Enhancing scrutiny in question time –
New practices for questions without notice in the A.C.T.
Legislative Assembly

Shane Rattenbury, Speaker, Legislative Assembly for the Australian Capital Territory
Presented at 41st Presiding Officers and Clerks Conference, Darwin, Australia
The key to an effective question time is, in my mind, firmly predicated on the idea that questions without notice offer non-executive members an unrivalled opportunity to hold executive government to account and to allow public ventilation of major policy and administrative issues of concern to the wider community (to whom the parliament is ultimately responsible). Where question time departs from this, it can become little more than political theatre with scrutiny and accountability subordinated to nothing more than a platform for noisy, partisan, gamesmanship. After the ACT elections in October 2008, the ACT Greens and the Australian Labor Party established a parliamentary agreement which set out a number of reforms to the manner in which the accountability processes of the institution could be enhanced. One area that was canvassed in this agreement (and later adopted in the Assembly) was in terms of improving the relevance of answers provided by ministers in question time. After being in the Speakership for a period and having visited Westminster as part of a CPA seminar\(^1\) where I had the opportunity to witness the forms and procedures adopted in the House of Commons for Questions to the Prime Minister, I became attracted to introducing some further changes to the way that our question time was conducted which have also since been adopted. These changes, although not without their challenges have, I believe, enlivened question time proceedings in the Assembly and strengthened the scrutiny role of our parliament more generally.

With its inception in the British House of Commons, Question Time is an established feature of many parliamentary systems with variants operating in Australia, New Zealand, Canada, India, Hong Kong and many African and Pacific Island nations. The opportunity for non-executive members to put questions without notice to ministers is one of the most important exercises of the parliament’s accountability function. It provides the platform for members to scrutinise executive and administrative performance and to allow the public to gain an insight into, and understanding of, the programs being administered by the executive government of the day and the decisions it is making on a daily basis. It is also one of the most visible aspects of parliamentary practice – the colour and theatre of question time often attracts the most publicity and the highest degree of interest from members, the media and the public. As McRae points out:

\(^1\) 58th Seminar on Parliamentary Practice and Procedures at Westminster March 2009

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\(^1\) The accountability of government is tested most clearly and publicly during question time when questions are asked orally without notice by opposition,
crossbench and government backbench members. This is why question time is one of the most significant parts of a sitting day. In fact, the importance placed on question time is indicated by the fact that all non-executive members will usually be present in the chamber and wish to ask a question.2

Question time is not an opportunity to explore matters unrelated to the official of public functions of ministers from which the executive is formed but to cast the light of accountability on such matters as the expenditure of public funds and the operation of programs and services directed by the government. To this end, questions asked at question time must be confined to areas over which ministers have a specific administrative responsibility3 as reflected in the Assembly’s standing orders which state that ‘Questions may be put to a Minister relating to public affairs with which that Minister is officially connected, to proceedings pending in the Assembly or to any matter of administration for which that Minister is responsible’.4

Aside from the loftier accountability purposes served by a question time process, there has also always been a palpable political dimension which attends these proceedings and it is a forum which has traditionally been used to prosecute the key political messages of the government and opposition of the day. As the House of Representatives Practice notes:

The purpose of questions is ostensibly to seek information or press for action. 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.5

It is also true that the news media so often rely on the intemperate grandstanding and some of the more flamboyant exhibitions which can take place in question time as grist for their coverage of the parliament more generally. By contrast, the more protracted and judicious deliberative processes undertaken by say a standing

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3 The Administrative Orders tabled by the Chief Minister set out the portfolio responsibilities of each individual minister.
4 SO114
committee through a public inquiry process are not nearly as attractive in terms of perceived ‘news value’ when compared with the innumerable sound bites on offer where politicians are seen to hurl so many creative and colourful insults at each other. While this has often been seen as an inevitable consequence of the oppositional and confrontational nature of the parliamentary system, I remain unconvinced that it is in the best interests of the community or of the parliament itself to continue down this track.

With the advent of the parliamentary agreement between the ACT Greens and the ALP which recognised the ascendance of a third-force in ACT politics, there was an opportunity to reassert the role of question time as being a forum for genuine inquiry, openness and accountability, rather than a mere stage for the government and the opposition to showcase their respective political gimmicks. Quite simply, in my mind, question time should be about non-executive MLAs seeking information from the government and then having that information provided clearly and succinctly without resorting to obfuscation, misdirection or name calling.

