

**PITA ROYCROFT**

**QUESTION TIME OR SHOW TIME?**

**ANALYSING THE VALUE OF QUESTION TIME AS A  
PARLIAMENTARY ACCOUNTABILITY MECHANISM**

LAWS 522

Submitted for the LLB (Hons) Degree

Faculty of Law

Victoria University of Wellington

2017

***Abstract***

*This paper analyses the value of question time in New Zealand as a parliamentary accountability mechanism. It uses Professor Mark Bovens' definition of accountability as a social relation to develop a bespoke, criteria-based evaluative framework for assessing question time's performance. Six aspects of question time are evaluated: supplementary questions, patsy questions, the rule governing the adequacy of replies, the power to transfer responsibility for questions, ministerial responsibility, and media reporting practices. Each of these aspects is found to hinder the House of Representative's ability to hold Ministers to account in question time. Several recommendations for reform are proposed for each aspect. Unless Members of Parliament and Ministers are willing to implement meaningful change, question time will have little value as a parliamentary accountability mechanism, and the principle of responsible government will be diminished.*

***Keywords***

*Question time – accountability – Parliament – House of Representatives – ministerial responsibility.*

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## I Introduction

A body of [people] holding themselves accountable to nobody ought not to be trusted by anybody.

—Thomas Paine, 1792.<sup>1</sup>

Responsible government is a cornerstone of New Zealand’s modern liberal democracy. Its continuing force lays not in its historical roots or its aspirational qualities, but in the requirements for its observation. Scrutiny, enquiry, judgment and sanction. This is the language of accountability. A government cannot be responsible if it is not accountable. And it cannot be accountable if it is not *answerable* for its actions. Executive accountability is vital to ensuring the government “acts responsibly and in the best interests of the people”.<sup>2</sup> In our Westminster-hybrid system, the government must account for its actions to Parliament and, through Parliament, to the country.<sup>3</sup>

Modern society is replete with accountability mechanisms that seek to review, scrutinise and judge the actions of the organs of State. Specialised agencies like the Ombudsman or Auditor-General, statutory freedom of information regimes,<sup>4</sup> commissions of inquiry, and judicial review are but a few of the mechanisms open to citizens who seek accountability. These avenues operate outside one of the oldest government accountability forums—the House of Representatives—which features an impressive array of procedures designed to secure *parliamentary* control over, and oversight of, Executive action. Perhaps the “best known, most public and most infamous example” of these accountability mechanisms is the “central political ritual” known as question time.<sup>5</sup> Under the vigilance of the Speaker of the House, Ministers are subjected to an unyielding tide of questioning about the management of their portfolios and their conduct in office, ever cautious to avoid the

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<sup>1</sup> Thomas Paine *Rights of Man* (Floating Press, eBook ed, 2010) at 102.

<sup>2</sup> Andrew McGowan “Accountability or Inability: To What Extent does House of Representatives Question Time Deliver Executive Accountability Comparative to other Parliamentary Chambers? Is there Need for Reform?” (2008) 23(2) *Australasian Parliamentary Review* 66 at 66.

<sup>3</sup> See Speakers’ Rulings of the House of Representatives 1867–2014 [Speakers’ Rulings], r 194/4.

<sup>4</sup> Official Information Act 1982.

<sup>5</sup> Phil Larkin “Ministerial Accountability to Parliament” in Keith Dowding and Chris Lewis (eds) *Ministerial Careers and Accountability in the Australian Commonwealth Government* (ANU Press, Australia, 2012) at 99. Other parliamentary accountability mechanisms include, for example, select committees, special procedures for the scrutiny of financial legislation, and parliamentary debates. All are set out in the Standing Orders of the House of Representatives 2014 [Standing Orders 2014].

perception that they are “stumbling blindly through an administrative minefield”.<sup>6</sup> Question time certainly provides the *opportunity* for accountability, but whether it *delivers* on its promises is an entirely different matter.

This paper evaluates the effectiveness of question time as an accountability mechanism in New Zealand. It is divided into three parts. Part II opens with an overview of the nature of question time and an analysis of its purposes. Part III then explores the concept of accountability as a relationship, explaining its various lenses and dimensions. Using Professor Mark Bovens’ definition of accountability as a platform, I develop a criteria-based evaluative framework to assess the performance of question time as a parliamentary accountability mechanism. The criteria are the extent to which an aspect of question time: promotes political contestation; elicits information from Ministers; encourages meaningful and substantive replies; and exposes the government to judgment and sanction.<sup>7</sup> In Part IV, I use the criteria to review six aspects of question time and evaluate whether they inhibit more effective accountability practices. They are: supplementary questions, patsy questions, the rule governing replies to questions, the power to transfer questions, the rules defining the limits of ministerial responsibility, and the impact of the media. For each, I explain the relevant aspect, discuss the issues, evaluate its performance against the criteria, and then suggest potential improvements or reforms. The paper concludes with some observations about the future of question time in Part V. It notes that accountability and responsible government are likely to be further diminished if politicians do not implement meaningful reforms.

## *II Question Time: A Brief Overview*

Question time is a procedure conducted most sitting days in the House of Representatives. It is formally known as “oral questions”.<sup>8</sup> It is a process where Members of Parliament ask Ministers questions about government policy, the performance of public agencies, the management of their portfolios, and their conduct in office. The Speaker of the House chairs question time impartially and decides on matters of order (that is, how the rules of the House are to be applied). Twelve questions are lodged with the Clerk of the House each sitting day at about 10:30 am, giving Ministers several hours to prepare for question time

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<sup>6</sup> Robert Salmond “Bureaucrats in the Headlights: Question Times and Delegation to Bureaucrats” (2011) 17(3) *Journal of Legislative Studies* 368 at 368; and Irina Loginova “Creating Disorder: The effect of impending elections on Question Time in two Houses of Representatives” (2015) 14(6) *Journal of Language and Politics* 801 at 802.

<sup>7</sup> See Part III B.

<sup>8</sup> Standing Orders 2014, SO 383. This is in contrast to written questions under SO 382.

at 2:00 pm. These twelve “primary questions” are posed to Ministers, who are given the opportunity to provide an oral answer that “seeks to address the question asked”.<sup>9</sup> Each primary question may be followed up with “supplementary questions” to clarify or contest matters raised in the primary question or its answer. Any Member is able to ask a supplementary, though more often it is the primary questioner.<sup>10</sup> The Speaker rules on points of order where there is a dispute about the rules or conventions relating to questions or answers, of which there are myriad. The partisan combat and often unscripted dynamism of pitting Ministers against the opposition means question time is distinctly adversarial in nature. It is a manifestly *political* process.

Constitutionally, question time has one central purpose: accountability. But this is not its only purpose. There are three others: electioneering, education, and entertainment. These four purposes are essential to understanding why question time is a unique accountability mechanism. Each are discussed in turn.

The central purpose of question time is one of public accountability.<sup>11</sup> The fundamental nature of our representative democracy is that Members of Parliament hold Ministers to account on the public’s behalf.<sup>12</sup> Question time “enable[s] members to seek information and press for action”.<sup>13</sup> It is an important constitutional tool for parliamentary oppositions to exploit.<sup>14</sup> Questioning plays a vital role in “bringing to light perceived abuses, ventilating grievances, exposing and thereby preventing ... arbitrary power, and pressing the Government to take remedial or other action”.<sup>15</sup> It is one of the rare occasions where the opposition wrests control of the parliamentary agenda and the government relinquishes its effective hegemony over the legislature.<sup>16</sup> Few issues are considered inviolate. A vast swathe of matters of ministerial responsibility are eligible to undergo thorough examination

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<sup>9</sup> Standing Orders 2014, SO 386(1).

<sup>10</sup> Standing Order 387(1).

<sup>11</sup> Andrea Ulrich “A Question of Accountability: Is Question Period in Canada working?” (2011) 2(2) *Queen’s Policy Review* 1 at 2. See also Mary Harris and David Wilson (eds) *McGee: Parliamentary Practice in New Zealand* (4th ed, Oratia Media, Auckland, 2017) at 590.

<sup>12</sup> Standing Orders Committee “Review of Standing Orders” [2017] I AJHR 18A at 37.

<sup>13</sup> McGowan, above n 2, at 68.

<sup>14</sup> Robert Salmond “Grabbing Governments by the Throat: Question Time and Leadership in New Zealand’s Parliamentary Opposition” (2004) 56(2) *Political Science* 75 at 78.

<sup>15</sup> Ken Coghill and Alan Hunt “Reforming Question Time” (1998) 12(2) *Journal of Legislative Studies* 36 at 36.

<sup>16</sup> Robert Salmond “Parliamentary Question Times: How Legislative Accountability Mechanisms Affect Mass Political Engagement” (2014) 20(3) *Journal of Legislative Studies* 321 at 322.

in the pursuit of accountability. Barely any executive act is shielded from interrogation.<sup>17</sup> Question time is a constant parliamentary check on the Executive, calling Ministers to account and upholding the separation of powers.<sup>18</sup>

Another core purpose of question time is electioneering and policy formation. This purpose has some overlap with the accountability purpose. Politicians use question time to wage the “permanent election campaign”,<sup>19</sup> pitting their policies and personalities against the other political parties. The advent of the mixed-member proportional electoral system splintered the longstanding parliamentary duopoly of the National Party and the Labour Party. It heralded the beginning of a more colourful spectrum of party representation in Parliament, ultimately intensifying political contest in question time. Members use the watchful eye of the nation’s media to attack Ministers’ policies, to set the political agenda, to promote their own party as an alternative government-in-waiting, and to undermine the performance of the government. If a Minister appears to be “blatantly evading questions”, no chance to damage their credibility goes unused.<sup>20</sup> Question time thus reflects the concept of policy formation by contest: the confrontational back and forth between government and opposition identifies policy strengths and exposes policy holes.

Question time also has an educational purpose. “Parliament exists also to express the mind of the people” and help us learn more about the State we live in.<sup>21</sup> The need for question time as a deliberative political forum is clear in a modern democracy: “it exists to teach the nation what it does not know, and to make us hear what otherwise we [would] not”.<sup>22</sup> An informed citizen is an engaged one. Question time promotes raw, open, accessible political debate to help citizens engage with politics by providing them with an “information-laden political spectacle”.<sup>23</sup> Its role in our democracy goes beyond a “sometimes decorum-free” distraction from the usual business of law-making, instead serving as a “powerful catalyst for mass political participation”.<sup>24</sup> The increased attendance in the House’s public gallery,

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<sup>17</sup> See Suman Ojha and Sanjay Mishra “An analysis of effectiveness of parliamentary questions in the Queensland Parliament” (paper presented to the Australian Political Studies Association Conference ‘Connected Globe: Conflicting Worlds’, Melbourne, September 2010) at 1.

<sup>18</sup> Ulrich, above n 11, at 3.

<sup>19</sup> Salmond, above n 14, at 78.

<sup>20</sup> Larkin, above n 4, at 100.

<sup>21</sup> Willem Maas “Question Period and Canadian Democracy” (Paper presented to the Annual General Meeting of the Canadian Political Science Association, Ottawa, 2 June 1998) at 9.

<sup>22</sup> At 9–10.

<sup>23</sup> Salmond, above n 16, at 321.

<sup>24</sup> At 324.

the saturation of social media with political commentary, and the spike in consumers of parliamentary broadcasts during question time are all evidence of intensified engagement. In an era characterised by a decline in voter turnout,<sup>25</sup> question time has a particularly valuable purpose in educating the citizenry and promoting political involvement.

