern, for example:

- statements, actions or decisions of the Minister's own party or of its conferences or officials, or of those of other parties, including opposition parties⁹⁶;
- statements by people outside the House⁹⁷, including other Members⁹⁸, notably opposition Members⁹⁹;

⁹⁴ May, p. 334.

⁹⁵ S.O. 142. For statistics see Appendix 29.

⁹⁶ H.R. Deb. (6.4.67)970; H.R. Deb. (22.11.73)3679; H.R. Deb. (10.9.75)1194.

⁹⁷ H.R. Deb. (4.5.77)1512.

⁹⁸ H.R. Deb. (22.10.74)2617.

⁹⁹ H.R. Deb. (12.10.77)1892-3.

- statements in the House by other Members¹⁰⁰;
- anything of a private nature, that is, not related to the public duties of a Minister¹⁰¹;
- what happens or is said in the party rooms or in party committees¹⁰²;
- arrangements between parties, for example, coalition agreements on ministerial appointments¹⁰³;
- policies of previous governments¹⁰⁴;
- the internal affairs of a foreign country¹⁰⁵, unless the information can be obtained from international organisations of which Australia is a member, and
- matters in State Parliaments¹⁰⁶ or State matters.¹⁰⁷

As mentioned in the cases above, it is not in order for the personal conduct or private affairs of a Minister to be criticised by way of a question. A charge of a personal nature can only be raised by way of a direct and substantive motion. This fundamental parliamentary rule was re-iterated by Speaker Snedden on 23 November 1978:

... Standing Order 142 provides that a question may be put to a Minister relating to public affairs with which he is officially connected or to any matter of administration for which he is responsible. *May's Parliamentary Practice*, page 331, which this House uses as a guide, further amplifies this rule by stating that a question may not be asked which deals with the action of a Minister for which he is not responsible to Parliament.

Standing order 153 states that questions shall not be asked which reflect on or are critical of the character or conduct of those persons whose conduct may be challenged only on a substantive motion. Among those persons are the Speaker, Chairman and members of both Houses of Parliament. I have not prevented honourable members from criticising a Minister or any other person. I have upheld the rules of the House so as to ensure that any criticism of a Minister or any other person takes place in the established parliamentary form for which there is a sound procedural reason. The precise rule is set out in *May*, pages 328 and 368. As recently as 19 June this year Mr Speaker Thomas in the United Kingdom House of Commons had cause to remind the House of the rule. He said:

'On Thursday last, I caused the honourable member to withdraw a reflection on the conduct of a member. To clear up any lingering doubts about my reasons for doing so, I shall try to make the position absolutely clear. The conduct of certain categories of persons may be criticised only in a substantive motion, of which due notice must be given'.

... 'Those categories include members of either House of Parliament. If such a motion is debated, the criticism embodied in the motion can, of course, be repeated in the course of the debate. The criticism can then be answered and the motion decided, if necessary on a vote. This procedure ensures fair play on all sides.

... Thus it is not in order, as Erskine May makes clear, for personal conduct to be criticised in a question'.¹⁰⁸

Statutory authorities

The nature and degree of ministerial responsibility for the policies and operations of statutory authorities or corporations varies. The practice of the House has been to allow questions about such bodies and on all but relatively rare occasions full replies have been provided.

However a Minister may choose not to answer any question or he may answer it as he sees fit. Ministers have exercised this discretion in relation to some questions on

100 H.R. Deb. (5.5.64)1489-90.

101 H.R. Deb. (12.11.65)2680.

102 H.R. Deb. (6.6.78)3075; H.R. Deb. (25.10.79)2481.

103 H.R. Deb. (26.10.78)2338.

104 H.R. Deb. (21.8.75)382.

105 H.R. Deb. (5.5.64)1480.

106 H.R. Deb. (31.3.71)1206.

107 H.R. Deb. (6.10.76)1537.

108 H.R. Deb. (23.11.78)3333.

statutory authorities, particularly in instances where a large degree of autonomy exists or where an answer may be to the commercial disadvantage of an authority operating in a competitive commercial environment. In 1956, in response to a question on notice concerning the Commonwealth Bank, the Treasurer stated:

It is . . . a question of some difficulty as to how far the bank should be called upon to provide detailed information on matters affecting its day-to-day management. Obviously a limit must be observed if the degree of independent responsibility conferred by statute upon the bank is to be maintained.¹⁰⁹

Reference was also made to procedures followed to inform Parliament and the public about the bank's policies and administration.