At its inception the ACT Legislative Assembly adopted the practice of the Australian House of Representatives whereby the government of the day had the authority to determine the duration of question time.6 However, the question time arrangements adopted by the Assembly also borrowed from the Australian Senate practice in allowing a member to pose a supplementary question to the question initially asked as well as the imposition of time limits on the answers to questions given by ministers. A significant advancement occurred in 1994 with the adoption of a standing order (so113A) which stated that ‘Questions without notice shall not be concluded until all non-Executive Members rising have asked at least one question’. Since this time and unlike the House of Representatives this means that question time in the Assembly has not been conducted for a fixed period but may vary until all members, who are of a mind, have had the opportunity to ask a question. Members have also been entitled as a follow up to their original question to ask one supplementary question (so113B), meaning that with a 17 member Assembly, 11 of whom are entitled to ask a question (i.e. not including the Speaker or the current five ministers), it has, until recently, been possible for 22 questions to be asked during a

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6 McRae op cit p 125.
question time. This means that representatives from all electorates within the ACT and from all political parties within the chamber can participate in the question time proceedings in a way that is not observed in any other Australian parliament (which generally see proceedings confined to exchanges between the leader of the opposition and the Premier/Prime Minister/Chief Minister or another minister in the ‘hot seat’ on a particular day). This confers on proceedings a greater sense of pluralism and diversity and is by definition a more inclusive process than that observed in other jurisdictions.

The 2008 election, saw the loss of a majority government and the Assembly evenly poised with 7 ALP, 6 Liberal and 4 ACT Greens members. As a result, it has been possible to introduce a number of additional innovations which, I think, strengthen question time and make it a forum where accountability outcomes are more likely to be achieved and where the array of community concerns and interests can be explored more deeply. It is worth mentioning that these changes have been achieved in the Assembly by consensus with all parties – the ACT Greens, the ALP, and the Canberra Liberals – supporting them.

**Amendment to standing orders to allow additional supplementary questions**

On 27 August 2009 I moved a motion to amend the Assembly standing orders to allow additional supplementary questions to be asked by non-executive members. The Assembly agreed to amend the standing orders so that they would read:

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Immediately following the answer to a question, one supplementary question may be asked by the Member who asked the original question: provided that the supplementary question is relevant to the original question or arises out of the answer given, contains no preamble, introduces no new matter and is put in precise and direct terms. The Speaker may allow two further supplementary questions from other non-Executive Members, provided that the questions are relevant to the original question or the answers given.  
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The answer to a question without notice:

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7 Nothing has been stipulated in standing orders to prevent a member from asking more than one question but it is the convention of the place that members restrict themselves to one question only, with one supplementary question if needed.

8 It would, of course, be impractical for the House of Representatives to adopt a similar practice with its large membership (Currently 150 members) – the same is true of other larger legislatures.

9 so113B
...(c) shall, in the case of the original question, be not longer that four minutes in length, and in the case of any supplementary question asked, not longer that two minutes in length. The Speaker may, at his/her discretion, order the clock to be stopped.\textsuperscript{10}

The effect of these changes is that although the length of question time has not been extended, there are now two more supplementaries allowed from non-executive members in addition to the supplementary posed by the original questioner.\textsuperscript{11} Therefore, potentially 44 questions can be asked during question time by non-executive members (excluding the Speaker).

The thinking behind the new arrangements is encapsulated in my speech in the Assembly having moved the motion to the standing orders:

I was inspired \[to introduce these changes\] by \[witnessing\] the conduct of question time in Westminster, particularly, and also by the way the New Zealand parliament operates, where answers tend to be shorter and there is… more \[of a\] questioning process that goes on. It engages all members of the chamber in question time, keeps them focused on the questions that are being asked and enables the expertise of all members in the chamber to be shown. One member may ask a question, but another member, by dint of expertise or experience in the chamber, may see an avenue where they want to explore further the question or the answer provided by the minister.

