

INQUIRY INTO THE RULES FOR QUESTIONS

Organisation: House of Representatives

Name: Hon Tony Smith MP

Date received: 10 February 2017



THE HON TONY SMITH MP
Speaker of the House of Representatives

9 February 2017

Mr David Blunt
Clerk of the Parliaments and
Clerk of the New South Wales Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Blunt

David,

PROCEDURE COMMITTEE INQUIRY INTO THE RULES FOR QUESTIONS

Then President Harwin wrote to me on 24 November 2016 and invited me to provide a submission to the Procedure Committee's inquiry into the rules for questions. As I understand the Council has still to select a new President, I am addressing my submission to you and ask that you pass it on to the Procedure Committee.

I understand the Committee is considering three proposals with respect to the rules for questions: the provision for a 'take note' debate on answers to oral and written questions; the scheduling of Question Time so as to avoid an overlap with Question Time in the Legislative Assembly; and the requirement for answers to be 'directly' relevant to questions asked.

In regard to the first proposal, while debate on motions to take note of answers has been a regular feature of the Australian Senate for some years, provision for a similar debate in the House of Representatives—although it has been suggested from time to time—has never been adopted by the House. I am therefore unable to offer a House view on the effectiveness of such a measure.

Question Time usually commences at 2 pm in the House of Representatives and the Senate. This has been the case for many years and I am not aware of any consideration having been given by either House to altering the order of business to avoid Question Time occurring at the same time in each House.

Therefore, I have focussed my comments on the third proposal being considered by the Committee—the requirement for 'direct' relevance in answers to questions.¹

The standing orders of the House of Representatives provide that questions must not contain arguments, inferences, imputations, insults, ironical expressions or hypothetical matter (SO 100). As question time has developed, Speakers have tended to exercise some leniency such that breaches of only minor procedural importance have not prevented questions on issues of

¹ House Standing Orders relating to Question Time are collected in Attachment A to this letter.

special public interest. In addition, some latitude is generally extended to Opposition leaders in asking oral questions and to the Prime Minister in answering them.

The standing orders and practice of the House have been criticised in that the restrictions applying to the form and content of questions do not apply correspondingly to answers; for instance, the standing orders do not prevent Ministers from introducing argument into their answers. The only provision in the standing orders which deals explicitly with the content of answers is the requirement that an answer shall be directly relevant to the question (SO 104(a)).

In answering questions, Ministers may refer to related matters which, although technically directly relevant to the subject matter of the question, do not satisfy the questioner. Opposition Members have, on occasion, raised a point of order on direct relevance to argue that their question requires a 'yes or no' type of answer. However, there is no obligation on a Minister to answer a question in the way the questioner wishes it to be answered. When a question is preceded by a lengthy preamble, Speakers have ruled that it is not reasonable for a Member to conclude with a short, sharp question and to then claim that the answer should be limited to the contents of the conclusion.²

Speakers of the House of Representatives have consistently indicated that the relevance of answers to questions without notice is the most difficult subject on which the Chair has to adjudicate. In 1988, Speaker Child stated:

The question of relevance is generally a matter of opinion or judgment. I find myself in exactly the same position as previous Speakers who have had difficulty in pleasing all sections of the House...When general questions are asked it is very difficult to define them down to specific relevant parts.³

In 1993, the House Procedure Committee formed the view that regardless of the extent to which the standing order on relevance was tightened up, relevance would continue to be a matter of opinion.⁴

The requirement for answers to be 'directly' relevant was inserted in the standing orders in 2010 at the same time as other provisions that were slightly more restrictive than previous arrangements. These introduced time limits on questions and answers and limited points of order regarding relevance so that they can be taken only once in respect of each answer.⁵ Previously, standing orders required that answers be 'relevant to the question'. *House of Representatives Practice* (5 ed., 2005) described the application of the previous standing order:

The interpretation of "relevant" has at times been very wide, with a basic requirement being that an answer must maintain a link to the substance of the question. In practice the word has been frequently accepted by the Chair as meaning relevant in some way or relevant in part, rather than directly or completely relevant.⁶

While the provision for 'direct' relevance gave the Speaker greater authority to require answers to be less wide-ranging, *House of Representatives Practice* notes that 'the interpretation and application of the provision has remained challenging'.⁷

² *House of Representatives Practice*, 6 ed., 2012, p. 568.