Finally, question time has an entertainment purpose. The “spectacle of partisan antagonists crossing rhetorical swords” in the House, coupled with “quick-witted, spontaneous, and jargon-free debate” is a show in itself—theatrical, engaging, informative. Few other public fora offer drama that is both entertaining and real. A newly-minted Minister poised to fall on their sword in reply to a particularly sharp question from a political enemy is a marvel exclusive to question time. So too is the prospect that the opposition reveals facts about the maladministration of ministerial portfolios, “cornering the Government into making damaging concessions”.<sup>26</sup> Public accountability is only important if the public actually cares, and one could argue that the “occasionally outrageous behaviour is a worthwhile trade-off for consistent media coverage and public interest”.<sup>27</sup> It is perhaps concerning that entertainment has shifted from an *effect* of question time to one of its key *purposes*. Certainly this is the root of most criticism. Even so, question time can simultaneously be both a source of entertainment and a useful accountability mechanism. Entertainment and accountability are not mutually exclusive.

In summary, question time has four purposes. Accountability is the strict constitutional purpose; but it is not *the* purpose, merely *a* purpose. Electioneering, education and entertainment are corollary, but equally important, purposes. To understand question time’s performance as an accountability mechanism, it is vital to keep its purposes in mind. To say question time is incapable of delivering on its promises is to overlook what promises it has made.

### *III Exploring Accountability and Question Time*

Question time’s value as an accountability mechanism was tested in 2016 when the then Leader of the Opposition, Andrew Little, chose to criticise the Government outside the absolute privilege of question time.<sup>28</sup> Mr Little questioned the Government’s propriety in

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<sup>25</sup> See Statistics New Zealand “Voter Turnout” (2014) <[www.stats.govt.nz](http://www.stats.govt.nz)>; and Abdurashid Solijonov *Voter Turnout and Trends Around the World* (International IDEA, December 2016).

<sup>26</sup> Salmond, above n 14, at 77.

<sup>27</sup> Ulrich, above n 11, at 4.

<sup>28</sup> All statements made inside the House of Representatives attract absolute privilege and cannot be called into question in a court of law. See Parliamentary Privilege Act 2014 and Bill of Rights 1688.



awarding a contract to a hotel management group that had made donations to the National Party. Mr Little was sued for defamation. The High Court ruled his statements were made on an occasion of qualified privilege because he was fulfilling his constitutional duty to hold the Government to account as Leader of the Opposition.<sup>29</sup> In other words, the principle of accountability gave him an effective defence. But the question remains: why did Mr Little make his comments in the public domain, at the risk of a defamation suit, and not under the absolute privilege afforded to statements made in the House? One answer is that the House's accountability procedures did not match the gravity of the political issue. In other words, *question time* was considered inapposite to raise a serious issue concerning the legitimacy and transparency of the Government's actions. The saga is a recent, high-profile anecdote of among several others that suggest question time is failing and therefore in need of contemporary analysis.

### ***A Accountability and its Lenses***

Accountability is notoriously difficult to define. It is important that accountability and its various lenses are explored and analysed to provide a backdrop to developing a tailored, criteria-based evaluative framework for parliamentary accountability in question time. Most concisely, accountability is the obligation to explain and justify conduct. However, this leaves out several nuances and caveats that are often appended to this definition. More broadly, accountability can be a promise of fair and equitable governance;<sup>30</sup> one of those “golden concepts” that no one can logically oppose.<sup>31</sup> It is a “cherished principle ... that can seemingly adapt to novel modes of governing while at the same time ensuring such modes are legitimate”.<sup>32</sup> Equally, though, the concept's evocative and aspirational nature makes it far from axiomatic. It is often considered synonymous with loose political ideals like equity, transparency, democracy, efficiency, responsiveness, and integrity.<sup>33</sup> It also means different things to different people.<sup>34</sup> It can indicate the *ability* to give an account. But being *able* to account for something does not mean an *obligation* to do so, or to whom or in what way. There is no general consensus about the standards for accountable behaviour—they differ from “role to role, time to time, place to place and from speaker to

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<sup>29</sup> *Hagaman v Little* [2017] NZHC 813, [2017] 3 NZLR 413.

<sup>30</sup> Mark Bovens “Analysing and Assessing Accountability: A Conceptual Framework” (2007) 13(4) *ELJ* 447 at 449.

<sup>31</sup> At 448.

<sup>32</sup> Elizabeth Fisher “The European Union in the Age of Accountability” (2004) 24(3) *OJLS* 495 at 495.

<sup>33</sup> Thomas Schillemans and Mark Bovens “The Challenge of Multiple Accountability: Does Redundancy Lead to Overload?” in Melvin Dubnick and Henry Frederickson *Accountable Governance: Problems and Promises* (M E Sharpe, New York, 2015) at 4.

<sup>34</sup> Bovens, above n 30, at 448.

speaker”.<sup>35</sup> Whether accountability has been delivered, exercised, or even considered, lays in the eye of the beholder. Accountability has become a blurry and indistinct constitutional icon;<sup>36</sup> more of a goal in its own right. This is problematic. How is one meant to assess whether an entity has lived up to its accountability obligations when the concept resembles no more than a messy “dustbin filled with good intentions”?<sup>37</sup> Accountability requires some conceptual organisation for it to be coherent and meaningful.

Defining accountability with reference to different “lenses” helps organise the various types of accountability mechanisms and bring some structure to the concept. The legal, administrative and political lenses are those most related to holding the government to account. Legal accountability is exercised in the courts, where there are precise legal issues, a clear process for discovering information, and an enforceable outcome. Administrative accountability involves a state-sanctioned investigative body, independent of the Executive, with powers to investigate alleged government impropriety, report to a central body such as Parliament, and make recommendations for future conduct.<sup>38</sup> Political accountability is the least structured of the three. Political accountability relationships are characterised by multiple parties, and do not necessarily have a distinct issue for resolution. For example, the Executive may be held to account by the media through interviews or exposure, the agenda being dictated by the media or by the public interest. Here, the media *and* the public may be considered the entities demanding an account, and Ministers and the public service the entities being held to account.

The lenses matter because question time, as a *parliamentary* accountability mechanism and as a subset of *political* accountability, is unique. Analysing a mechanism under the right lens is required to judge whether it is performing as a mechanism of that type should be. In terms of question time, a legal accountability lens is inappropriate because, unlike a court, there is no distinct issue to be resolved. Nor is there an objectively correct outcome—that is dependent on political viewpoint. An administrative accountability lens is equally inapt because question time is not equipped with the necessary fact-finding tools to report with recommendations in an independent and impartial way. Question time demands analysis under a different lens, one tailored to its nature, purposes and nuances.

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<sup>35</sup> At 450.

<sup>36</sup> At 449.

<sup>37</sup> At 449.

<sup>38</sup> See, for example, the Ombudsmen Act 1975 (establishing the Office of the Ombudsman); the Public Audit Act 2001 (establishing the Office of the Auditor-General); and the Environment Act 1986 (establishing the Office of the Parliamentary Commissioner for the Environment).

## ***B Developing a Criteria-Based Evaluative Framework for Question Time***

Bovens defines accountability as a social relation.<sup>39</sup> The obligation to explain and justify one's conduct implies a relationship between an actor (the entity giving the account) and a forum (the entity receiving or demanding the account).<sup>40</sup> Bovens argues accountability is an observable:<sup>41</sup>

... relationship between an actor and a forum, in which the actor has an obligation to explain and to justify [their] conduct, the forum can pose questions and pass judgment, and the actor may face consequences.

This definition is a suitable basis for developing criteria for parliamentary accountability. It is concise and comprehensive, containing several elements that are found in nearly all accountability mechanisms. The elements are befitting of a question-based, adversarial, political accountability mechanism involving a functional relationship between a principal (forum) and an agent (actor). I explore this definition, its elements, and how it might be applied to question time below.

An *actor* and a *forum* are the functional elements of the accountability relationship. Ministers are agents (the actors) and the House is their principal (the forum).<sup>42</sup> However, parliamentary accountability is much more dynamic and complex than this. Ministers are responsible for, and represent, public agencies. Those agencies are extensions of the Crown. Thus, Ministers can be considered the primary actor in question time, but not the only actor. Public agencies are held to account through the Minister and can be considered the secondary actor. Equally, the House derives its authority from another forum: the voting public. So the House is the primary forum but, again, not the only one. The fact that both the House (by withdrawing its support) and the public (by voting against the governing parties) can impose sanctions on the government supports this notion of dual fora. Question time is a unique accountability mechanism because it has both primary and secondary actors and fora. It transcends the traditional concept of accountability because it involves a series of interconnected relationships between several entities.

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<sup>39</sup> Bovens, above n 30, at 450.

<sup>40</sup> Christopher Pollitt *The Essential Public Manager* (Open University Press, Buckingham, 2003) at 89.

<sup>41</sup> Bovens, above n 30, at 450.

<sup>42</sup> Section 6(1) of the Constitution Act 1986 requires Ministers to be Members of Parliament. The Act contemplates that Ministers will retain the confidence of the House of Representatives as its agents, consistent with the principle of responsible government and the constitutional convention of collective Cabinet responsibility.

Political accountability relationships involving several actors and fora are often seen as “links” in an accountability chain.<sup>43</sup> But this description is not entirely accurate in relation to question time. Question time’s accountability relationships intersect, are interdependent, and impact on one another in a more sophisticated “web” of political accountability. If departmental action fails due to a Minister’s policy, the media might approach the Minister and the department; electors may be directly affected and reconsider their vote; Parliament will scrutinise the Minister; and the political party might chastise the caucus or Minister for even considering the policy. This series of events involving several actors and fora can be triggered by a single question in question time. The dynamism and complexity of the political accountability web is an important feature of question time that should be reflected in any criteria-based definition of parliamentary accountability.

Bovens’ social relation definition also calls for an obligation to explain and justify conduct. Ministers are expected to explain and justify the conduct or policies for which they are properly responsible. This obligation is set down in Parliament’s rules. The forum also needs a means to ask questions, extract information, and make a judgment of the adequacy of the actor’s explanations and justifications.<sup>44</sup>

Question time meets Bovens’ accountability requirements but, conversely, his definition does not meet the nuances of question time. Every time a Minister replies to a question in the House, there is the potential for accountability. The *provision of information* about personal conduct, government policy or departmental action is the primary medium through which accountability is delivered. If a Minister refused to respond to a question, then accountability would not be exercised. Under Bovens’ definition, a question asked and duly responded to would be sufficient. But is this enough? If the criteria were restricted to merely providing information, we could not conclude that question time is failing as an accountability mechanism because, so long as a Minister said something, indeed *anything*, it would count as a proper exercise of accountability. A reply that is irrelevant, inaccurate, misleading, inconsistent, unwholesome or even unintelligible would suffice—so long as it was provided in response to a question. Little thought is required to determine that this conceptualisation is totally inadequate. Providing information is a necessary, but not sufficient, element of parliamentary accountability. The bare requirement that information be provided is not enough. To make questions meaningful, their answers must also be meaningful. Ministers’ replies should also be relevant, factually correct, complete, and give a substantive answer. Without these additional caveats on the duty to provide information,

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<sup>43</sup> See Bovens, above n 30, at 455.

<sup>44</sup> Larkin, above n 4, at 97.

question time would not be a valuable accountability mechanism because it would provide nothing of substance or use. Scholarly opinion shows that question time is unlikely to produce this higher standard of answers in its current form.<sup>45</sup> But by modifying Bovens' definition, and bolting on these requirements for an answer to be considered legitimate, question time can begin to promote better accountability.