In 1979, a Minister answered a question on notice concerning Medibank Private's procedures for dealing with certain types of claims for refund. The Minister emphasised that while Medibank Private operated under statute it was in competition with private medical funds and received no instructions from government as to how its business should be conducted other than through instructions which applied equally to all other registered funds. He concluded that publication of the information sought by the Member might be 'to the commercial disadvantage of the fund'. He had therefore asked that the information be provided direct to the Member on a confidential basis.¹¹⁰

Proceedings pending in the House

Questions put to a Minister concerning proceedings pending in the House for which he is responsible cannot anticipate discussion upon an order of the day or other matter¹¹¹ (see p. 492).

Questions to seek factual information or press for action

The purpose of questions is to enable Members to obtain factual information or press for action on matters for which the Minister questioned is responsible to the House. The standing orders, particularly standing order 144, contain many detailed provisions, outlined in subsequent sections of this Chapter, whose primary objective is to ensure that this purpose is given effect. In particular, they attempt to restrain the questioner from giving unnecessary information or introducing or inviting argument and thereby initiating a debate. On the other hand, the standing orders and practice of the House have been found wanting in that similar restrictions are not placed on the Ministers' answers. For instance, Ministers are free to introduce argument into their answers. In this context the only standing order relating to answers is standing order 145 which states that, 'an answer shall be relevant to the question'. *May* supplements the standing order:

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.¹¹²

Debate

Questions cannot be debated¹¹³, nor can they contain arguments¹¹⁴, comments¹¹⁵ or opinions.¹¹⁶ They may not become lengthy speeches¹¹⁷ or statements and they may not in themselves suggest an answer.¹¹⁸ In short, questions should not be used to initiate discussion of issues.

109 H.R. Deb. (6.3.56)543.

110 H.R. Deb. (22.11.79)3425-6.

111 S.O.s 142, 144.

112 *May*, p. 334.

113 S.O. 144.

114 S.O. 144.

115 H.R. Deb. (13.4.61)799.

116 H.R. Deb. (5.7.49)1927.

117 H.R. Deb. (31.8.66)584.

118 H.R. Deb. (5.5.78)1880.

References to debates and committee proceedings

References in questions to debates in the current session, concluded or adjourned, are out of order.¹¹⁹ The Chair has interpreted this rule as applying equally to debates in the Senate.¹²⁰ The rule does not preclude questions on the subject matter of such debates, which may be so broad as to cover, for example, the country's whole foreign policy, but rather precludes reference to the debate itself and to specific statements made in it.

It is also out of order to ask a question repetitive of a matter already determined by the House¹²¹, which reflects upon any vote of the House¹²² or which refers to proceedings in committee, including select committees, not reported to the House.¹²³

In relation to the proceedings of a select committee not reported to the House, the following private ruling of President Cormack has equal relevance to the House:

... if I were to rule that questions should not be allowed on any matters which may be under examination by committees, such a rule—strictly applied—would operate to block questions on a very wide variety of subjects.

The practice which I follow, and which I shall continue to follow unless otherwise directed by the Senate, is to allow questions seeking information on public affairs for which there is ministerial responsibility—provided that such questions are not of a nature which may attempt to interfere with a committee's work or anticipate its report.¹²⁴

Anticipation of business

Standing order 144 provides that questions cannot anticipate discussion upon an order of the day or other matter. On the face of it this rule appears to be in conflict with standing order 142, which permits questions to Ministers on 'proceedings pending in the House', as the only matters of which the House has cognisance as 'proceedings pending' are orders of the day and other matters on the Notice Paper. In fact there is no conflict. The principle established by rulings from the Chair is that questions seeking to elicit information about proceedings pending in the House are permissible provided they do not anticipate the discussion itself or invite a Minister to do so. For example, in 1976, Speaker Snedden disallowed a question because it invited anticipation of the second reading speech and the arguments and principles upon which the legislation was based. However, he later permitted a question asking whether certain people would be disadvantaged under legislation then before the House. The Speaker ruled, in response to a point of order alleging inconsistency in the 2 rulings, that the second question was in order as it was simply seeking information about the legislation.¹²⁵

Information in questions

Questions should not contain statements of fact unless they are strictly necessary to render the question intelligible and can be authenticated.¹²⁶ Thus, Members may not give information under the guise of asking a question, otherwise questions cease to be questions and become excessively long which limits the number of questions that can be asked at Question Time. The Chair frequently interrupts Members to warn them that their questions are excessively long and requires them to come to the point quickly. A Member who persists in giving information may have his question ruled out of order. Alternatively, if enough has been said to make the point of the Member's question

119 S.O. 144; H.R. Deb. (21.5.75)2545; H.R. Deb. (25.8.76) 525.

120 H.R. Deb. (20.8.69)431.

121 H.R. Deb. (16.11.78)2892.

122 S.O. 73; *May*, p. 332.

123 S.O. 144.

124 *Odgers*, p. 218.