In terms of the impact this proposed reform will have \[is that\] it should give all members the opportunity to engage in an issue once it has been discussed on the floor of the chamber. It will mean that ministers, particularly on the supplementary questions, will need to be more concise in their answers, with two minutes for each of them. As I said earlier, overall, there still will be 10 minutes of answering time for the ministers, but it will be more segmented and it will require perhaps more concise answers or less digression, depending on your perspective on the current conduct of question time. And undoubtedly there will be some impact on the conduct of so-called dorothy dixers.\textsuperscript{12}

\textsuperscript{10} so118(c)
\textsuperscript{11} Prior to the changes, each questioner was entitled to one question with the relevant minister having five minutes within which to answer it, followed by a supplementary with a further five minute response period.
\textsuperscript{12} Legislative Assembly for the ACT: 2009 Week 10 Hansard (27 August) p 3808.
Since the introduction of these changes, I believe question time has become more interrogative with ministers being subject to a sustained line of questioning on particular matters and also allowing a greater degree of involvement by all members. Members are now required to listen carefully to both questions and the answers provided during the question time period in order that any subsequent supplementary question they may wish to put are ruled ‘in order’ under the relevance provisions in the standing orders. In the past members could merely ask their question followed by one supplementary question and then proceed to ‘tune out’ for the rest of proceedings. On this note - it is certainly the case that I have observed more active engagement and involvement across the membership of the Assembly in the question time proceedings than was previously the case.

One challenge for me as speaker has been to ensure that follow-up supplementaries are apportioned to members fairly and that, in particular, all party groupings are given supplementary questions proportionate to their representation in the chamber. As I have the call in directing which member is able to ask a supplementary question, I have had to be vigilant in maintaining the proper ratios between questions asked by members of the crossbench, the opposition and the non-executive government members. To this end, I keep a record of who has asked questions and detailed statistics are available to provide an assurance to other members that the Speaker’s call is being given on a proportional basis to members seeking the call to ask a supplementary. To date, the ratio of supplementary questions has been in almost perfect alignment with the makeup of the Assembly as shown in the statistics at Attachment A.

In my experience answers in general have been more concise and relevant to the questions that have been put. The fact that a line of questioning can be developed, also means that ministers who use avoidance techniques in answering questions are usually challenged later by the three supplementary question that can be deployed by non-executive members. This allows a ‘drilling down’ effect where members can seek additional information and detail and to highlight inadequate responses that might be observed.

**Inclusion in the standing orders of a procedure to respond to a minister’s answer in question time considered to be a ministerial statement**

As part of a suite of changes set out in the parliamentary agreement between the ACT Greens and the ALP, was a proposal to introduce a new procedure in the
standing orders which sought to provide a disincentive for ministers to use question time as an opportunity for speechmaking and either avoiding the substance of questions put by non-government members or responding to what are colloquially termed “Dorothy Dixers”\textsuperscript{13} from government backbenchers in a form that essentially amounts to a ministerial statement. The Assembly approved this change on 9 December 2008 by agreeing to insert a new provision as a temporary order (to9) in so118 which sets out the following procedure:

A Member who believes a response given to a question was in the form of a ministerial statement, may seek the leave of the Speaker to respond to the statement at the conclusion of Question Time for a period not exceeding five minutes. \textit{(Temporary order 9 December 2008)}

Despite its existence, this procedure has not been used frequently. On 24 February 2010, following question time the Opposition spokesperson on Health made the claim that one of the Chief Minister’s question time responses in relation to a question from a government backbencher (which could have been broadly construed as a ‘Dorothy Dix’ type question) on random breath testing, amounted to a ministerial statement and that opposition member was granted leave by the Speaker to provide a response which he subsequently did.

While it will always be difficult to prevent ministers from using question time as a vehicle for irrelevant speechmaking, waxing lyrical about the raft of claimed accomplishments that they and their government have achieved, this procedure at least provides an opportunity for non-executive members to have some chance to reply to these speeches as they would had the speech been made as a formal ministerial statement. I have a feeling, although this cannot be empirically verified that this new arrangement could well act as a disincentive for ministers to engage in ‘Dorothy Dix speechmaking’ and at this stage in the life of the 7\textsuperscript{th} Assembly, I consider it a positive step in the evolution of our question time arrangements.