Admittedly, these extra requirements have their own problems. For example, is it possible to judge whether an answer *is* relevant or accurate or complete without being at least somewhat subjective? Probably not. Even empirical analyses that involved a panel of lay people who were asked to decide whether or not a question had been answered conceded that the measure was still highly subjective.<sup>46</sup> Analytically, there is no wholly objective standard with which to assess the merit of a Minister's answer in terms of how well it delivers accountability. Nonetheless, the lack of an objective set of evaluative criteria should not prevent an assessment of whether question time *could* be improved. So, even without a more concrete measure to distinguish between better and worse accountability practices in question time, there is no doubt that reforms could improve it.

Drawing everything together, we can see that Bovens' definition of accountability is not suited to the unique purposes and features of question time. In assessing whether question time is doing its job we have to give it a job description. I propose the following definition:

Parliamentary accountability in the context of question time is exercised where a Member of Parliament, who seeks to negatively scrutinise, challenge or contest the government's actions or policies, questions a Minister for information for which they have political or ministerial responsibility and, in responding to the question, the Minister provides a relevant, accurate, informative and complete reply that disposes of the question, gives an answer, and is subject to the judgment and possible sanction of the House or other external fora.

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<sup>45</sup> Parameswary Rasiah "Can the Opposition Effectively Ensure Government Accountability in Question Time? An empirical study" (2010) 25(1) *Australasian Parliamentary Review* 166 at 175; Peter Loney "Executive Accountability to Parliament — Reality or Rhetoric?" (2008) 23(2) *Australasian Parliamentary Review* 157 at 160; John Uhr *Questions without answers: an analysis of Question Time in the Australian House of Representatives* (Australasian Political Studies Association and Parliament of Australia, Canberra, 1982); and Coghill and Hunt, above n 15, at 36.

<sup>46</sup> McGowan, above n 2, at 75–78.

The definition is quite academic, but it can be simplified and clustered into four criteria. These criteria constitute the framework I use to evaluate the value of question time as a parliamentary accountability mechanism. The four criteria derived from the definition are:

- (1) political contestation (“seeks to negatively scrutinise, challenge or contest the government’s actions or policies”);
- (2) eliciting information from within the scope of a Minister’s responsibility (“questions a Minister for information for which they have political or ministerial responsibility”);
- (3) replies that give an adequate, meaningful and substantive answer (“a relevant, accurate, informative and complete reply that disposes of the question”); and
- (4) the ability of the House or other fora to pass judgment and impose consequences (“subject to the judgment and possible sanction of the House or other external fora”).

First, parliamentary accountability cannot be achieved in question time without an element of *contestation*. This is reflected in the requirement that the questioner “negatively scrutinise, challenge or contest” the government. Parliamentary accountability cannot be exercised if questions are no more than obsequious requests for ministerial press releases. Question time should not be used as an opportunity for Ministers to spout their political achievements. Contestation is crucial to parliamentary accountability because Parliament is adversarial. Policy in Parliament is developed by contest. Multi-party politics stimulates a combative political environment, where parties seek to discredit government policy by challenging them and proposing alternatives. Without contestation, Parliament is less able to highlight flaws in policies, their underlying ideological assumptions, or create viable alternatives. The element of contestation effectively adds another layer to accountability because it has a tendency to prompt Ministers to give further justification to their reasons for taking a particular action.

Secondly, parliamentary accountability requires that the question elicit information from within the proper scope of a Minister’s “political or ministerial responsibility”. This requirement qualifies the subject-matter of questions in that they should only relate to actions or policies for which the Minister properly has responsibility. Though a somewhat self-evident point, testing a Minister on issues for which they have no responsibility is not conducive to responsible government. A line must be drawn between issues of public gossip and issues of proper political responsibility.

Thirdly, the question must receive a reply that is meaningful and useful. Answerability is undermined if Ministers become flippant or provide empty, insincere answers. There must be a reply, and it must be “relevant, accurate, informative and complete”. Each of these qualifiers are essential. For if a response is relevant to the subject-matter of the question, but inaccurate, it is misleading. Or if a response is informative and accurate, but irrelevant, it is a gratuitous statement, not an answer. A reply must dispose of the question in an adequate, meaningful and substantive way to qualify as an answer. This element places additional hurdles on Bovens’ requirement for the actor to explain and justify their conduct.

Fourthly, any aspect which tends to hinder the ability of the House or other external fora (such as the voting public) to pass judgment and impose sanctions limits parliamentary accountability. Poor performance in question time can lead to a variety of consequences for a Minister. Negative media exposure could emphasise the Minister’s ineptitude to the public, causing embarrassment or even withdrawal of ministerial warrant by the Prime Minister in extreme cases. Consistently poor performance might even cause a loss of confidence in the House or a loss of voter support. The dynamism of the relationship involving multiple actors and multiple fora is acknowledged by this element.

The extent to which aspects of question time tend to hinder or promote the fulfilment of these criteria is the measure used to evaluate the extent to which question time delivers parliamentary accountability. Thus, a reform that increases the likelihood of these criteria being fulfilled is more likely to deliver better parliamentary accountability. Admittedly, the criteria are subjective, but they constitute a workable framework for evaluating question time because parliamentary accountability, as a subset of political accountability, is itself measurable only through qualitative judgments relying on perception, opinion and belief.

#### *IV Question Time or Show Time? Issues, Evaluations and Reform*

This Part evaluates six acutely underperforming aspects of question time against the parliamentary accountability criteria. Namely: supplementary questions, patsy questions, the rule governing replies to questions, the power to transfer questions, the rules defining the limits of ministerial responsibility, and the impact of the media. For each aspect, the paper outlines the specific issue, provides an analytical discussion, evaluates that aspect under the criteria, and then suggests a reform to improve the aspect’s performance. The broader aim is to shed light on why question time might be underperforming and how this can be remedied.

It must be noted that reforming question time's rules, structures and conventions is not an easy task. Practically, there are several obstacles to effective change. The House must have the institutional capacity to improve its accountability practices in question time without detracting from its other functions as a legislature, the provider of a government, and a representative body. Secondly, the willingness of the primary forum and the primary actors to implement change might present considerable difficulties to effective reform. Thirdly, any reform seeking to improve one aspect of parliamentary accountability must not unduly impair another aspect in the process. Finally, the changes "must be fair to all parties and be manifestly seen by the public to be fair".<sup>47</sup> These political and constitutional realities must be kept in mind, but this does not prevent suggestions for reform from being aspirational or ambitious. Nor should it. Comprehensive reform is required to foster meaningful change.

### ***A Supplementary Questions: the Issue of "Surprise Supplementaries"***

A supplementary question is a follow-up question asked to clarify or contest an issue raised in the primary question, its answer, or any subsequent answers. Supplementaries are used to probe Ministers for additional information or to exacerbate the effect of poor answers. A supplementary question is considered a "surprise supplementary" when it follows a primary question that is spare and vague. That is, where the primary question reveals very little about the subject-matter of its likely supplementaries. These types of supplementary question undermine parliamentary accountability because they do not allow Ministers to prepare full and proper answers. This subpart explores surprise supplementaries, highlights the barriers they present to better accountability practices, and suggests they be abolished.

Standing Orders and Speakers' Rulings govern the content and form of oral questions. Questions must be concise.<sup>48</sup> But conciseness does not mean that questions need to be short; rather, that they be spare—devoid of unnecessary material.<sup>49</sup> There is a working rule that Members cannot include more than two parts to an oral question.<sup>50</sup> Nevertheless, most prohibitions on a question's content are often relaxed by the Speaker, who tends to let question time run its course unless a Member objects, or where the contravention is more

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<sup>47</sup> Coghill and Hunt, above n 15, at 48.

<sup>48</sup> Standing Orders 2014, SOs 380(1) and (2). Questions cannot contain unnecessary statements of facts, names of persons; arguments, inferences, imputations, epithets, ironies or expressions of opinion or discreditable references to the House or any Member.

<sup>49</sup> Harris and Wilson, above n 11, at 638.

<sup>50</sup> See (1997) 559 NZPD 1194; and (1998) 567 NZPD 7887–7888.



than trifling.<sup>51</sup> The issue arises, however, when primary questions do the reverse: becoming *too* spare, containing almost nothing at all. This gives rise to the surprise supplementary.

Using the surprise supplementaries tactic, politically experienced and articulate Members can test the boundaries, manipulating the rules to their advantage.<sup>52</sup> Members can ask their primary question without any indication as to the subject-matter of their supplementaries. For example, by asking whether the Minister simply “stands by all their statements” or “stands by all their policies” in the primary question, the Member can ask supplementaries on *any* policy, action or statement they wish, as it fits within the scope of the primary. This reverses the principle that questions are to be on notice—with some indication as to what information the Minister needs to prepare. Surprise supplementaries rarely see a Minister make “damaging concessions”, more often producing wholly inadequate answers.<sup>53</sup> Indeed, testing Ministers on their ability to recall large volumes of detailed departmental information at whim, without prior notice, inevitably leads to replies that are uninformative and irrelevant, or simply political attacks.<sup>54</sup> “Vague or very broad questions” make it “difficult for a Minister to meet accountability requirements” and are less likely to receive an informative answer.<sup>55</sup>

The surprise supplementary tactic poses a threat to parliamentary accountability. Members who receive inadequate responses to supplementaries following vague primary questions are really authors of their own misfortune. It is at best entertaining, and at worst contrived, to expect a good answer to a bad question. Speakers are understandably hesitant to help Members who ask generalised or all-encompassing primary questions. Many have ruled that it is “not reasonable to expect Ministers to have that sort of detail in their heads” when answering surprise supplementaries following a vague primary question.<sup>56</sup> And rightly so. Some, indeed *any*, indication of subject-matter would go a long way to helping Ministers prepare more fully for question time. It is simply artificial for a Member to feign indignation at a Minister who did not produce a reply with encyclopaedic precision in answer to a surprise supplementary.

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<sup>51</sup> Mary Harris in Group Think “Politics: How to Fix Question Time in Parliament? MPs, Media and Other Experts Weigh In” (13 October 2015) The Spinoff <thespinoff.co.nz>.

<sup>52</sup> Salmond, above n 14, at 77.

<sup>53</sup> At 77.

<sup>54</sup> McGowan, above n 2, at 82.

<sup>55</sup> (10 September 2015) 708 NZPD 6524.

<sup>56</sup> (24 October 2013) 694 NZPD 14276; (9 May 2017) 722 NZPD 17738; and Speakers’ Rulings, rr 191/3 and 191/4.

Unsurprisingly, the surprise supplementary performs poorly when measured against the parliamentary accountability criteria. They are a “largely ineffective means” of eliciting information under Criteria 2 as they defy the principle that oral questions are asked with notice.<sup>57</sup> By limiting the Minister’s ability to collect detailed and specific information from their advisors, vague primary questions and their surprise supplementaries constrain the volume of relevant information that a Minister takes to the House. Consequently, they also fail Criteria 3, as a lack of information often prompts irrelevant, uninformative replies that involve off-the-cuff political attacks or dismissive one-word epithets.<sup>58</sup> Moreover, the tactic’s tendency to reduce the likelihood that Ministers provide relevant, accurate, informative and complete replies lessens question time’s value as an accountability mechanism. Further, particularly badly executed surprise supplementaries do not properly contest the government on a substantive policy issue, being no more than attempts to politically outflank Ministers for something they could not have known about in advance. This impacts its fulfilment of Criteria 1, given it may lack the necessary contestation element, but it is rare for opposition supplementaries to fail this Criteria in its entirety.

Several reforms are necessary. First, by giving Ministers and their departments time to collate information and prepare answers, question time is all the better because answers are more informative and complete. The infamous “does the Minister stand by all their statements?” question defeats this principle and should be prohibited. Though it is arguable that surprise supplementaries put Ministers’ political capacities and policy knowledge to the test by requiring an off-the-cuff response, practice dictates that it frequently leads to inaccurate, incomplete and irrelevant replies.