125 H.R. Deb. (25.3.76)1005.

126 S.O. 144.

clear, the Speaker may require him to resume his seat and ask the Minister to respond.¹²⁷

References to newspaper reports, etc.

The requirement that information contained in a question be authenticated by the questioner is rarely applied unless the accuracy of the information is challenged. In such cases the Speaker simply calls on the questioner to vouch for the accuracy of the statement and, if the Member cannot do so, the question is disallowed.¹²⁸ If the Member vouches for the statement's accuracy, the Speaker necessarily accepts the authentication.¹²⁹ Questions based on rumour, that is unsubstantiated statements, are not permissible.¹³⁰

It is established practice that, provided the Member asking a question makes himself responsible for the accuracy of the facts upon which the question is based, he may direct attention to a statement, for example, in a newspaper or a news report, but may not quote extracts.¹³¹ The questioner must vouch for the accuracy of any such report to which he refers, not simply for the accuracy of his reference to it. If he cannot do so his question is out of order.¹³² Therefore, it is not permissible to ask whether a reported statement is correct.¹³³

In 1977, a Member's authentication of a newspaper report referred to in his question was challenged by the Member whose speech was the subject of the report. As he was in no position to adjudicate on the matter the Speaker accepted the questioner's authentication at face value and suggested that if any misrepresentation was involved this could be corrected in a personal explanation after Question Time. Instead leave was granted for the full text of the reported statement to be incorporated in Hansard.¹³⁴ In a similar case in 1978 when leave was not granted for incorporation of the reported statement the Member concerned made a personal explanation.¹³⁵

The restriction on quotations in questions, which reflects House of Commons practice¹³⁶, has always been applied to questions on notice but the Chair has sometimes chosen not to apply it to questions without notice, probably on the basis that, where a statement of fact is strictly necessary to render a question intelligible, a succinct quotation may more readily achieve this objective. In permitting quotations the Chair has ruled that they may not contain matter which would otherwise be ruled out of order, for example, comment, opinion, argument or unparliamentary language.¹³⁷ In 1962 the Standing Orders Committee recommended that standing order 144 be amended to make explicit provision for questions not to contain quotations. Consideration of the proposal was deferred by the House and subsequently lapsed.¹³⁸

Questions seeking opinions

Questions may not ask Ministers for an expression of opinion¹³⁹, for comment¹⁴⁰, or for justification of statements made by them.¹⁴¹

127 H.R. Deb. (7.9.77)802.

128 H.R. Deb. (7.9.77)801.

129 H.R. Deb. (29.3.77)645-7.

130 H.R. Deb. (19.9.78)1105.

131 *Standing Orders Committee Report*, H of R 1 (1962-63)32.

132 H.R. Deb. (7.9.77)801.

133 H.R. Deb. (16.6.39)2085; *see also* H of R 1 (1962-63)32.

134 H.R. Deb. (29.3.77)645-7.

135 H.R. Deb. (24.5.78)2390-1,2395,2396-7.

136 *May*, p. 328.

137 H.R. Deb. (13.12.34)1205; H.R. Deb. (7.6.45)2685; H.R. Deb. (29.9.48)937.

138 H of R 1 (1962-63)32.

139 S.O. 144.

140 H.R. Deb. (25.8.77)628.

141 H.R. Deb. (20.11.57)2322.

Legal opinions should not be sought in questions¹⁴² such as the interpretation of a statute, or of an international document, or of a Minister's own powers, as the courts, rather than Ministers are competent in such matters. Ministers may be asked, however, by what statutory authority they have acted in a particular instance, and the Prime Minister may be asked to define a Minister's responsibilities. Speaker Morrison of the House of Commons explained the basis for not permitting questions seeking an expression of opinion on a question of law:

A Question asking a Minister to interpret the domestic law offends against the rule of Ministerial responsibility, since such interpretation is not the responsibility of a Minister . . . But it also offends against the rule that a Question may not ask for a Minister's opinion. The interpretation of written words is a matter of opinion. It is for the latter reason, I think, that the rule has been applied to the interpretation of an international document.¹⁴³

Questions asking about the extent to which federal legislation would prevail over State legislation or administrative action have been permitted.¹⁴⁴ In addition it has been ruled that in response to a question dealing with the law a Minister may provide any facts, as opposed to legal opinions, he may wish to give.¹⁴⁵ A question asking whether legislation existed on a specified subject has been permitted.¹⁴⁶

In 1951, a question seeking a legal opinion from the Prime Minister having been disallowed, a Member asked the Prime Minister if he would table legal opinions he had received on the matter specified. The Prime Minister declined, stating that it was not his practice to table opinions received from the Crown's legal advisers.¹⁴⁷

Announcement of government policy

Members should not ask Ministers to announce the Government's policy, but may seek an explanation to clarify policy and its application and may ask the Prime Minister whether a Minister's statement in the House represents government policy.¹⁴⁸

This rule is often misunderstood but the practice of the House is quite clear. A question which directly asks a Minister to state new policy is obviously out of order but a request for an explanation regarding existing policy and its application, or regarding the intentions of the Government is in order. Many questions ask a Minister whether he will consider certain matters. Whether an answer to such a question would involve the Minister in a policy matter or in a form of words which may appear to disclose some point of policy can be determined only by the Minister. The Speaker is not in a position to decide. If the provision of an answer would involve the announcement of policy, the Minister should reply that as the information sought involves policy an answer cannot be given.

