PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE INQUIRY INTO STRENGTHENING GOVERNMENT AND PARLIAMENTARY ACCOUNTABILITY IN VICTORIA

Submission by Ray Purdey, Clerk of the Legislative Assembly

As part of its Inquiry into Strengthening Government and Parliamentary Accountability in Victoria the Public Accounts and Estimates Committee has particularly sought my views on the following aspects of the terms of reference:

(b) question time procedure

(e) modernisation of Parliament including the permanent abolition of wigs and other archaic practices; and

(f) reform of the process of dealing with petitions.

I will deal with each one of those issues in turn particularly as they relate to the Assembly.

QUESTION TIME PROCEDURE

The first question time occurred in the Legislative Assembly on 30 April 1969. This followed the adoption of a new Standing Order which had been recommended by the Standing Orders Committee. That Standing Order read as follows:

> *"A member may be at liberty to ask a question without notice in conformity with Standing Orders Nos. 79 and 79A provided that no question shall be asked after a lapse of thirty minutes from the time Mr Speaker calls on questions."*

Support for the introduction of question time seems to have come from an analysis of the practices of other Parliaments throughout Australia. There is very little detail in the Committee's report, or in the brief debate that took place in the House when the Standing Order was adopted, as to the reason for the introduction of question time. The Australian House of Representatives had already been using the question time procedure for sometime and it is undoubtedly one of the jurisdictions upon which our question time was based. It is therefore appropriate to look to that jurisdiction for some guidance on the purpose of question time. This can be found in the House of Representatives Practice[1] where it states:

> *"It is fundamental in the concept of responsible government that the Executive Government be accountable to the House. 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 (questions in writing) play an important part in this quest for information."*

From the outset question time in the Legislative Assembly was governed by the rules for dealing with questions on notice. Over time these rules have been modified by rulings from the Chair and amendments to the Standing Orders. The general guidelines applying to the conduct of question time today can be summarised as follows:

- The purpose of a question is to seek information, not to give information or to suggest its own answer; the only arguments, opinion or facts given should be those necessary to explain the question;
- The matter must relate to public affairs and be directed to the minister responsible;

[1] Fifth edition page 527

- Questions should not seek opinion, particularly a legal opinion, ask whether Press statements are correct, seek a solution to a hypothetical proposition, be trivial, vague or meaningless, raise matters *sub judice*, anticipate debate on an Order of the Day or raise questions of policy too large to be dealt with in an answer to a question;
- In answering, ministers should - confine themselves to the points contained in the question; be direct, factual and succinct; not introduce extraneous material; and should not debate the matter;
- The minister has discretion as to whether or not the question is answered;
- Where a minister refuses to answer, a reply cannot be insisted upon and supplementary questions are out of order.
- Points of order should not be used as a means of repeating a question;
- Should a minister wish to make a lengthy speech or statement, the proper form is via a ministerial statement;
- Question time will last for 30 minutes or until 10 questions have been answered, whichever is the longer.

In is interesting to see how question time has developed since its inception in 1969. During the very first question time there were 23 questions posed which were all from non-government members. All questions and answers were very succinct which accounted for the large number. This pattern continued through to the mid 1970's when it was still common practice for 18 to 20 questions to be asked during a 30 minute period. During this time it gradually became the practice for Government members to ask questions. Initially it was one or two each question time rising to about six by the mid 1970's.

During the 48th Parliament (1979–1982) two significant changes occurred. The first being the introduction of a standard rotation of questions between government and non-government members which resulted in the number of government questions increasing to about 33% of questions asked. Secondly, the Standing Orders were altered to enable question time on Tuesdays to run for a period of 45 minutes.

The next decade brought other changes. Filming of question time commenced and each of the political parties established questions committees to exert control over the questions being asked. Gradually the length of ministers' answers began to increase, with a resulting decrease in the number of questions asked. This reached an all time low in the 53rd Parliament (1996–1999) when on some occasions only three to four questions were raised during a 30 minute question time.

At the beginning of the 54th Parliament the "30 minute or 10 question" rule was introduced to address that problem. This has been effective in ensuring that 10 questions are now raised during each question time. I am unaware of any dissatisfaction with the adequacy of 10 questions, which leads me to the view that dealing with 10 questions each question time is acceptable.

The question rotation introduced in 1979 – Opposition, National Party, Government – continued to apply until 1992. Following the election of the Liberal/National Coalition Government in 1992 the questions were rotated more evenly between Opposition and Government. I expect that this was based on the new make-up of the House being Government and Opposition rather than three separate parties operating independently as they were in the previous Parliament. The fifty/fifty question rotation was entrenched during the

54th Parliament when question call lists were issued to each of the parties reflecting that rotation. The fifty/fifty rotation continues to be used in the current Parliament.