An indication of the policy domain or political issue to which supplementaries will relate should be a prerequisite to lodging a primary question. Some questions are already phrased in this way by asking whether the Minister “stands by all his/her statements on *immigration policy*?” The “sheer amount of time and attention” required to answer more specific questions forces Ministers to “seriously consider the issues being raised”.<sup>59</sup> But the rule should not be so onerous as to diminish the level of spontaneity and quick-witted debate that makes question time unique and supports its entertainment purpose. The politics must

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<sup>57</sup> Larkin, above n 4, at 100.

<sup>58</sup> The Australian question time, by comparison, is effectively meaningless because all questions are asked without notice, giving Ministers no ability to prepare their answers. See Rasiah, above n 45; and Larkin, above n 4, at 100.

<sup>59</sup> Ulrich, above n 11, at 3.

not be taken out of Parliament.<sup>60</sup> A straightforward indication of subject-matter would promote superior answers, sharper supplementaries and better parliamentary accountability without compromising question time's entertainment purpose.

### ***B Patsy Questions: An Unnecessary Evil?***

Patsy questions are questions asked by members of governing parties who do not hold executive office.<sup>61</sup> They do no more than give Ministers the opportunity to pat themselves on the back because the Members who ask them do not seek to scrutinise or challenge the government. They are a barrier to parliamentary accountability because they do not involve the element of contestation. The following analysis explores patsy questions in more depth and suggests they be replaced with a Ministerial Announcements procedure.

Patsy questions are “soft” questions that do not seek to criticise, expose, or negatively judge government policies or ministerial performance.<sup>62</sup> Though asked by a Member who does not hold executive office, in reality, patsies are planned and scripted by Ministers and palmed off to backbenchers for the government's own self-promotion. The Standing Orders allow for patsy questions because they draw a distinction between executive and non-executive Members when allocating questions according to party membership in the House.<sup>63</sup> Those Members who hold executive office are excluded from the calculation of the number of questions available to governing parties.<sup>64</sup> Importantly, however, this rule does not prevent members of governing parties who are *not* part of the Executive (the “government backbenchers”) from asking questions. Governing parties use their allocation to its fullest because Parliament's rules recognise that government backbenchers are constitutionally distinct from their partisan counterparts who hold executive office.

Patsy questions might be partially justified by a strict application of the doctrine of the separation of powers: in short, members of the legislature have the right to hold members of the Executive to account. In reality, patsies are written for two reasons: to allow Ministers to give pre-prepared answers to promote themselves and their government's policies; or to launch political attacks on the opposition. These two types of patsy questions

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<sup>60</sup> Peter Dunne in Group Think, above n 51.

<sup>61</sup> See below for further discussion on the proposed meaning of “governing party”.

<sup>62</sup> Australian parliamentarians call patsy questions “Dorothy Dixers”, referring to an American newspaper columnist who allegedly made up her own questions to allow her to publish more interesting answers: Coghill and Hunt, above n 15, at 37; and Larkin, above n 4, at 100.

<sup>63</sup> Standing Orders 2014, SO 381(2); and Standing Orders Committee, above n 12, at 37.

<sup>64</sup> Specifically, Ministers of the Crown and Parliamentary Under-Secretaries are excluded from allocation: Harris and Wilson, above n 11, at 637. See also Standing Orders Committee, above n 12, at 75.

I term “positive patsies” and “negative patsies” respectively, though they are not mutually exclusive categories and a question can be both.

Scholarly opinion is divided as to whether patsies are useful for accountability purposes. McGowan reasons that accountability is exercised every time a Minister gets to their feet and, in response to a question, explains a government decision or describes an action carried out by a department.<sup>65</sup> “Provision of information”, he contends, “is still a form of accountability, even though it is far less confrontational and challenging for the government”.<sup>66</sup> Take for example this positive patsy:<sup>67</sup>

Joanne Hayes (National) to the Minister for ACC: How is ACC addressing car safety in the consultation process?

Hon JUDITH COLLINS (Minister for ACC): What an *excellent* question. As well as reducing average motor vehicle levies, ACC is also proposing the introduction of risk rating for cars ... Risk rating would mean the cost of levies would more closely reflect the level of risk associated with a car. All car owners would pay lower levies under ACC’s proposed changes ...

Grant Robertson: I raise a point of order ... I think there are rulings about tabling press releases, but I would encourage the Minister to table that press release she was reading out there.

Undoubtedly, the patsy got an answer. The Minister provided an informative and ostensibly accurate response. McGowan’s definition would deem this scenario a legitimate exercise of accountability. However, as can be seen from the point of order, positive patsies are “nothing more than tax-payer funded ads”.<sup>68</sup> McGowan’s approach does not recognise the value of political contestation (Criteria 1), which is fundamental to parliamentary accountability in question time. Positive patsies are “less important than questions from other sources because they do not contain a clash between questioner and answerer”.<sup>69</sup> Turning Ministers into droning speakers that propagate government press releases does not induce meaningful debate. Ministers have several other ways to make administrative or

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<sup>65</sup> McGowan, above n 2, at 67.

<sup>66</sup> At 69.

<sup>67</sup> (20 May 2014) 699 NZPD 18084 (emphasis added).

<sup>68</sup> Andrew Little in Group Think, above n 51.

<sup>69</sup> Salmond, above n 16, at 19.

political announcements.<sup>70</sup> An “orchestrated series of questions [with] little more than a pretence of seeking information or pressing for action” detracts from question time’s parliamentary accountability and entertainment purposes.<sup>71</sup>

McGowan attempts to justify his position by arguing that, because patsies are scripted, they provide “better quality information to Parliament”, compared to the “vague and irrelevant answers often delivered to opposition questions”.<sup>72</sup> True as it may be that positive patsies elicit information from within a Minister’s responsibilities (Criteria 2), there are two objections to McGowan’s argument. First, justifying the retention of patsies on the basis that the answers given to *non-patsies* are vague or irrelevant is comparing apples with oranges. The real problem is Ministers’ *answers*, not the questions. Sycophantic praise for government policy contributes nothing to question time,<sup>73</sup> but opposition scrutiny can, and does, have real consequences. While information provided by Ministers in reply to positive patsies is valuable, it is inappropriate to use question time for this purpose when other avenues for dissemination of government information exist. Positive patsies detract from the focus on scrutiny and judgment. Further, the tight caucus unity and the unending aspiration to ascend to the Cabinet has left non-executive Members of governing parties no room to ask independent questions of Ministers, much unlike the British question time.<sup>74</sup> Instead, toeing the party line—by reading out a scripted, government-prepared query for the Minister to respond to via an equally dull public service announcement—is expected.

The second objection to McGowan’s reasoning is that not all patsies are designed to elicit a correct and complete statement of government policy or action. A *negative patsy* is designed to do exactly the opposite. For example, after a series of positive patsies about

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<sup>70</sup> For example, announcements can be made via the Beehive website (the official website of the New Zealand Government) or at post-Cabinet press conferences. Urgent announcements can also be made in the House of Representatives via the Ministerial Statements procedures: Standing Orders 2014, SO 356.

<sup>71</sup> Coghill and Hunt, above n 15, at 37.

<sup>72</sup> McGowan, above n 2, at 81.

<sup>73</sup> Michael Cole “Accountability and quasi-government: The role of parliamentary questions” (1999) 5(1) *Journal of Legislative Studies* 77 at 84–85.

<sup>74</sup> In the United Kingdom Parliament, non-Executive members of the governing party retain a measure of independence from the Government and often ask questions that actually do seek to challenge Ministers’ policies and actions. As such, they are not patsy questions. This independence comes from the fact that the number of members without Executive positions far exceeds the number of Ministers, giving these Members room to express dissent from party positions. See Olivier Rozenberg & Shane Martin “Questioning Parliamentary Questions” (2011) 17(3) *Journal of Legislative Studies* 394 at 400.

the Government's actions to keep interest rates low, a National Party backbencher posed this negative patsy as their final supplementary:<sup>75</sup>

Sarah Dowie (National—Invercargill) to the Minister of Finance: What *alternative* reports has he seen on interest rates?

Hon BILL ENGLISH (Minister of Finance): I have received two particular reports lately. The first report said that households were worse off because of *high* interest rates. The second ... said that *lower* interest rates apparently show that the economy is on a downward slide ... Both of these reports came from an organisation that apparently thinks that both *higher* interest rates and *lower* interest rates are bad ... It could be only one organisation—the New Zealand Labour Party!

There ensued raucous laughter from the Government's side of the debating chamber. This answering tactic—leaving the source of the reports undisclosed until the end—is often used because, while the audience can anticipate that it will end with a political attack, it is not *certain*. And a question or an answer is not ruled out of order until it is very likely to breach the Standing Orders. Negative patsies therefore provide a seemingly innocent façade through which Ministers can strategically outmanoeuvre the Speaker ruling the question or answer out of order.

Patsy questions ultimately hinder accountability when evaluated under the parliamentary accountability criteria. Patsies seek neither to scrutinise government policy; nor do they challenge questionable ministerial actions. They do not involve the necessary political contestation that Criteria 1 requires for effective accountability. Further, while positive patsies fulfil Criteria 2 in that they elicit information from Ministers, negative patsies often lead to irrelevant and unnecessary political attacks from the government. Not only does this fail Criteria 3—as many answers then become irrelevant and inaccurate—it also inverts the principal/agent model of accountability between the House and Ministers. It is for the *House* to hold the *government* to account by asking Ministers questions, not the other way round. Patsies, particularly negative patsies, cannot be justified from an accountability perspective and are in need of reform.

The most effective reform would be to abolish patsy questions. Stopping this entitlement is a significant structural change that would strengthen the ability of the opposition to hold

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<sup>75</sup> (17 June 2015) 706 NZPD 4477 (emphases added).

Ministers to account and minimise executive interference with parliamentary scrutiny.<sup>76</sup> A new rule that excluded *all* Members of governing parties, whether executive or not, would serve to curb this issue. A party should be considered as “governing” if one or more of its Members hold a Cabinet position. Importantly, this interpretation would exclude all Members of parties in formal coalition arrangements from asking questions, but not parties who enter into agreements that only give ministerial posts *outside* Cabinet. For example, applying this interpretation to the Fifth National Government, the National Party’s support partners (ACT, United Future and the Māori Party) would have been entitled to ask questions of the Government. Conversely, applying the interpretation to the arrangements of the Fourth National Government after 1996, the National Party’s formal coalition partner, New Zealand First, would not be entitled to ask questions.

There are three possible objections to abolishing patsies, each of which are misconceived. First, opposition parties frequently ask supplementaries to patsy questions to test Ministers on statements they voluntarily provide, and this rule would eliminate this possibility. To meet this objection, a dedicated period of time for Ministerial Announcements should be established and held before question time.<sup>77</sup> Ministers could voluntarily provide non-urgent government information to the House in this way.<sup>78</sup> Opposition Members should then be entitled to ask a small number of questions without notice after each announcement. By limiting the time available for, or the number of, announcements that can be made, the process will strike a balance between three competing interests. That is, encouraging voluntary provision of government information (“self-imposed” accountability); Members’ entitlements to scrutinise this information; and efficient use of parliamentary time. This would free up question time to focus on contested political issues and better accountability.

The second major obstacle to this reform is that smaller governing parties in coalition with a major party might lose their separate political identity by foregoing their entitlements to ask oral questions. The risk is that these smaller parties cannot stand out and criticise the major governing party’s actions from their separate political perspective, which might be particularly acute where support parties are very small. However, relinquishing the ability to ask questions is not an unreasonable political cost in return for a seat at the Cabinet table and the influence and public power vested in a Ministerial portfolio. Further, it is illogical

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<sup>76</sup> Maas, above n 21, at 10.