Inferences, etc.

Questions should not contain inferences, imputations, epithets, ironical expressions or hypothetical matter¹⁴⁹; nor may they be facetious¹⁵⁰, frivolous¹⁵¹ or attribute motive.¹⁵²

142 S.O. 144.

143 H.C. Deb. 543 (5.7.55)961-2.

144 H.R. Deb. (6.10.76)1542.

145 H.R. Deb. (4.4.79)1474.

146 H.R. Deb. (5.5.76)1926.

147 H.R. Deb. (6.11.51)1542. It has been stated that questions seeking information about advice given to the Crown by law officers are in fact out of order, *Campion*, p. 151.

148 S.O. 144; see also *Standing Orders Committee Report*, PP 129(1964-66)9.

149 S.O. 144; H.R. Deb. (13.4.67)1212.

150 H.R. Deb. (1.7.41)591.

151 H.R. Deb. (8.10.36)898.

152 H.R. Deb. (26.4.77)1198.

Identification of people in questions

A question without notice which is laudatory of a named individual¹⁵³ or contains the name of an individual in order to render the question intelligible is permissible.¹⁵⁴

However questions may not be asked which reflect on, or are critical of, the character or conduct of those people whose conduct may only be challenged on a substantive motion.¹⁵⁵ Such people include the Sovereign, the heir to the throne, other members of the Royal Family, the Governor-General¹⁵⁶, the Governor of a State, the Speaker, the Chairman of Committees, Members of either House¹⁵⁷ and members of the judiciary.¹⁵⁸ This rule applies to both questions without notice and questions on notice.

Questions critical of the character or conduct of other persons cannot be asked without notice.¹⁵⁹ Although this rule is generally applied to named persons, it has also been applied to unnamed, but readily identifiable, persons. Such questions may, however, be placed on the Notice Paper. The purpose of the rule is to protect a person against criticism which could be unwarranted. A question on notice does not receive the same publicity and prominence as a question without notice and the reply can be more considered.

The standing orders do not prevent criticism of Ministers or others in high office but rather preclude such criticism from being aired in questions.¹⁶⁰ A substantive motion stating the criticism must be moved so that the House may then debate the criticism and make its decision.¹⁶¹ Once the House has made a decision on the matter further questions, whether containing criticism or not, are out of order on the ground that the House has made its determination.¹⁶²

In 1976 Speaker Snedden, referring to a question about the Chief Justice of the High Court of Australia, said:

I have ruled that the reference in May's *Parliamentary Practice* which would prevent even the mention of such an office holder . . . is far too restrictive and that there can be discussion about such an office holder provided that the discussion relates to a statement as to whether the actions were right or wrong, is conducted in a reasonable fashion and does not attribute motive to or involve criticism of the office holder.¹⁶³

Although not specifically referred to in the standing orders, 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.¹⁶⁴ The application of this rule has tended to vary according to diplomatic considerations at the time.

Questions concerning the Crown

Questions may be asked of Ministers, who are the confidential advisers of the Crown, about matters relating to those public duties for which the Queen or her representative in the Commonwealth, the Governor-General, is responsible.¹⁶⁵ However, just as in debate, no Member in putting a question may use the name of Her Majesty, her representative in the Commonwealth, or her representative in a State, disrespectfully nor for the purpose of influencing the House in its deliberations.¹⁶⁶ Nor may a Member in a question cast reflections on or make critical references to the Crown or its representative.

¹⁵³ See H of R 1 (1962-63)33.

¹⁵⁴ S.O. 144; H.R. Deb. (4.11.77)2882.

¹⁵⁵ S.O. 153.

¹⁵⁶ H.R. Deb. (7.10.76)1622.

¹⁵⁷ H.R. Deb. (30.5.78)2721.

¹⁵⁸ May, p. 428.

¹⁵⁹ S.O. 153.

¹⁶⁰ H.R. Deb. (23.11.78)3333.

¹⁶¹ See Ch. on 'Motions'.

¹⁶² H.R. Deb. (16.11.78)2892.

¹⁶³ H.R. Deb. (7.10.76)1628-9.

¹⁶⁴ VP 1951-53/117; H.R. Deb. (10.10.51)459-60.