I am not so sure that the fifty/fifty rotation between government and non-government members has been a good initiative. My reason being that the large number of Government questions seems to be in conflict with the original purpose of question time, which is to enable the Executive Government to be held accountable to the House. To illustrate my point I have done some analysis of the time taken to answer questions over the last three Parliaments which is shown in Table 1.

Table 1

Parliament	Time taken (minutes)	
	Government	Non Government
53rd (1996-1999)*	5.6	2.2
54th (1999-2002)	5.2	2.2
55th (2002-2006)	5.1	1.6
Average	5.3	2.0

*Limited to a sample of question times where 10 questions were raised

The figures are fairly consistent over the three Parliaments and on average they show that it takes 5.3 minutes to answer a government question and two minutes to answer a non-government question. Extrapolation of these figures shows that 26.5 minutes (70%) is spent answering government questions and 10 minutes (30%) answering non-government questions. Clearly question time is dominated by answers generated by government members. Observers of question time would also note that many of those questions invite answers that would be regarded as mini ministerial statements. An example is a question asked by the Member for Mitcham on 19 June 2007 -

> *"Will the Premier inform the house how the next stage of the Victorian government's water plan will help secure Victoria's water future and ensure Victoria can continue to grow and prosper?"*

It appears to me that we have gradually moved away from the original concept of Executive Government accountability, to a situation today where the majority of question time is devoted to Government policy announcements. The Parliament's accountability measures could be strengthened by reversing this trend.

Some suggestions that the Committee may consider in this regard are:

- Replacing the fifty/fifty question rotation with a rotation that increases the number of non-government questions and reduces the number of government questions. My suggestion would be 7 non-government and 3 government questions which is similar to the ratio of mid to the late 1970's.
- Reduce the amount of time taken to answer a government question. This could be achieved by insisting on the "30 minute" rule and changing the order in which questions are asked whereby government questions come later in the rotation. This would require self discipline by Ministers to keep answers succinct to ensure that there is time to raise government questions later in the period.
- Introduce a new procedure to enable Ministers to make brief Ministerial Statements. The Western Australian Legislative Assembly currently has such a procedure.

The final matter I raise in relation to question time is the excessive amounts of points of order that are raised. This is mainly due to the excessive length of some answers, ministers

debating the issue, and failure by ministers to directly respond to issues raised. I have already suggested some mechanisms to try and overcome excessive length of answers. However, dealing with these other issues may require a more significant change in the way question time is conducted. Firstly I would move to the UK practice of not allowing any points of order during question time. This would improve the process and allow question time to flow more smoothly. For this to work effectively the Chair would need to be given the power to determine if a minister has answered a question. The Speaker already adjudicates on the admissibility of some answers to questions on notice, and I see this being an extension of that responsibility. Adoption of this process would undoubtedly place greater responsibility on the Chair and it would also require a willingness by ministers to be more direct in their response to non-government questions.

MODERNISATION OF PARLIAMENT INCLUDING THE PERMANENT ABOLITION OF WIGS AND OTHER ARCHAIC PRACTICES

Modernisation of Standing Orders

I draw the Committees attention to work done recently in this area by the Standing Orders Committee. That Committee's Report on the Modernisation of Standing Orders[2] completely revised the Standing Orders using plain English, gender neutral terms, streamlined procedures and deletion of obsolete practices. The House adopted the recommendations outlined in that report and agreed to a new set of Standing Orders on 4 March 2004. With this in mind there may not be a great deal for the Committee to consider in this area.

Wigs and uniforms

The terms of reference specifically refer to the permanent abolition of wigs. This seems a trivial issue and I am at a loss to know why it has been referred a Joint Parliamentary Committee for consideration. In the lower House the wigs have only been worn for seven years in the last quarter of a century. The Parliamentary Clerks in the lower House have no desire to wear the wigs and I do not see any likelihood of them ever being worn in the lower House again. While I am dealing with the Chamber Staff uniforms, I should also make reference to the full Windsor Court Uniform. This is a traditional uniform that was supplied to Parliamentary Clerks and the Serjeant-at-Arms for use on formal occasions. It was last worn by staff at the opening of Parliament in 1999. Recently appointed Clerks have not been supplied with this uniform and it will not be worn again.