<sup>77</sup> See Standing Orders Committee, above n 12, at 37 where a similar procedure had support from the Clerk of the House of Representatives. The proposal was ultimately rejected.

<sup>78</sup> Standing Order 356 provides that urgent government information can be provided to the House via the Ministerial Statements procedure.

to assume that the inability to ask oral questions of other governing parties entails a loss of political identity. In a mixed-member proportional party-political environment, it is a prerequisite to negotiate and form coalitions or Confidence and Supply majorities based on ideological similarities. Governing parties already band together and work collectively to forward a coherent legislative programme. These parties would still retain the entitlement to ask *written* questions of the major governing party, and could still ask questions without notice in the Ministerial Announcements period. Of course, a party's knowledge that it will need to sacrifice its question allocation in exchange for Cabinet posts will impact its post-election negotiations, but this should be seen only as another factor to balance in deciding whether to enter into a formal coalition or provide confidence and supply outside Cabinet.

A third objection is that the new rule could violate a strict application of the separation of powers. The argument is that government backbenchers are no more part of the Executive than opposition Members, and so should be able to ask questions of Ministers regardless of their party affiliation. Any rule prohibiting them from doing so is said to breach the principle that Members of the legislature who are not Ministers are entitled to the same accountability rights as other non-executive Members. While this objection may be correct at a strict constitutional level, it ignores the reality that non-executive Members of governing parties are *practically* treated as part of the government for the purposes of question time. Caucus control and loyalty is exceptionally strong in New Zealand. There is not the same independent backbencher voice and power as in other countries with larger legislatures, like the United Kingdom.<sup>79</sup> It is artificial to say that these Members should be treated the same as opposition Members for question allocation purposes when they rarely, if ever, express a true desire to contest the government. If anything, the current rules actually undermine the separation of powers because they inhibit the House's ability to control and scrutinise Ministers. Abolishing government backbenchers' entitlements to ask questions would do well to improve this accountability deficit.

In summary, the reform encompasses three structural changes to question time: the removal of governing party Members' question allocations; the establishment of a Ministerial Announcements procedure; and the ability to ask brief questions thereafter. This package of reforms would ensure all questions have the necessary element of political contestation required to fulfil parliamentary accountability Criteria 1. Further, the tendency for negative parties to reverse the principal/agent accountability relationship between the House and the government would no longer exist.

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<sup>79</sup> See above n 74.



### ***C The (Inadequacy of the) Rule Governing the Adequacy of Replies***

The rule governing the adequacy of Ministers' replies to questions, and the role of the Speaker in interpreting that rule, is the subject of much criticism. It has a tendency to allow for inadequate answers that fail Criteria 3. The rule should be reformed to clarify its scope and application, and strengthen the powers of the Speaker to prevent Ministers getting away with unsatisfactory replies.

Parliament's rules governing the adequacy of Minister's replies to questions present a real barrier to more effective accountability because it allows Ministers to simply address questions rather than *answer* them. A question is no more than rhetoric without an answer. And answerability is crucial to effective parliamentary accountability; so if a Minister felt neither willing nor compelled to answer questions, question time would be futile. Without *obligation* there is no accountability.<sup>80</sup> Most criticism about the standards of ministerial answers to oral questions in New Zealand has its roots in Standing Order 386(1). The rule is that an answer that "seeks to address the question asked must be given if it can be given consistently with the public interest".<sup>81</sup> Prima facie, the rule appears to be reasonable. But it contains several flaws.

Standing Order 386(1) contains several qualifications on *how* and *when* an answer should be given. An answer need only "seek" to "address" the question that is asked. Conceptually, the rule may not require an "answer" at all, at least in the ordinary usage of the word. Manipulation of the word's meaning in its context could lead to an interpretation that "answer" means nothing more than a reply that bears some relevance to the question. Ministers have sought to use the rule's ambiguity to "avoid accountability rather than to welcome it, to evade questions rather than to answer them".<sup>82</sup> Cunning Ministers routinely mould the rule to their advantage, circumventing the need to give a proper answer.<sup>83</sup> No axiom better reveals the approach some Ministers take to question time than that of: "It's Question Period, not Answer Period".<sup>84</sup> If this is true, there is little chance that opposition Members will actually elicit valuable information. Answerability is the cardinal component of ministerial accountability to Parliament.

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<sup>80</sup> See Bovens, above n 30, at 451–452.

<sup>81</sup> Standing Orders 2014, SO 386(1).

<sup>82</sup> Coghill and Hunt, above n 15, at 38.

<sup>83</sup> Salmond, above n 14, at 76–77.

<sup>84</sup> Ulrich, above n 11, at 5 citing Gordon Campbell, 34th Premier of British Columbia.

On another level, the rule's susceptibility to different interpretations by different Speakers may be the real issue.<sup>85</sup> At one stage, it was considered that if "a Minister got to their feet and in answer to a question farted loudly, the Speaker would say they had addressed the question".<sup>86</sup> Not only does this kind of disdain undermine the dignity of Parliament, it also paints question time as an elite circus of politicians who have neither the will nor the capacity to seek political accountability. It is undeniably true that Members praise a Speaker who requires only an addressing of the question when in government, but will censure that very Speaker when they themselves are voted back into opposition. The task of presiding over question time and giving immediate rulings is not an easy one, but surely it is incumbent on the Speaker to at least seek reasonable attempts from Ministers to *answer* questions. This is important if the House is to remain a valuable forum for parliamentary accountability. Ministers should be encouraged by the Speaker to explain and justify their conduct or policies, and actually provide an answer that is adequate, meaningful and substantive. For example:<sup>87</sup>

Chris Hipkins (Labour—Rimutaka) to the Minister of Education: Does she stand by all of her statements to Cabinet recommending that Wanganui Collegiate School not be integrated ...?

One would expect that the Minister would begin with either a "yes" or "no" and then an explanation for completeness. On the contrary.<sup>88</sup>

Hon HEKIA PARATA (Minister of Education): I sought Cabinet input on a difficult decision, and I appreciated that, and I am comfortable with the decision I then made to integrate Wanganui Collegiate School.

The Minister left the question manifestly unanswered. It was hardly an *answer* at all. At best, it was a *response*. That she sought the input of Cabinet and that it was appreciated does not actually say whether she stood by all her statements. Naturally, the "response" was not left uncontested, the Member immediately protesting that it "was not actually the question [he] asked the Minister".<sup>89</sup> When questioners contest a Minister's answer, they invoke SO 386(1) and seek the guidance of the Speaker. A straight question, containing no

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<sup>85</sup> See McGowan, above n 2, at 84.

<sup>86</sup> Lockwood Smith, Speaker of the House of Representatives of New Zealand "The role of the Speaker" (speech to the New Zealand Centre for Public Law, Wellington, 12 May 2010).

<sup>87</sup> (26 February 2013) 687 NZPD 8166.

<sup>88</sup> At 8166.

<sup>89</sup> At 8166.

political attacks or gratuitous criticisms, should provide almost no scope for an answer to deviate from what might be expected in ordinary parlance, even in the “highly politically charged” milieu of question time.<sup>90</sup> Questions are an important means by which Ministers are accountable to the House, so “for a Minister to respond in an irrelevant manner is to act contrary to the spirit of the question process ... [and] their constitutional responsibilities”.<sup>91</sup> It is therefore incumbent on the Speaker to safeguard the parliamentary accountability process. In the above scenario, the Speaker (unfortunately) ruled that the Minister had “adequately addressed” the question, relying on a loose interpretation of SO 386(1).<sup>92</sup> That ruling was challenged, and the Speaker stated:<sup>93</sup>

Mr SPEAKER: ... I will listen very carefully to every question [and] ... to every answer, and I will determine whether I think that question has been satisfactorily *addressed*. On this occasion I think the Minister has satisfactorily *addressed* the question. It is not for me to design the answer to the satisfaction of the member.

Further challenges were made by Members who sought a relevant, complete and accurate answer rather than an addressing of the question:<sup>94</sup>

Dr Russel Norman: ... Your predecessor actually used the language of “answer” the question, rather than “address” it. I am just wondering whether we should read anything into the fact that you are saying you are requiring Ministers to *address* the question ...

Mr SPEAKER: If the member wants to refer to the Standing Orders, he will see it is a requirement that the question be *addressed* ...

Chris Hipkins: ...The previous Speaker indicated that members on this side of the House could expect an *answer* in accordance ... with the type of question that was asked. So if it was a very straight question, we could expect a very straight answer. If it was a political question, it would be a political answer.

Mr SPEAKER: And *I* have ruled that the Minister has satisfactorily *addressed* the question.

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<sup>90</sup> Larkin, above n 4, at 98.

<sup>91</sup> Speakers’ Rulings, r 194/5.

<sup>92</sup> (26 February 2013) 687 NZPD 8166.

<sup>93</sup> At 8166 (emphasis added).

<sup>94</sup> At 8166–8167 (emphasis added).

Rulings that Ministers need only “address” the question are technically acceptable, given the contested and opaque scope of SO 386(1).<sup>95</sup> Speakers are not bound by previous rulings. Ruling 199/6 epitomises the unfortunate approach that some Speakers have taken to the adequacy of answers: that intervention by the Speaker in the form of “disapproval” will only occur where a reply to a question is “so patently inadequate”.<sup>96</sup> This threshold is far too high. It cannot be an effective deterrent to poor answers.

An assessment against the criteria reveals that the rules governing the adequacy of answers perform poorly from a parliamentary accountability perspective. The answer’s relevancy, accuracy and completeness is the main failure here (Criteria 3). Some flexibility must of course be attributed to the nature of the House. Question time is a “political exchange” and the adequacy of its performance must equally be judged through a political lens. So it cannot be expected that answers will be given to the accuracy, formality and relevancy required of legal or administrative accountability. Therefore, any reform cannot impose too much rigidity because the free flow of speech at question time is crucial to not only its political accountability purpose, but also its entertainment and education purposes. Much of whether a question is properly “addressed” or “answered” is subjective, too. It “requires a judgment that is up to Parliament and the public at large”.<sup>97</sup> It is the House and the public who ultimately arbitrate on the quality of an answer to a question in the raucous milieu of question time, and indeed *some* information is elicited which is helpful for Criteria 2.<sup>98</sup> The Speaker has a role to play, but should not intervene too easily. Further, particularly poor answers often prompt scathing responses from the opposition and exposure to the media, meaning the rule inadvertently supports Criteria 4 by opening up the Minister to judgment and sanction by these fora.

The need for flexibility in open debate and to styles of questioning and answering should not prevent Speakers taking an insistent approach to helping Members elicit information from Ministers. Unless Parliament can “properly scrutinise ministerial activity by accessing information, by asking questions and receiving proper answers”, the pressure on Ministers is diminished. Inadequate answers are the antithesis of parliamentary accountability.<sup>99</sup> Speakers who have been unwilling to press Ministers for an answer have

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<sup>95</sup> Speakers’ Rulings, rr 187/5, 189/6, 196/7, 198/2, 198/4, and 199/2.

<sup>96</sup> Ruling 199/6.

<sup>97</sup> Rulings 199/2, 199/3 and 199/4.

<sup>98</sup> Rulings 199/2, 199/3 and 198/5.

<sup>99</sup> Phil Larkin, above n 4, at 111.

“hastened, or at least facilitated, the degeneration” of question time as an accountability mechanism.<sup>100</sup> Answerability has been wrongly replaced with “addressability”.