¹⁶⁵ May, p. 328.

¹⁶⁶ S.O. 74.

In 1956 Prime Minister Menzies tabled documents relating to the double dissolution of the Senate and the House by the Governor-General in 1951. The documents referred to an interview which the Prime Minister had had with the Governor-General and contained copies of a letter from the Prime Minister to the Governor-General and the latter's reply.¹⁶⁷ Questions seeking the tabling of these documents had been asked by the Leader of the Opposition some 5 years earlier. In answer to those questions the Prime Minister acknowledged the importance of making the documents public as historical records and guides to constitutional practice but indicated that he would not table them until the Governor-General concerned had left office so that they would not involve the incumbent Governor-General in public debate.¹⁶⁸ In 1979 Prime Minister Fraser tabled documents relating to the dissolution of the House in 1977 and the double dissolution of 1975. These included correspondence between the Prime Minister and the Governor-General relating to the grounds for the dissolutions.¹⁶⁹ He indicated that he was tabling the documents in response to a question asked earlier by the Deputy Leader of the Opposition.¹⁷⁰

It is the practice in the House of Commons not to permit questions to the Prime Minister on advice given to the Crown concerning the granting of honours. Although this practice has not been followed in the House of Representatives, the answers have not been very informative.¹⁷¹

The sub judice convention

The House has a fundamental right and duty to consider any matter if it is thought to be in the public interest to do so. However, in the case of a matter awaiting or under adjudication in a court of law the House imposes a restriction upon itself to avoid setting itself up as an alternative forum to the courts and to ensure that its proceedings are not permitted to interfere with the course of justice. This restriction is known as the sub judice rule or, more properly, as the sub judice convention. The convention, which is discussed in detail in the Chapter on 'Control and conduct of debate', also applies to questions and answers.

The rule does not apply to matters which are sub judice in courts of law outside Australia and its territories, nor to matters which are the subject of administrative inquiry.

Language

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.¹⁷²

Repetition of questions

A question fully answered cannot be renewed.¹⁷³ Also, as a Minister cannot be forced to answer a question, House of Commons practice provides that Members are out of order in renewing questions to which an answer has been refused. Where a Minister has refused to take the action or give the information asked for in a particular question, he may be asked the same question again after 3 months. A question which one Minister has refused to answer cannot be addressed to another Minister.¹⁷⁴

167 VP 1956-57/167.

168 H.R. Deb. (13.6.51)49, H.R. Deb. (26.9.51)37.

169 H.R. Deb. (20.2.79)17; VP 1978-80/616.

170 H.R. Deb. (23.11.78)3276.

171 e.g. H.R. Deb. (25.8.54)587; H.R. Deb.

(19-20.8.59)393; H.R. Deb. (29.9.60)1579-80; H.R. Deb. (31.8.61)787; H.R. Deb. (12.9.61)1081.

172 S.O. 147.

173 S.O. 146.

174 *May*, p. 332.

A question may however contain a reference to a question already answered (*see below* in respect of supplementary questions). Members occasionally place questions on notice asking Ministers to up-date information provided in answer to earlier specified questions.

Questions without notice which are substantially the same as questions already on the Notice Paper are not permissible.¹⁷⁵

Questions requiring detailed response

If a question cannot reasonably be expected to be answered without notice, it is disallowed, and the Chair suggests that it be placed on the Notice Paper.¹⁷⁶ This rule is mainly applied to questions seeking excessively detailed replies or to questions with many parts. Ministers themselves occasionally indicate that they are unable to answer a question without notice and ask that the Member place it on notice or, alternatively, they undertake to provide the Member with the information in writing. In the latter case, if the Minister provides a copy of the reply to the Clerk of the House, the question and reply are printed in Hansard.

SUPPLEMENTARY QUESTIONS

At the discretion of the Speaker supplementary questions without notice may be asked to elucidate an answer.¹⁷⁷

When first introduced into the standing orders in 1950, it would appear that the term 'supplementary question' was not intended to signify an immediate follow-up question by the original questioner. Rather it was intended that Members could henceforth ask questions without notice based upon answers to earlier, but not necessarily immediately preceding, questions.¹⁷⁸ Prior to 1950, questions without notice based on the answers to questions asked in the same session were disallowed.¹⁷⁹ The purpose of the restriction was to avoid a series of questions on the same subject which would develop into a debate.¹⁸⁰ A similar concern was probably in mind in 1950 when the House amended the standing orders to permit supplementary questions but to limit them to one for each answer. However, the Chair found it impracticable to limit supplementary questions in this way. In practice further questions could be, and were, asked provided Members did not describe them as supplementary questions. In 1962, on the recommendation of the Standing Orders Committee, the standing orders were amended to permit more than one supplementary question.¹⁸¹

In recent years some interest has been expressed in permitting immediate supplementary questions. Change has been resisted in favour of maintaining rigid adherence to the principle of alternating the call between the left and right of the Chair.¹⁸² However, in view of the wording of standing order 151, it would be within the discretion of the Speaker to permit immediate supplementary questions.