Opening day procedure

I now wish to comment on some other matters that could be seen as archaic practices. The first of these relates to the opening day procedure. One of the traditions of opening day is for members of the Assembly to attend the Council Chamber to hear the reading of the Commission from the Governor to swear-in members. Procedurally, it is not necessary for Assembly members to attend the Council Chamber. In fact the Commissioner appointed to swear-in members of the Assembly (normally the President of the Court of Appeal) could proceed directly to the Assembly Chamber and have the Commission read to members by the Clerk. This would obviate the need for Assembly members to attend to the Legislative Council Chamber for that purpose.

Condolence motions

On the death of a former member I am invariably asked to provide advice on an appropriate length of time for the adjournment of the House. Adjournment times vary enormously and

[2] Parliamentary Paper No 50/2003

there is no standard period. The Legislative Council has recently adopted the practice of adjourning for a fixed period of one hour. This is a very sensible procedure and one which the Committee may wish to consider.

Adjournment debate

The adjournment debate is another procedure that could be reformed. Under Standing Order 33, thirty minutes is set aside for matters to be raised, or until 10 members have spoken (for a maximum of three minutes each), whichever is the shorter. Any ministers present can respond, for a total overall period of thirty minutes. When the adjournment debate procedure was first introduced it was common practice for ministers to attend the Chamber to respond to matters raised. In more recent times (since the mid nineties) the tendency for ministers to respond to issues has been less frequent. It is now common practice for the minister on duty at the Table to advise that the matters raised will be referred to the various ministers concerned for their consideration. On other occasions a few ministers will be in attendance to primarily respond to issues raised by government members. It is now fairly unusual for ministers to respond in the House to issues raised by non-government members. I also understand that non-government members rarely, if ever, receive formal responses to issues raised with ministers that were not present during the adjournment debate.

This provides another opportunity to strengthen parliamentary accountability. If the procedures of the House provide for matters to be raised with ministers, then surely there is an expectation that those matters must receive a response. My suggestion to improve this practice is to remove the requirement for ministers to respond in the House as it is currently not being taken seriously and prolongs the sitting day with little tangible benefit. It should be replaced with a requirement that ministers respond in writing to issues raised on the adjournment within a set time limit.

Address-in-Reply

Standing Orders provide[3] that the address-in-reply will be presented to the Governor by the Speaker, accompanied by the mover and seconder and other members that wish to attend. Traditionally this is a formal occasion that takes place at Government House with a substantial number of members attending. This year there appeared to be a distinct lack of interest in the ceremony, with attendance by members embarrassingly low. Perhaps it is time to dispense with the formal ceremony at Government House and allow the Speaker (accompanied by the mover and seconder) to present the address-in-reply in a more informal manner without the attendance of other members.

Sitting hours

The final archaic practice I wish to draw to the attention of the Committee is that of late night sittings. There is a propensity for the House to solve any of its scheduling problems by extending its sittings beyond the normal 10pm adjournment time. This seems to be done without any consideration of the consequences it may have on the health and safety of its members and staff.

It has certainly been a tradition for the House to sit late into the evening. Back in the 1970's it was common for the House to sit until midnight or the early hours of the morning. However, in those days the House commenced sitting at 4pm on Tuesdays, 2pm on Wednesdays and 11am on Thursdays. The late nights were not so much of an issue because

[3] Standing Order 179

members and staff were able to achieve an adequate break due to the later starting times the next morning. Over time the starting times of the House have gradually been brought forward to the 2pm, 9.30am and 9.30am commencement times we have today. While it is quite acceptable and reasonable for the House to commence at these earlier times, it is no longer acceptable or reasonable for the House to extend its sittings in the evenings. Where the House continues to sit until 11pm or 12 midnight members and staff are not able to have an adequate break before resuming work the next day. This is exacerbated for staff because they need to be at work by 8am to prepare for a 9.30am sitting and of course they are commuting to work during the peak travelling time.

I am extremely concerned about the occupational heath and safety issues associated with late night sittings and the potential legal risks that this brings for senior management and office holders of the Parliament. This is a serious issue that needs to be addressed.