A second issue with the rule is that Ministers can refuse to respond at all. If, in the Minister’s opinion, the public interest would be “imperilled by giving the information sought”, there is no obligation to answer.<sup>101</sup> Though rare, a recent high-profile example was the refusal by Hon Gerry Brownlee to respond to an energy and resources question from the Green Party.<sup>102</sup> Dissatisfied with the Minister’s inaction, the questioner insisted that the Minister had to “attempt to answer a question properly put to him”, lest “relevant and procedurally correct questions” become a waste of time and resources.<sup>103</sup> Speakers have repeatedly applied rulings that they have no power to compel a Minister to answer a question, so if a Minister decides not to answer, the House must move on.<sup>104</sup> An absence of any response does not satisfy Criteria 2 or 3: without an answer, there is nothing to evaluate. Obviously, refusal is still subject to the criticism of the House and the public, meaning the rule is technically compliant with Criteria 4. The political risk taken by an unresponsive Minister is severe, so the risk would be somewhat calculated. Nevertheless, there are grounds for reform on the basis that the Minister ought to, at the very least, give reasons for their refusal to answer the question. SO 386(1) requires amendment, or at least clarification, if question time is to deliver better accountability practices. So too do the powers of the Speaker in terms of an ability to intervene where answers do not live up to the accountability criteria.

Standing Order 386(1) is perhaps the most contentious and most difficult rule to reform because of the likely unwillingness of governing parties to agree to reform, and the fact that the rule is acutely subjective. Its propensity to allow Ministers to give—or Speakers to accept—irrelevant, inaccurate, uninformative or incomplete replies is unfortunate. Worse still, its provision for Ministers to refuse to respond to questions in their entirety if not “in the public interest”, bereft of reasons, is woefully problematic. However, a spontaneous reform of the rule to require Ministers simply to “answer” the question is injudicious without further justification. For the word *answer* can be equally as subjective as the word *address*. A more workable rule that accounts for the political nuances of question time is

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<sup>100</sup> Rasiah, above n 45, at 167.

<sup>101</sup> See Harris and Wilson, above n 11, at 654 citing Speaker Steward in (1892) 78 NZPD 374–375. See also Coghill and Hunt, above n 15, at 41.

<sup>102</sup> See (16 September 2009) 657 NZPD 6452–6453.

<sup>103</sup> At 6453.

<sup>104</sup> Speakers’ Rulings, rr 194/2 and 194/3.

required—one that also accepts the different styles that Speakers will bring to chairing the House. An acceptable answer should be one that is, at least, relevant to the subject-matter of the question, factually accurate (to the best knowledge of the Minister), informative, and complete in the sense that it fulfils Criteria 3. Some leeway must be given to recognise the practicalities of answering several supplementaries to a broad primary question.

Three changes are necessary. First, the rule should be reworded to require Ministers to “answer” questions, but with some stipulated criteria to give the Speaker a ‘benchmark’ in assessing an answer’s adequacy. It should require Ministers to “answer the question asked” and in doing so, be “complete, accurate, informative and relevant”. Clearer standards as to what an optimal answer will look like mean better accountability because it will engender expectations as to how questions should be answered. It will also provide a clearer and more structured basis for objecting to poor answers, allowing opposition Members to ground their objections in clearly-stipulated criteria that were not met. This change would afford the Speaker with more well-defined criteria with which to reprimand Ministers for not answering questions properly. Further, as the Speaker is also part of the issue, better defined boundaries will constrain their discretion in ruling on the adequacy of replies. The hope is that these suggestions will encourage more impartial Speakers—ones who are focussed on upholding question time’s accountability purpose. Simply asking for a return to better speakership is not enough to stimulate meaningful change to the way the rule is interpreted and applied, which is why a more codified reform is necessary. An empty call for better answers does not have the legitimacy, force and clarity of an amendment to Standing Orders.

Secondly, the current practice of sanctioning Ministers who give inadequate replies by affording the questioner an additional supplementary should be written into the Standing Orders.<sup>105</sup> A clearer sanction for giving a bad answer will give Members another opportunity to seek accountability from Ministers, and its inclusion in Parliament’s rules will hopefully act as a deterrent. Thirdly, if Ministers refuse to answer questions in reliance on the “public interest” exception, a brief explanation should be compulsory. By requiring an explanation, Ministers are more likely to give *some* justification, rather than outright rejecting it. Further, an unsatisfactory and unjustified explanation is likely to lead to more scrutiny and negative exposure. Ultimately, the Speaker cannot force a Minister to provide an answer in a particular way, or indeed at all. But totally inadequate replies after

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<sup>105</sup> Standing Orders Committee, above n 12, at 38.

significant and continued pressure from Members and the Speaker is likely to exacerbate the effects of negative political exposure on the Minister.

#### ***D Ministers' Powers to Transfer Responsibility for Questions***

Ministers enjoy a power to transfer responsibility for answering a question to another Minister.<sup>106</sup> This power is presumably based on the principle that Ministers are “effectively interchangeable” and can act for one another.<sup>107</sup> However, the power is often exploited to strategically reallocate a question to avoid providing fuller information to the House or to avoid the embarrassing prospect of a junior Minister crumbling under pressure. Misuse of the power impedes the provision of more accurate, relevant, informative and complete answers. It is a source of frustration for opposition Members, many of whom protest that improper transferrals “undermine the integrity of question time”.<sup>108</sup> Neither a reasoned explanation nor a limited period of notice is required for the government to exercise its transfer power.

The power becomes particularly contentious in two situations: if the question is redirected to a Minister who has limited knowledge about the subject-matter; or if the transfer has occurred only minutes before the question is asked. Members direct questions to specific Ministers because of the knowledge they have of a contested issue, either from being the portfolio Minister or from being personally involved. Transferrals often lead to inadequate answers because the transferee Minister is just there to fill the shoes of the other. It is a cunning political tactic to transfer a question to a Minister who has overlapping ministerial responsibility, and therefore knowledge of the general subject-matter, but who was not personally involved in the issue at hand so as to avoid tricky questions.<sup>109</sup> Members try to pre-empt the issue by asking very broad questions that avoid transferral, such as whether a Minister stands by all their statements, but this approach has its own problems.<sup>110</sup> While the Speaker might disallow a transfer in very exceptional circumstances, Members cannot insist on a particular Minister dealing with a question.<sup>111</sup> Only where the original addressee is the “only person who could possibly have information of significance”,<sup>112</sup> or where the

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<sup>106</sup> Speakers' Rulings, rr 167/1 and 167/4. See also Standing Orders Committee, above n 12, at 38.

<sup>107</sup> Standing Orders Committee, above n 12, at 38 citing Constitution Act 1986, s 7.

<sup>108</sup> See (27 August 2015) 708 NZPD 6248.

<sup>109</sup> See (12 March 2013) 688 NZPD 8388.

<sup>110</sup> See Part IV A.

<sup>111</sup> Speakers' Rulings, r 169/4.

<sup>112</sup> (12 September 2012) 683 NZPD 5123. See also Speakers' Rulings, r 168/3.

transfer is “patently an abuse” and “anathema to the justice of the question time system”,<sup>113</sup> will the Speaker intervene. Similarly, Speakers’ Rulings allow Ministers to transfer questions right up until the moment the question is asked,<sup>114</sup> which has the potential to affect Members’ ability to ask incisive, detailed and tailored supplementaries.

On the one hand, transferral can inhibit parliamentary accountability if replies are given by a Minister who has less political responsibility for, or knowledge of, the matter at hand. This limits the answer’s potential completeness and how informative it may be under Criteria 3. It is also arguable that it contravenes Criteria 2 as it does not elicit information from the responsible Minister (although this is not the case if it elicits useful information from *another* Minister). Opposition Members sometimes have no choice but to use their supplementaries in vain. On the other hand, the transferral power might be justifiable for practical reasons. Where a Minister is unavailable or incapable of acting, it is desirable that *someone* answer the question on their behalf, rather than striking it off the order paper. However, it remains legitimate to distinguish between transfers for practical reasons and transfers exercised under ulterior motives. The former is justifiable whereas the latter is not. Additionally, the threshold for intervention by the Speaker to prohibit a transfer is unrealistically high. It is undesirable to afford Ministers an almost absolute freedom to gerrymander the assignment of questions, as this is the House’s responsibility. Thus, any reform must balance the two competing considerations of accountability and practicality.

First, in terms of reform, the transferral power should be caveated with an obligation to produce brief written or oral reasons for that transfer. This would inform the House of the motives behind the transfer. In cases where questions have been directed to the wrong portfolio Minister, or where the relevant Minister is simply unavailable, there is no issue. However, if the transfer lacks either of these two justifications, the Minister’s reasons for transfer will need to be thoroughly scrutinised by the Speaker. Having a ministerial roster system similar to the United Kingdom—where Ministers are allocated specific days to come to the House and answer questions—is a possible alternative.<sup>115</sup> However, this would also require abolishing the transferral power in its entirety, lest Ministers designate other

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<sup>113</sup> Speakers’ Rulings, r 168/4; (27 August 2015) 708 NZPD 6248; and Standing Orders Committee, above n 12, at 38.

<sup>114</sup> Speakers’ Rulings, r 169/2.

<sup>115</sup> In the United Kingdom House of Commons, question time is effectively split into two procedures. The first is Questions to the Prime Minister, where the House has a dedicated period of time to ask questions only of the Prime Minister on general government policy and business. The second procedure is a ministerial ‘roster system’, whereby Ministers are allocated specific days to appear before the House to answer questions in relation to their portfolios and their own performance in office.



Ministers to answer questions on their behalf. This suggestion would also use a significant amount of the House's time, something that the New Zealand Parliament does not have compared to its British counterpart.<sup>116</sup> A roster system could also mean that pressing issues deserving of immediate attention and questioning would have to be delayed until the Minister is next rostered to appear before the House. Further, Ministers holding important portfolios—such as finance, justice or education—are asked many more questions than those holding more minor portfolios, so it would be too restrictive to expect the opposition to wait for an allocated timeslot to elicit information from these Ministers.

Secondly, the effectively insurmountable threshold for Speaker intervention in current rules should be abolished and replaced with a discretionary power allowing the Speaker to prohibit a transfer “lacking sufficient and pressing justification”. A fairly demanding onus should be placed on the government to substantiate its transfer in order for the rule to deter potential abuses of the power. Inadequate explanation is likely to lead to negative public perception or continued questioning from the opposition. This way, there is less room for transfers to result in incomplete answers given by Ministers who are transferees, hopefully producing better answers under Criteria 2 and 3. Ulterior political motives, such as diverting questions away from politically vulnerable Ministers in favour of more experienced ones, are likely to dissipate. Further, reforming the power in this way protects the balance between promoting better parliamentary accountability and the practicality of being able to transfer questions if a Minister is simply unavailable.

### ***E Irresponsible Ministers and Ministerial Responsibility: Issues with Scope***

The uncertain scope of the doctrine of ministerial responsibility hinders accountability in question time. That uncertainty leads to confusion as to what Ministers are responsible for. Manipulation of the boundaries of the doctrine often means that Ministers get away with providing limited or uninformative answers on the basis that the question does not fall within the scope of their responsibility. Political responsibility is undefined and ambiguous, differing from *legal* responsibility for, or control of, public agencies. The indeterminate nature of ministerial responsibility, at least in question time, means there is an absence of

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<sup>116</sup> The New Zealand House of Representatives, in an ordinary sitting week, sits for 20 hours (including breaks) over three days. This short amount of time is used for all business before the House including question time, legislative debates, general debates and other procedures. In comparison, the United Kingdom House of Commons sits for 37.5 hours (including breaks) over five days and has a secondary chamber dedicated to Commons debates that sits for 11 hours over four days. For a discussion on the House of Representative's very limited time to conduct business, see Lockwood Smith “Legislative Accountability: Getting the balance right – the availability of House time for the Government's legislative programme” New Zealand Parliament (9 January 2012) <[www.parliament.nz](http://www.parliament.nz)>.

clarity as to when it is proper for a Minister to decline to answer a question. Indeed, the scope of the doctrine is applied and reformulated by the Speaker on an ad hoc basis. Proper questions often go unanswered or waste parliamentary time.