³ House of Representatives Debates, 28 September 1988, p. 1037.

⁴ House of Representatives Standing Committee on Procedure, *About Time: Bills, Questions and Working Hours*, October 1993, pp 22-3. (Procedure Committee reports are available at or via http://www.aph.gov.au/Parliamentary_Business/Committees/House/Procedure)

⁵ House of Representatives Votes and Proceedings, 29 September 2010, p. 37.

⁶ *House of Representatives Practice*, 5 ed., 2005, p. 553.

⁷ *House of Representatives Practice*, 6 ed., 2012, p. 568.

The Speaker at the time the standing order was revised—Speaker Jenkins—noted that despite the change, there remained an ongoing difficulty for the Chair in that a Minister could be ‘directly relevant’ to a question without necessarily giving the direct answer that the questioner may be seeking. For example, in response to a point of order on direct relevance, Speaker Jenkins stated:

The minister is relating his response to the question and, if you want the added word, “directly”. It may not form what one might consider a direct answer, but it is directly relevant. I think you will appreciate that there are two different things. You may couch your question and you can expect a direct answer. The standing order talks of being “directly relevant”... I would adjudge that the minister has been directly relevant. He has not entered into debate about this question and brought in any other opinions.⁸

The Procedure Committee has long contended that a change in the nature of answers would depend on a change of attitudes on the part of Members asking questions and Ministers answering them, rather than a change of rules.⁹ Shortly after the relevance rule was amended to require answers to be ‘directly’ relevant, Speaker Jenkins also emphasised that the effectiveness of the reform would depend on a cultural shift within the House:

The standing orders were changed to add that answers be directly relevant... it will not only take a change of standing orders but a change of culture in the whole House to bring about the type of question time and proceedings in this place that many outside would like to see.¹⁰

The way that I have interpreted ‘direct’ relevance is that a Minister in answering a question must remain on the policy topic of the question to be directly relevant.¹¹ The enforcement of ‘direct’ relevance by the Chair is greatly aided by questions that focus tightly on a particular policy topic and do not introduce extraneous matter. A very broad question, even one with a more succinct concluding question, provides the Chair with less capacity to restrict the answer.

As noted above, at the same time that the provision for direct relevance was adopted in September 2010, time limits were introduced on questions and answers. The duration of each question was limited to 45 seconds and each answer was limited to 4 minutes. These changes saw the average length of questions reduce by around 2 seconds and the average length of answers reduce by around 30 seconds.¹² Further refinements were made in February 2012 to reduce the time limits to 30 seconds for questions and 3 minutes for answers. Consequential adjustments were made to the order of business to provide for question time to finish at approximately 3.10 pm rather than 3.30 pm. In September 2016 the imposition of a 45-second time limit on questions was restored for questions asked by non-aligned Members only.

I believe that the introduction of time limits on answers has been significant in assisting with relevance, as very lengthy answers which may stray from the topic of the question are now not possible.

In 2010, standing orders were also amended to provide that points of order regarding relevance could only be taken once in respect of each answer.

⁸ House of Representatives Debates, 19 October 2010, p. 677.

⁹ See, for example, House of Representatives Standing Committee on Procedure, *About Time: Bills, Questions and Working Hours*, October 1993, pp. 22-3; House of Representatives Standing Committee on Procedure, *Interim Report No. 1: Monitoring and review of procedural changes implemented in the 43rd Parliament*, April 2011, p. 37.

¹⁰ House of Representatives Debates, 28 October 2010, p. 2062.

¹¹ House of Representatives Debates, 11 August 2015, p. 7913 and 13 October 2015, p. 10996.

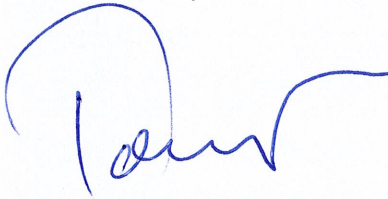
¹² Table 4.1, House of Representatives Standing Committee on Procedure, *Monitoring and review of procedural changes implemented in the 43rd Parliament*, November 2012, p. 33.

The Procedure Committee noted that this had led to a 'significant reduction' in the average number of points of order taken during question time.¹³

From my perspective as Speaker of the House for 18 months, the provision for 'direct' relevance has aided me in requiring answers to be less wide-ranging. However, the question of direct relevance remains a matter of judgment. And as noted earlier, the imposition of time limits has assisted by requiring both questions and answers to be more concise.