Since 1972 Presidents of the Senate have allowed immediate supplementary questions, within reasonable limits, to permit elucidation of answers.¹⁸³ President Cormack ruled in 1973:

The Chair recognises the questioner as having the first opportunity to seek the call to ask a supplementary question, and within the discretion of the Chair other supplementary questions may be allowed.¹⁸⁴

175 H.R. Deb. (10.5.79)2058.

176 H.R. Deb. (9.3.71)698.

177 S.O. 151.

178 H.R. Deb. (22.3.50)1055.

179 H.R. Deb. (22.10.36)1194.

180 H.R. Deb. (2.4.41)511.

181 H of R I (1962-63)33.

182 H.R. Deb. (27.2.80)406.

183 S. Deb. (22.8.73)39-40.

184 S. Deb. (13.12.73)2778.

QUESTIONS ON NOTICE**Notice of question**

Members may ask questions on notice by having them placed on the Notice Paper. Neither the question nor the answer is read in the House. There is no limit to the number of questions a Member may place on the Notice Paper at any time or on the length of a question.

Questions on notice should be clearly written or typed, signed by the Member and delivered to the Clerk within such time as will enable them to be printed on the Notice Paper.¹⁸⁵ In practice the Member's signature is not insisted upon when the Member delivers the question in person. Although the standing orders require that each notice of question shall show the day proposed for asking the question¹⁸⁶, it is the practice not to insist upon this requirement. When a notice of question is handed in, it is taken that the notice is for the next sitting, unless the Member states otherwise. From time to time a notice of question is given for a particular date.¹⁸⁷

The Speaker has determined that questions for the next day's Notice Paper should, in normal circumstances, be lodged by 5.30 p.m. If the House sits on a Friday and adjourns to the following week, this close-down time is advanced to 2.15 p.m.

Form and content

The rules governing the form and content of questions without notice apply equally to those asked on notice but are applied strictly to the latter because of the opportunity to examine them closely.

The Speaker is responsible for ensuring that questions conform with the standing orders¹⁸⁸, but, in practice, this task is performed by the Clerks who have the Speaker's authority to amend questions submitted before placing them on the Notice Paper. The Clerks also edit questions to eliminate unnecessary words, to put them into proper interrogative form, and to ensure that they are addressed to the correct Ministers. Where changes of substance are involved the amendments are discussed with the Member concerned. No question is amended so as to alter its sense without the Member's consent. Only in instances where agreement cannot be reached does the Speaker become personally involved, and any decision he makes is final.¹⁸⁹

Order of questions

The Clerk is required to place notices of questions on the Notice Paper in the order in which he receives them.¹⁹⁰ Each question is numbered, and the question continues to appear on the Notice Paper, retaining the same number, until it is fully answered and the reply is delivered to the Clerk. On the first sitting day of each week all unanswered questions appear in full on the Notice Paper. On subsequent days only new questions for that week appear while the numbers of unanswered questions placed on notice in earlier weeks are listed.

Removal of questions from Notice Paper

A Member may withdraw a question appearing on the Notice Paper in his name by informing the Clerk. When a Member ceases to be a Member or becomes a Minister, any questions appearing on the Notice Paper in his name are automatically removed.

185 S.O. 148. For statistics see Appendix 29.

186 S.O. 148.

187 NP 64(16.10.70)4351.

188 S.O. 147.

189 H.R. Deb. (12.12.14)1689.

190 S.O. 149. For further details concerning the format of the Notice Paper see Ch. on 'Papers and documents'.

Any questions remaining on the Notice Paper at the time when the Parliament is prorogued or the House is dissolved lapse.¹⁹¹

ANSWERS

No obligation to answer

It is the established practice of the House that Ministers cannot be required to answer questions.¹⁹² Outright refusal to answer questions is relatively rare being restricted largely to questions dealing with clearly sensitive and confidential matters such as security arrangements, Cabinet and Executive Council deliberations, and communications between Ministers and their advisers. Further, if a Minister does not wish to reply to a question on the Notice Paper he may simply ignore it. The question then eventually lapses on prorogation of the Parliament or dissolution of the House.