Ministers are answerable to the House under the doctrine of ministerial responsibility on several grounds, including “public spending, and the performance of entities within their portfolios”.<sup>117</sup> For a question to be “admissible”, there must be ministerial responsibility for its subject matter.<sup>118</sup> If there is no ministerial responsibility, there can be no question.<sup>119</sup> The principle is reflected in Standing Orders: questions may be put to Ministers relating to “public affairs with which the Minister is officially connected or proceedings in the House or any matter of administration for which the Minister is responsible”.<sup>120</sup> However, this broad brush approach does not actually cover *everything*. Seldom does a week go by without an issue as to whether questions fall within or without the scope of a Minister’s responsibilities.<sup>121</sup> Such issues depend in each case on the constitutional, legislative and administrative circumstances surrounding the question.<sup>122</sup> So the real problem is not the doctrine itself, but its (mis)application and (mis)interpretation by Ministers seeking to evade questions, or by the Speaker in ruling that there is no ministerial responsibility. There are three main grounds on which the Speaker might rule a question out of order for lack of ministerial responsibility:

- (1) Where the subject-matter of the question relates to an operational or administrative issue in the public sector,<sup>123</sup> or where another public office holder is responsible *de jure*.<sup>124</sup> In such cases, responsibility lies with the relevant Chief Executive or the person specifically made responsible by the Act.

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<sup>117</sup> *Cabinet Office Cabinet Manual* (2017) at [2.22(h)].

<sup>118</sup> Harris and Wilson, above n 11, at 642.

<sup>119</sup> *Speakers’ Rulings*, r 170/2. See also (25 February 1997) 558 NZPD 278.

<sup>120</sup> *Standing Orders* 2014, SO 378.

<sup>121</sup> As primary questions must be lodged and accepted in advance of question time, most problems arise in relation to supplementaries.

<sup>122</sup> See Harris and Wilson, above n 11, at 643.

<sup>123</sup> *State Sector Act* 1988, s 33. See also (1989) 501 NZPD 12467.

<sup>124</sup> See, for example, *Serious Fraud Office Act* 1990, s 30. See also (21 March 2006) 630 NZPD 1977.

- (2) Where the subject-matter of the question relates to a political party issue. In such cases, responsibility lies with the party leader in that capacity only, irrespective of whether they are also the Minister.<sup>125</sup>
- (3) Where the subject-matter of the question relates to a private, personal or business related issue that does not have a connection to the Minister's performance in office.<sup>126</sup> In such cases, responsibility (and accountability) is non-existent because they are inherently "non-public" issues.

I address grounds one and two, as they are more often disputed in the House. Regarding the first, the fact that a Minister has limited or no legal control over an issue does not of itself preclude ministerial responsibility: "legal responsibility and political responsibility are different things".<sup>127</sup> Recent legislative tendencies to reduce the directness of ministerial responsibility to Parliament, mostly through converting the accountability relationship from vertical to either horizontal or diagonal,<sup>128</sup> has been the cause of much controversy in question times. Governments have altered the nature and scope of ministerial responsibility via two avenues: the outsourcing of policy delivery to the private sector by contract; or by providing that a more independent public agency is statutorily responsible,<sup>129</sup> at "arm's length from the government and outside direct ministerial control".<sup>130</sup> This phenomenon reduces the scope and/or intensity of accountability to the House. It allows Ministers to sidestep certain questions falling within this ambit, the responsibility for which ostensibly lying with the relevant statutory agency or contracting party.<sup>131</sup> Although, a recent ruling has held that if a question reveals a reasonable likelihood of a connection to ministerial responsibility, an informative answer must be given.<sup>132</sup>

The "agencification" of public service functions to more independent agencies or entities in the wider state sector contributes to the "feeling of the diminished importance of traditional relationships of hierarchical accountability".<sup>133</sup> This phenomenon has allowed Ministers to dismiss questions relating to entities like the State-Owned Enterprises (SOE)

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<sup>125</sup> Speakers' Rulings, rr 172/2 and 172/3. See also (21 February 2006) 629 NZPD 1269; and (1 August 2000) 585 NZPD 3768.

<sup>126</sup> (7 December 2010) 669 NZPD 15817.

<sup>127</sup> (1997) 558 NZPD 484. See also Harris and Wilson, above n 11, at 643.

<sup>128</sup> See Larkin, above n 4, at 96; and Bovens, above n 30, at 460–461.

<sup>129</sup> For example, under the Crown Entities Act 2004 or State-Owned Enterprises Act 1986.

<sup>130</sup> Larkin, above n 4, at 96.

<sup>131</sup> See Cole, above n 73, at 78 and 85–86.

<sup>132</sup> (23 October 2014) 701 NZPD 199–200.

<sup>133</sup> Larkin, above n 4, at 96.

as “operational” and therefore outside their responsibility. So, while responsible for an SOE’s functions under the Act, a Minister can absolve themselves of liability to answer more detailed questions under the cloak of “statutory independence”.<sup>134</sup> For example, when asked whether he was “concerned” about KiwiRail’s announcement to de-electrify the North Island Main Trunk railway line, the Minister’s response was that it was an “operational decision for KiwiRail” and outside his answerability obligations.<sup>135</sup> Whether the Minister was “concerned” is not an “operational” issue at all, meaning the Minister should not have relied on that exception. Nevertheless, further supplementaries were met with similar responses from the Minister, eliciting very little meaningful information. It is concerning that Ministers can liberate themselves from their responsibilities with a single word: “operational”.

Speakers also have a crucial part to play in ruling on ministerial responsibility. Many have ruled that while a Minister’s reply contesting that something is “operational” is not out of order, it is “neither informative nor helpful”.<sup>136</sup> No rule actually exists to say that Ministers are not answerable to the House for “operational matters in the departments or agencies falling within their portfolio areas”.<sup>137</sup> Unfortunately, such a convention is crystallising. In practice, there is no real recourse for a Member who is met with the “operational” dismissal, other than testing the Minister on their excuse. In one case, where a Minister claimed not to have the level of “operational detail to hand” to give a complete and informative answer, the Speaker merely advised the questioner that his recourse was to “try again another day, I guess”.<sup>138</sup> Where the operation is inherently under the Minister’s control, this answer is plainly unsatisfactory. Issues relating to discretion exercised by government officials is one area where such an answer may be acceptable, but the whole field is a grey area without clearer guidelines. Other dismissals of questions for operational reasons often relate to the actions of private parties under contract, such as the prison operator Serco,<sup>139</sup> independently elected public bodies, such as District Health Boards,<sup>140</sup> or matters relating

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<sup>134</sup> State-Owned Enterprises Act 1986, s 6.

<sup>135</sup> (16 February 2017) 720 NZPD 16291–16292. KiwiRail is an independent statutory corporation owned by the Crown and responsible for the management of the nation’s railways.

<sup>136</sup> (2 September 2003) 611 NZPD 8243; (26 July 2005) 627 NZPD 21957; and (15 May 2013) 690 NZPD 9927. See also Speakers’ Rulings, r 175/3.

<sup>137</sup> (2 September 2003) 611 NZPD 8243; (26 July 2005) 627 NZPD 21957; and (15 May 2013) 690 NZPD 9927. See also Speakers’ Rulings, r 175/3.

<sup>138</sup> (12 November 2015) 710 NZPD 7968.

<sup>139</sup> See, for example, (1 April 2015) 704 NZPD 2797.

<sup>140</sup> See, for example, (9 March 2017) 720 NZPD 16506–16507; and (25 August 2016) 716 NZPD 13270.

to departmental Chief Executives' actions and the State Services Commission.<sup>141</sup> A lacuna between the doctrine of ministerial responsibility and its application in question time clearly exists, spurred by the increase in the statutory independence of various public agencies and exacerbated by the doctrine's uncertainty. There is, however, some force in holding that Ministers need not, and should not, be responsible for *everything* that occurs in their portfolio. Day-to-day administrative issues such as the employment of public service functionaries should not be an issue on which questions can be asked.<sup>142</sup>

Turning now to the second ground, Ministers need not answer questions relating to party-political matters. There is no portfolio responsibility for internal partisan affairs. A question exhibiting a manifest lack of correlation between a party matter and official ministerial responsibilities is swiftly ruled out of order, and this is generally well respected. But it can be a hard distinction to draw.<sup>143</sup> Eyebrows are raised where the two subject-matters collide. Members seeking information to hold a Minister to account are forced to word their party-related questions with great care for fear of it being ruled inadmissible. Only where a question on party political issues sufficiently "impinges" on a Minister's "official responsibilities" will it be accepted.<sup>144</sup> A palpable and realistic link to public affairs for which the Minister is responsible is the touchstone.<sup>145</sup>

A recent case in point prompted several questions spanning several weeks in the House on a party political issue. It involved an electorate office staff complaint against the local National Party Member of Parliament, Todd Barclay, for alleged breaches of privacy and other improprieties.<sup>146</sup> The Prime Minister—leader of the National Party—was asked 21 primary questions from the date the story broke on his knowledge of, actions relating to, and statements made about, the impropriety.<sup>147</sup> Most questions on the issue were rebutted with the standard response that there was no ministerial responsibility for the subject-matter. Disputes ensued about answerability when Members adjusted their questioning to focus on previous statements the Prime Minister had made *regarding* the issue, rather than

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<sup>141</sup> See, for example, (12 March 2013) 688 NZPD 8388.

<sup>142</sup> (12 September 1989) 501 NZPD 12467; and Speakers' Rulings, r 176/1.

<sup>143</sup> (7 December 2010) 669 NZPD 15817.

<sup>144</sup> (22 February 2006) 629 NZPD 1351; and Speakers' Rulings, r 173/3.

<sup>145</sup> (7 December 2010) 669 NZPD 15817; and Speakers' Rulings, r 173/4.

<sup>146</sup> Melanie Reid "Politicians, police, and the payout" (20 June 2017) Newsroom <[www.newsroom.co.nz](http://www.newsroom.co.nz)>; "What Todd Barclay did" (20 June 2017) The Wireless <[www.thewireless.co.nz](http://www.thewireless.co.nz)>; and "Glenys Dickson breaks silence over Todd Barclay secret tapes scandal" *The New Zealand Herald* (online ed, Auckland, 22 June 2017).

<sup>147</sup> See from (20 June 2017) 723 NZPD to (09 August 2017) 724 NZPD.

the substantive issue itself. This distinction is legitimate and attracts ministerial responsibility where the comments were made in official ministerial capacity. Despite the questions being in order,<sup>148</sup> the Prime Minister continued to refuse to answer.<sup>149</sup>

Each ground affects Criteria 2 and 3. As to the first ground relating to “operational matters”, this exception to answerability is problematic because it is uncertain when something is truly operational and when it should be answered. There is some force in such a rule because it allows certain “independent” public agencies to remain free from ministerial influence. More astute Ministers know they are only obliged to transmit information from the relevant independent agency, rather than take full responsibility for its actions.<sup>150</sup> This is acceptable, and criticism from the opposition in such cases is misguided. However, the exception to answerability inhibits accountability when Ministers misuse the exception to undermine Criteria 4 by evading scrutiny and judgment of their actions. Where a Minister has a high level of political and legal control over the relevant entity, there should only be very exceptional, and clearly stated, reasons for refusing to answer a question. For example, it would be justified to refuse to answer where it would disclose personal information or where it was related to a specific discretionary issue entrusted to the Department. Ministers who improperly hide behind the “operational matters” exception undermine Criteria 2 by not disclosing information, and Criteria 3 by not providing a reply that is informative and complete.