There is another issue associated with late night sittings that appears to be ignored. That is, by extending the sittings later into the night the Parliament is potentially flouting its own laws. I draw the Committee's attention to the *Crimes (Dangerous Driving) Act 2004* which introduced an offence of culpable driving causing death when driving while fatigued. The following is an extract from the Minister's second reading speech from the debate on passage of that legislation:

> *Driving while fatigued*
> *Up to 20 per cent of deaths on our roads are the result of drivers falling asleep at the wheel.*
> *The offence of culpable driving causing death includes driving while fatigued, losing control of the vehicle and causing the death of another person. To emphasise the dangers of driving while fatigued and to ensure that the community's expectation of its drivers is clear, the bill will amend the Crimes Act to explicitly provide that driving while fatigued can constitute culpable driving causing death.*
> *The bill provides that a person is guilty of culpable driving causing death where he or she drives a motor vehicle when fatigued to such an extent that he or she knew, or ought to have known, that there was an appreciable risk of him or her falling asleep or losing control of the vehicle, and where their driving was criminally negligent.*[4]

It is clear from the minister's statement that anyone knowingly driving a vehicle when they are fatigued has the potential of facing a charge of culpable driving if they are involved in a fatal accident. Whenever the House extends its sitting and as a consequence members and staff drive home in a fatigued state they are exposing themselves to potential risk. That risk would remain for other nights of the sitting week and until the fatigue is reduced by a good night's sleep. The use of taxis in this situation can assist, but they will not reduce an individual's fatigue. Members and staff driving home on a Thursday evening could still be at risk and particularly those non-metropolitan members that may have a drive of three hours or more.

I am also concerned whether others might bear some responsibility or liability for contributing to members and staff driving home in a fatigued state. Could it be the House, the Government, the Party Leaders, the Speaker, the Clerk, or in fact do all collectively bear some responsibility? We should not leave it to the Courts to decide, but take some remedial action ourselves to ensure that no one is placed in this predicament.

---

[4] Parliamentary Debates 3 June 2004, vol 462, page 1797

My solution to this problem is to introduce an evening curfew, such as 10pm, on the sitting of the House. If this curfew was enshrined in legislation, then the sittings could not be extended and members and staff would be ensured of a reasonable break.

There are other alternatives to late night sittings to deal with any additional work requirements of the House. These include:

- Sitting a little later on a Thursday afternoon/evening
- Sitting on a Friday
- Sitting an extra week
- Setting a realistic Government Business Program that does not require extra debating time.

REFORM OF THE PROCESS OF DEALING WITH PETITIONS

In the last Parliament the Standing Orders Committee was considering the possible introduction of electronic petitions. In an effort to avoid duplication I suggest that the e-petition issue be left for the Standing Orders Committee.

There are currently two methods by which petitions can be presented to the House. The first and most common method is presentation by the Clerk during formal business[5]. Once tabled the terms of each petition must be printed in Hansard. A less frequently used method is for a member to read the terms of a petition and the number of signatories during statements by members[6]. Where a petition is tabled by the Clerk a member may also move "That it be taken into consideration on the next day of sitting"[7]. The House may also consider a petition immediately if it concerns a personal grievance that requires urgent remedy[8]. A copy of each petition tabled is then forwarded to the responsible minister for consideration[9].

The methods of presentation seem to be effective and work well, although the second option is rarely used. There is a requirement that petitions must be lodged for presentation by a member[10]. This is normally not a problem because in most instances a local member will table a petition on behalf of constituents whether or not they agree with the contents of the petition. On some rare occasions a group of petitioners may struggle to find a member willing to table their petition. This is not a major issue but I draw it to the Committee's attention for consideration.

As mentioned earlier once a petition is tabled a member may move a motion for consideration of that petition on a later day. When a petition is tabled details of that petition are entered in the Votes and Proceedings (minutes of the House) and they appear in Hansard. By moving the "take note" motion a member succeeds in having the matter listed on the Notice Paper as a General Business Order of the Day. It also receives a second entry in the Votes and Proceedings. The current rules do not provide any opportunity for consideration of General

[5] Standing Order 50
[6] Standing Order 49
[7] Standing Order 51
[8] Standing Order 51
[9] Standing Order 52
[10] Standing Order 44

Business Orders of the Day. Use of the "take note" motion is therefore redundant and the Committee may wish to consider it abolition.

Although petitions are forwarded to ministers for consideration there is no formal feedback mechanism for petitioners or the House. The Committee may wish to consider a process for this to be achieved. I can offer two possible alternatives. One method would be to refer petitions to a Committee of the House for consideration as happens in some other Parliaments. That Committee could carry out an inquiry and report its findings to the House. The Committee's findings outlined in the report would offer some feedback for petitioners and the information may also be useful for the Government.

A second alternative would require the relevant minister to consider a petition and present a short response to the House, similar to a Government response to a parliamentary Committee report. There would need to be some timeframe placed on responses to ensure that the matter is taken seriously. As most petitions seek some form of action from the Government, this alternative has some merit.

Ray Purdey
Clerk of the Legislative Assembly
16 July 2007