Occasionally Ministers reply, for example, that the information sought by a Member is unavailable or that the time and staff resources required to collect the information cannot be justified.¹⁹³ Ministers have also stated in answer to a question on notice that the question or part of the question sought, for example, a legal opinion or an answer to a hypothetical situation, and a substantive reply is not given.¹⁹⁴ The fact that a question which contravenes the standing orders appears on the Notice Paper from time to time is no reflection on the Speaker or the Clerk as it is not always possible for them to understand the full implications of a question. Only the Minister would have this knowledge. Ministers in replying to such questions generally recognise this situation. They should be careful in their answer that they do not reflect on the Speaker by suggesting through implication or otherwise that he has been negligent in permitting a question.

In 1977 several Ministers provided the following answer to a series of opposition questions on notice:

I have been informed that this question was prepared by an officer of the Attorney-General's Department. In these circumstances I do not propose to answer it.

The officer concerned had admitted that he had prepared the material.¹⁹⁵

Answers to questions put to Ministers representing Senate Ministers

A Minister, in answer to a question without notice addressed to him in his capacity as a Minister representing a Senate Minister in the House, provides, if possible, a substantive and immediate answer. If he cannot do so, but wishes the question to be answered, he undertakes to seek an answer from the responsible Minister and to pass it on to the questioner. In the case of questions on notice the question is also directed to the Minister representing the Senate Minister in the House but the answer is prepared by the responsible Minister. When the question and answer are printed in Hansard, the answer is prefaced with a statement along the following lines:

The Minister for . . . [i.e. the responsible Minister in the Senate] has provided the following answer to the honourable Member's question:

Answers to questions without notice

Ministers' answers to questions without notice are given orally and immediately. When a Minister is occasionally unable to provide an immediate substantive answer, he

191 See Ch. on 'The parliamentary calendar'.

192 H.R. Deb. (12.5.70)1949; *May*, p. 332.

193 H.R. Deb. (30-31.5.72)3289.

194 H.R. Deb. (5.9.67)823; H.R. Deb. (26.3.69)954.

195 *The Table* XLVI, 1978, p. 109.

may either undertake to supply the Member with the requested information in writing at a later date¹⁹⁶ or suggest that the Member place the question on the Notice Paper. When the former option is taken, a Minister will usually treat the question as if it were a question on notice and will deliver a copy of the reply to the Clerk in order that the question and answer may be printed in Hansard.

Ministers are not normally permitted to answer questions which have been ruled out of order.¹⁹⁷ Answers have been permitted however when the Minister or third parties have been criticised and the Minister has sought an opportunity to refute the criticism.¹⁹⁸

The only provision in the standing orders which deals specifically with the form and content of answers to questions is the requirement that an answer shall be relevant to the question.¹⁹⁹ Speakers have ruled consistently that provided an answer is relevant and is not couched in unparliamentary language a Minister may virtually answer a question without notice in any way he chooses. Although the test of relevance can be difficult to apply to answers to questions without notice, Ministers have been asked to resume their seats as their answers were not relevant.²⁰⁰ The Chair has also upheld points of order concerning the relevancy of a Minister's answer.²⁰¹

The Speaker has no power to require a Minister to conclude his answer to a question without notice. He may only exercise persuasion.²⁰² In exerting its influence the Chair has emphasised the need for questions and answers to be brief if maximum benefit is to be derived from the limited time allocated to questions. Ministers have consistently been advised that, should a question require a lengthy response, the proper procedure is for the Minister to state that fact and to seek leave to make a statement after Question Time.²⁰³ A Minister may, alternatively, seek leave to have part of a lengthy reply incorporated in Hansard.²⁰⁴ While the Speaker may offer advice, he has no power under the standing orders to require that it be followed.

In 1978 the Leader of the Opposition gave notice that he intended to move that the following new standing order be adopted:

151A. The time limit for an answer to a question without notice shall be 3 minutes but may, by leave, be extended.²⁰⁵

The notice lapsed on 19 September 1980 on the dissolution of the House.

More than one Minister has answered a particular question without notice in the case of shared responsibility. In 1970 a question was directed to and answered by the Minister for the Army. Upon completion of the answer the Minister for Defence indicated that the subject of the question lay more within his ministerial responsibilities and proceeded to add to the information already supplied.²⁰⁶

Ministers may seek the indulgence of the Chair after Question Time to add to or correct an answer given to a question without notice asked on that day²⁰⁷ or even a previous day.²⁰⁸ It is the practice of the Speaker to grant that indulgence. Alternatively the additional or corrected information may be given to the Clerk in writing who will treat it in the same manner as an answer to a question on notice.²⁰⁹ In the case of additional information, the Minister may choose simply to write directly to the Member concerned.