On evaluating the second ground (political party matters), any assessment must also be careful to balance two competing interests: accountability for statements made in official ministerial capacity versus holding Ministers to account for *public* issues, rather than private party ones. Asking questions outside the bounds of ministerial responsibility lessens the value of question time as a parliamentary accountability mechanism because it emphasises irrelevant political events that, while entertaining, are not the proper subject of question time. The fact that these questions invariably lead to dismissive answers, and therefore wasted questions, raises the issue of whether there should be clearer guidelines as to a Minister’s proper responsibilities. Members who try to elicit information from outside the scope of ministerial responsibility completely sidestep Criteria 2 as it is not the *kind* of information that should be subject to exposure. The doctrine of ministerial responsibility is perhaps underdeveloped in this respect as it narrows the range of legitimate political issues which can be tested in question time. However, broadening the range of

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<sup>148</sup> Speakers’ Rulings, r 171/2.

<sup>149</sup> See, for example, (28 June 2017) 723 NZPD; and (29 June 2017) 723 NZPD 19121.

<sup>150</sup> Harris and Wilson, above n 11, at 644.

subject-matters on which questions can be asked is also likely to detract from question time's central purpose of *executive* accountability. Obviously there is some artificiality in the fact that Ministers can wear multiple "hats"—as Minister, as Member of Parliament, as a political party leader, and as a private individual—but a line must be drawn somewhere.

There is a strong case for reform. Where the subject-matter of a question has no ministerial responsibility, accountability is likely to be undermined because the question is not one of the *type* that question time is suited for, and encourages answers to be flippant or simply rejected. This fails Criteria 2, as little or no information is elicited, and Criteria 3, as replies are often inaccurate and irrelevant. Equally, where the question *does* involve ministerial responsibility, but a Minister improperly relies on the "operational matters" exception, accountability is also undermined. This is because the Minister is able to shirk responsibility and decline to provide information that they would otherwise be expected to. Standing Orders should be amended to require Ministers to make good faith attempts to collect information from public agencies for transmission to the House, even if that body is statutorily independent from government policy. Where a supplementary question strays outside the scope of Ministerial responsibility and into the realm of "operational" affairs, as determined by the Speaker, only then should the Minister be relieved of the duty to answer fully and fairly.

Such a reform does not come without difficulties, though. If a Minister fails to bring the relevant information to the House to answer the question, believing they had no ministerial responsibility for it, what then? Obviously the Minister has no capacity while on their feet to ask their agency for more information or to give an answer that is actually relevant, complete and accurate. I suggest that there should be a standalone set of guidelines that set out more clearly *what* Ministers are responsible to answer questions on, and the *extent* of information they should provide. If the guidelines are intentionally made unenforceable, but set a clearer standard as to answerability expectations, they will be useful to the question time process without imposing too much rigidity. Thus, if a Minister breached the guidelines, there would not be formalised or time-consuming parliamentary sanctions, but there would be the chance for heightened scrutiny and media exposure. Moreover, this reform reflects the need for a cultural and institutional change and seeks to avoid too much formal structure in question time, which could impact the free flow of debate. While codification has the potential to marginally lessen the flexibility of the doctrine and temper the discretion of the Speaker, it nevertheless provides a measure of clarity and certainty which, in the current setting, is sorely needed. A "soft" reform encouraging institutional change will not unduly stilt the process. The guidelines would mean that Ministers could

be expected to give better answers with increased understanding of when matters are truly “operational” or “party related”.

### ***F Media Reporting: A Necessary Evil?***

Media reporting of question time is often spun to emphasise the less important but more entertaining aspects of the debate. While this is sometimes desirable—being consistent with the education and entertainment purposes—it can also trivialise question time, causing politicians to behave for maximum media impact. The following analysis discusses the impact of the media on question time. It evaluates the extent to which the media both promotes and hinders parliamentary accountability. It poses soft suggestions for reform on the basis that the media is independent of, and external to, Parliament.

Question time attracts significant media attention as “undoubtedly the most high-profile aspect” of parliamentary proceedings.<sup>151</sup> Though broadcast for free, the time at which the House sits and the length of question time often leads the media to excerpt the more important or entertaining parts of the event for reproduction in the daily news. Media attention, while crucial to the openness and transparency of Parliament, has also meant that question time’s purpose of eliciting useful information and exposing governmental action has been “overshadowed by its role as a set-piece confrontation”.<sup>152</sup> Keen parliamentary journalists, ever-hungry for their next salacious story on political leadership or ministerial performance, encourage question time to descend into a show of publicity and political point-scoring. At its worst, questions become attention-seeking statements of rhetoric used for political attack—ammunition for waging the political battle. Equally, Ministers use their answers to take back the limelight, and prove their worth to the country. Journalism must take its share of responsibility for this. Featuring entertaining but trivial soundbites does little to encourage an atmosphere of information-seeking.<sup>153</sup> It compromises the education and accountability purposes. The issue, though, is trying to find a good balance.

Painting a picture of the trivialised question time is not the complete truth. Salmond argues that question time’s role in democratic politics goes beyond a sometimes “decorum-free distraction” from the usual law-making business of Parliament.<sup>154</sup> He argues it is a “powerful catalyst” for mass political participation and engagement, especially those question times that feature “rapid, unscripted” debate, allowing consumers to grasp the

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<sup>151</sup> Larkin, above n 4, at 99.

<sup>152</sup> At 99.

<sup>153</sup> See Maas, above n 21, at 11.

<sup>154</sup> Salmond, above n 16, at 322.



political issue quickly and judge the performance and credibility of the government.<sup>155</sup> Spontaneity breeds raucousness, increasing citizen attention and entertainment, generating an “air of genuine spectacle”.<sup>156</sup>

Salmond’s view undeniably has merit, but it fails to account for other realities of political engagement. Politically-charged questions face replies prefaced with quips, epithets, jokes, and personal attacks. Statements that condemn the opposition’s electoral chances, poke fun at Members or party unity, or critique the performance of past governments feature often. The media and opposition’s unending obsession with ministerial resignation as a measure of executive accountability does little to discourage trivia and scandal. Both sides of Parliament must “play their part” if there is to be a “strong and rigorous accountability regime”.<sup>157</sup> So the issue is really: how far do we let the media and politicians go before the education and entertainment purposes outweigh the primary goal of accountability?

Media reporting practices have both positive and negative impacts on the parliamentary accountability criteria. In terms of positive impacts, media attention fosters better citizen engagement, or at least exposes the voting public to question time, thereby increasing the potential for additional scrutiny, judgment and sanction from the secondary forum under Criteria 4. It also increases the level of political contestation as Members ask more heated questions that are likely to test prickly political issues, thereby supporting the fulfilment of Criteria 1. However, there are also negative impacts. The increasing demand for soundbites affects the quality of answers. By looking for more entertaining spectacles, the media prompts Ministers to give irrelevant and inaccurate answers that are attention-grabbing but fail Criteria 3. Without informative commentary, the “community perception” may be confused as to what question time’s core purpose really is.<sup>158</sup> Occasionally outrageous behaviour may sometimes be a “worthwhile trade-off for more consistent media coverage and public interest”, but this is equally a criticism.<sup>159</sup> One key difficulty for reform is that both the media *and* politicians are responsible for this issue, and that any change to media reporting practices is outside the scope of *parliamentary* reform.

Of course, the above analysis does not mean that nothing should be done to mitigate the negative effects of modern media reporting. It only means that reforms are limited in their

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<sup>155</sup> Salmond, above n 16, at 325.

<sup>156</sup> Salmond, above n 6, at 369–370.

<sup>157</sup> Loney, above n 45, at 160.

<sup>158</sup> At 158.

<sup>159</sup> Ulrich, above n 11, at 4.

scope and application because “the media” is not a *parliamentary* rule, structure, institution or process. The imposition of strict reporting standards cannot be the solution if its tendency is to hinder freedom of expression and transparent, independent media. This would be anathema to the media’s role in facilitating greater civic engagement and bolstering accountability by making question time more accessible to the public. It would also run counter to the principle that Parliament exists as forum for free and open debate. Again, question time’s entertainment and education purposes should not be traded off so easily in a strict pursuit of parliamentary accountability.

The answer, then, is to foster a better reporting culture. Outlining the purposes of question time—and the relevance and importance of the media—in a standalone document would clarify the role the media should play. Encouraging reporting that is informative, fair and representative is about as far as *parliamentary* reform can go. The most important part is to emphasise the significance of Criteria 4: that the media act as a vehicle to pass information on to the public for their scrutiny, judgment and possible sanction. The onus on fostering this culture lays equally on politicians. It is their responsibility to take question time more seriously. A real cultural change in the way we conduct question time can be achieved through the successful implementation of the other suggested reforms, too.

## *V Conclusions and the Future of Question Time*

Responsible government and accountability sit atop the list of cherished constitutional principles. Question time is means used to uphold these principles and secure parliamentary control over the Executive. Members of Parliament have the duty to scrutinise Ministers to arouse public criticism of dangerous government action.<sup>160</sup> As the quintessential public display of parliamentary accountability, question time is vital to our commitment to liberal democracy. But these principles are at risk. Without reform, question time’s accountability purpose is likely to be further diminished, leaving its future uncertain. Several aspects of question time require improvement for it to reclaim its reputation as a valuable mechanism for parliamentary accountability. It is helpful to summarise question time’s performance and the proposed reforms here:

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<sup>160</sup> *Hagaman v Little*, above n 29, at [38].

<b>Aspect</b>	<b>Performance against criteria</b>	<b>Proposed reforms</b>
Surprise supplementaries following vague primary questions	C1: moderate to good. C2: poor. C3: poor to fail. C4: N/A.	Abolish ability to ask vague primaries and surprise supplementaries; require subject-matter indication.
Patsy questions	C1: fail. C2: fail (negative patsies). C3: fail (negative patsies). C4: N/A.	Abolish patsies; replace with Ministerial Announcements procedure; can ask questions after announcements.
SO 386(1): the rule governing the adequacy of Minister's replies to questions	C1: N/A. C2: moderate. C3: poor. C4: moderate.	Reword rule to require an "answer"; insert requirement that answers be complete, accurate, informative and relevant; formalise penalty of additional supplementaries; require explanations for refusals to answer.
Ministers' powers to transfer responsibility for answering questions	C1: N/A. C2: moderate. C3: poor. C4: N/A.	Require reasons for transfer; create new discretionary power for Speaker to prohibit transfer lacking justification.
The interpretation and application of ministerial responsibility	C1: N/A. C2: poor to fail. C3: poor to fail. C4: poor to moderate.	Require Ministers to collect full and fair information in good faith; create new guidelines to clarify the scope and extent of ministerial responsibility.
Media reporting practices	C1: good. C2: moderate to poor. C3: poor. C4: good.	Create a handbook of the purposes of question time and importance of fair media reporting; encourage change in reporting culture.

Obviously, reform is easier said than done. Successful change rests on the willingness of politicians to implement reforms to uphold the principle of responsible government. Unless and until meaningful steps are taken to improve question time, it will languish at the bottom of the list of valuable accountability mechanisms. So, is it question time or show time?

**Word count:** the text of this paper (excluding the cover page, contents page, keywords, abstract, footnotes, bibliography and this disclaimer) consists of exactly 14334 words.

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