I wish the Committee well in its inquiry and would be happy to provide further information if required.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Tony Smith', with a large, sweeping initial 'T'.

THE HON TONY SMITH MP

Speaker of the House of Representatives

¹³ House of Representatives Standing Committee on Procedure, *Monitoring and review of procedural changes implemented in the 43rd Parliament*, November 2012, p. 39.

Attachment A

House of Representatives Standing Orders relating to Questions seeking information

Oral and written questions

97 Daily Question Time

- (a) Question Time shall begin at 2 pm on each sitting day, at which time the Speaker shall interrupt any business before the House and call on questions without notice.
- (b) The business interrupted shall be dealt with in the following manner:
 - (i) if a division is in progress at the time, the division shall be completed and the result announced; or
 - (ii) the Speaker shall set the time for resumption of debate.

98 Questions to Ministers

- (a) A Member may ask a question in writing of a Minister (but not a Parliamentary Secretary*), to be placed on the Notice Paper for written reply.
- (b) During Question Time, a Member may orally ask a question of a Minister (but not a Parliamentary Secretary*), without notice and for immediate response.
- (c) A Minister can only be questioned on the following matters, for which he or she is responsible or officially connected:
 - (i) public affairs;
 - (ii) administration; or
 - (iii) proceedings pending in the House.
- (d) Questioners must not ask Ministers:
 - (i) for an expression of opinion, including a legal opinion; or

* Including Assistant Ministers who are Parliamentary Secretaries.

- (ii) to announce government policy, but may seek an explanation about the policy and its application, and may ask the Prime Minister whether a Minister's statement in the House represents government policy.

99 Questions to other Members

During Question Time, a Member may ask a question orally of another Member who is not a Minister (or Parliamentary Secretary*). Questions must relate to a bill, motion, or other business of the House or of a committee, for which the Member asked is responsible.

100 Rules for questions

The following general rules apply to all questions:

- (a) Questions must not be debated.
- (b) A question fully answered must not be asked again.
- (c) For questions regarding persons:
 - (i) questions must not reflect on or be critical of the character or conduct of a Member, a Senator, the Queen, the Governor-General, a State Governor, or a member of the judiciary: their conduct may only be challenged on a substantive motion; and
 - (ii) questions critical of the character or conduct of other persons must be in writing.
- (d) Questions must not contain:
 - (i) statements of facts or names of persons, unless they can be authenticated and are strictly necessary to make the question intelligible;
 - (ii) arguments;
 - (iii) inferences;
 - (iv) imputations;
 - (v) insults;
 - (vi) ironical expressions; or
 - (vii) hypothetical matter.
- (e) Questions must not refer to debates in the current session, or to proceedings of a committee not reported to the House.
- (f) The duration of each question asked by a government Member or an opposition Member is limited to 30 seconds. The duration of each question asked by a non-aligned Member is limited to 45 seconds.

101 Speaker's discretion about questions

The Speaker may:

* Including Assistant Ministers who are Parliamentary Secretaries.

- (a) direct a Member to change the language of a question asked during Question Time if the language is inappropriate or does not otherwise conform with the standing orders; and
- (b) change the language of a question in writing if the language is inappropriate or does not otherwise conform with the standing orders.

102 Lodging questions in writing

- (a) A Member lodging a question for the Notice Paper must deliver it in writing to the Clerk at the Table or to the Table Office.
- (b) The question must be authorised by the Member.
- (c) Questions for the next Notice Paper shall be lodged by the cut off time determined by the Speaker, otherwise they will be included in the Notice Paper for the following sitting.

103 Questions to Speaker

At the conclusion of Question Time, Members may ask questions orally of the Speaker about any matter of administration for which he or she is responsible.

Replies to questions

104 Answers

- (a) An answer must be directly relevant to the question.
- (b) A point of order regarding relevance may be taken only once in respect of each answer.
- (c) The duration of each answer is limited to 3 minutes.

105 Replies to written questions

- (a) A Minister's written reply to a question must be delivered to the Clerk. The Clerk shall provide a copy of the reply to the Member who asked the question, and the question and reply shall be published in Hansard.
- (b) If a reply has not been received 60 days after a question first appeared on the Notice Paper, the Member who asked the question may, at the conclusion of Question Time, ask the Speaker to write to the Minister concerned, seeking reasons for the delay in answering.