\textbf{Inclusion of a stronger relevance test in the standing orders}

\textsuperscript{13} As many would be aware the term Dorothy Dix is a reference to a question asked by a government backbencher usually with the sole purpose of allowing the government to make a speech which either extols the virtues of the government or denigrates its political opponents. Its origins arise from an American ‘agony aunt’ type column which appeared in a wide range of publications internationally during the 1920s. Dorothy Dix was a pseudonym for the journalist who produced the columns, Elizabeth Meriwether Gilmer, who was thought to have prepared many of the questions which she subsequently answered in her columns.
Prior to amendments moved by me and agreed to by the Assembly on 9 December 2009, the standing orders required that ministers answering questions without notice merely confine their answers to the subject matter of the question being asked. This seemed to me an inadequate approach in that it did not ensure that ministers were being directly relevant to the questions that were asked and who could instead canvass a wide range of largely tangential subject matter, leaving the questioner no wiser as to the details of the particular information they had sought. As my ACT Greens colleague, Caroline LeCouteur, pointed out in her speech supporting the amendments to include a new standard of relevance in the standing orders:

> Question time has sometimes become almost farcical, with ministers being permitted to push a line on a particular issue rather than answer the question. Assembly Hansard has examples of answers to questions that make only a meagre attempt to answer the topic of the question. It is intended that, by amending standing order 118 and requiring that the answer be directly relevant to the question asked, this will no longer be the case and, in formulating questions, members will be able to simply state a question and have it answered without having to wonder about what sort of tangent the minister might take in response to it.14

To overcome this, the Assembly agreed to amend the relevant standing order (so118) so that ministers are now required to be directly relevant to the question asked. This new arrangement relies on me in my role of Speaker to ensure that where a minister does stray considerably away from the substance of a question, I am able to direct the minister to return to the question. This, as other speakers would be aware, is a balancing act. Typically, where an answer appears to be straying off-topic, relevance is raised by a non-government MLA as a point of order; this is then usually followed by a counterpoint of order from the government claiming that the minister is merely providing the necessary context in which the substantive issue must be placed in order for it to be comprehended properly.

While I have some sympathy for the fact that some questions do require a degree of ‘contextualisation’ in order to fully and accurately respond to the subject matter at hand, there are also times where substantive answers are buried in such a torrent of ‘contextual’ verbiage that one is left wondering if the essence of the questioner’s question has been left ignored, avoided or simply misplaced altogether. It has been

14 Legislative Assembly for the ACT: 2008-2009 Week 1 Hansard (9 December) p 53.
my practice to give sufficient leeway so that these elements of context which are legitimatley attached to the question be allowed to proceed but where there appears to be no genuine attempt to provide the information sought, it has been my practice to call the minister to speak directly to the question and to the substance raised by the questioner. Particular difficulties can arise where the premise of the question is, in fact, disputed by the minister, meaning that significant time can be spent by the minister speaking not to the question but to the premise upon which it is based, pointing out why, in their view, there are either logical or factual problems contained within it. These sorts of responses can often venture into territory that is not strictly relevant to the information that has been sought by the non-executive member, however, I believe some latitude is warranted in these areas or ministers would be forced to accept premises with which they plainly disagree which would do nothing to enhance the accountability character of question time.

Conclusion
I have been encouraged by the way in which these changes to the question time arrangements have operated and no doubt a large part of their success is owed to the tri-partisan support they have received which has provided additional legitimacy to their practice. The Assembly has agreed to review a number of these new provisions to have the chance to comment on any deficiencies or unintended consequences which may have arisen. There will be an opportunity to refine them yet further following this review. All in all though, it is my personal view that the changes have managed to enhance the question time proceedings and have largely succeeded in improving scrutiny and accountability within the Assembly.

I would like to thank Mr David Skinner, Manager, Strategy and Parliamentary Education, for his assistance in researching and preparing this paper.
## Attachment A

**Questions without notices – statistics as at May 2010**

### 2009-2010

<table>
<thead>
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<th>Members</th>
<th>Total QoNs asked to date</th>
<th>Total Supplementary QoNs asked to date</th>
<th>% of Supplementary QoNs for each party grouping as at 6 May 2010</th>
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<td>52</td>
<td>Opposition (55%) (12 questions)</td>
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<td>Crossbench (27%) (6 questions)</td>
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