196 H.R. Deb. (30.5.77)2099; H.R. Deb. (18.8.77)496.

197 H.R. Deb. (2.5.78)1591.

198 H.R. Deb. (21.11.78)3075.

199 S.O. 145.

200 H.R. Deb. (13.9.79)1077-9; H.R. Deb. (18.9.80)1470.

201 H.R. Deb. (22.8.79)429.

202 H.R. Deb. (25.10.78)2259.

203 H.R. Deb. (19.8.76)365.

204 H.R. Deb. (28.4.77)1338.

205 NP 74(24.11.78)4118.

206 H.R. Deb. (3.3.70)19-20.

207 H.R. Deb. (31.5.73)2938-9.

208 H.R. Deb. (14.8.69)255.

209 H.R. Deb. (21.9.76)1276; H.R. Deb. (18.8.77)496.

Answers to questions on notice

An answer to a question on notice must be relevant to the question.²¹⁰

An answer is given by delivering it to the Clerk who must supply a copy to the Member who asked the question and arrange for both question and reply to be printed in Hansard.²¹¹ In addition the Clerk arranges for copies to be supplied to the Press. Answers are neither read nor tabled in the House. Answers delivered to the Clerk after the prorogation of the Parliament or dissolution of the House cannot be accepted. In these circumstances the Minister concerned may supply the answer directly to the questioner and, if he wishes, to the Press. However no privilege would attach to the answer, and the answer would not be published in Hansard.

Answers received by the Clerk subsequent to the last sitting of a session or Parliament but prior to prorogation or dissolution are accepted if they are received in time to be included in the final weekly edition of Hansard for that session or Parliament.

Occasionally Ministers supply interim answers to questions on notice. Interim answers are published in Hansard but the relevant questions are not removed from the Notice Paper until they are fully answered. The following guidelines are used in determining what constitutes an interim, as opposed to a final, reply. Any answer which makes a real attempt to supply the information sought in a question is considered fully answered. An answer to a question seeking information about an area outside a Minister's administrative responsibilities is considered fully answered if the Minister replies that he is having inquiries made and will provide the information. Similarly an answer to a question seeking information about various matters both within and outside a Minister's responsibility is considered fully answered if an answer is supplied to those parts within the Minister's administrative responsibility. An example of such a question would be one seeking statistical information on activities of the Australian Government and overseas governments within a field for which the Minister is responsible in Australia.²¹² However if the question concerns matters wholly within a Minister's administrative responsibility, a reply that he will provide the information at a later date is insufficient and the question remains on the Notice Paper. A statement by a Minister that he refuses to answer a question, with or without reasons, is considered to fully answer the question.

The answer to a question may refer the Member to the answer to another question if relevant.²¹³ This approach should be adopted if, for example, an answer applies equally to 2 questions on notice. It is unacceptable to give a single reply to 2 separate questions.

Supplementary answers adding to or correcting information contained in earlier answers to questions on notice are themselves dealt with as answers to questions on notice. The original question number is used for identification.²¹⁴

If a Minister relinquishes his portfolio before his answer to a question has been published in Hansard, the answer is returned to his former department or to the new Minister. The answer should then be re-submitted under the new Minister's name if he is satisfied with the answer, or alternatively the answer re-submitted may be prefaced:

The answer provided by my predecessor (. . .) to the honourable Member's question is as follows²¹⁵:

In 1975 an answer to a question was submitted by a Minister who had resigned as a Member. The answer was not accepted because, while the Minister could continue to act in his executive capacity, he could no longer act in his parliamentary capacity. The

210 S.O. 145.

211 S.O. 150.

212 H.R. Deb. (9.12.76)3688-9.

213 H.R. Deb. (7.4.70)781, question No. 1.

214 H.R. Deb. (15.8.72)147-8.

215 H.R. Deb. (16.2.71)73, question No. 1570.

Minister resigned from the Ministry soon afterwards and an answer to the question was submitted by his successor.

From time to time answers have not been printed in Hansard because of their extreme length and the difficulties which would be created for the Government Printer in producing Hansard. The answer recorded by Hansard has been along the following lines:

The information which has been collated for the honourable Member is too lengthy and complex to be published in Hansard. Copies are available at the Table Office of the House of Representatives.²¹⁶

This practice was first approved by Speaker McLeay in 1966 and has been endorsed by subsequent Speakers. In such cases the Member who asked the question is given a copy of the full answer.

It is not in order for a Minister to supply an abbreviated reply to the Clerk for publication in Hansard and a full reply to the Member concerned, even if a further copy of the full reply is placed in the Parliamentary Library or the House of Representatives Table Office. Any decision to exempt an answer from publication in Hansard lies with the Speaker, not Ministers.

In 1980 the Speaker explained that Hansard's objective is always to publish on the first day of a period of sittings answers to questions on notice which are provided during a non-sitting period. However the volume of answers is sometimes so large that some answers must be held over for publication in subsequent issues of Hansard.²¹⁷

²¹⁶ H.R. Deb. (7.9.71)899, question No. 3344. The answer was 29 pages long.

²¹⁷ H.R. Deb. (26.2.80)349.