



# ASSESSING THE EFFECTIVENESS OF WRITTEN QUESTIONS & REPLIES AS AN OVERSIGHT MECHANISM

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# Assessing the Effectiveness of Written Questions and Replies as an Oversight Mechanism in the South African Parliament

## Introduction

Across the globe, the legislature plays numerous roles in a democracy. From proposing, amending and passing laws, to acting in a representative role for their electorate, as well as exercising oversight over the Executive by scrutinising government action.<sup>1</sup> All these roles are interdependent.<sup>2</sup> South African Members of Parliament (MPs) have a unique set of oversight tools at their disposal to assist in the fulfilment of this critical oversight role<sup>3</sup>, one of which is the Written Questions and Replies mechanism.

“Written questions are in practice direct exchanges between a member and a minister on the public record”.<sup>4</sup> This mechanism allows MPs to submit Written Questions to Members of the Executive, seeking information that is usually not readily available elsewhere, to which they must receive a corresponding reply from that Executive Member. The Written Questions and Replies mechanism is an established feature of parliamentary democracies across the world.<sup>5</sup> In South Africa, the tool was established as part of the section 55 of the Constitution obligation to provide for mechanisms to hold the Executive to account.<sup>6</sup> Section 92 of the Constitution reiterates this point by obliging Members of Cabinet to be accountable to Parliament “for the exercise of their powers and performance of their functions”.<sup>7</sup> Written Questions allow MPs to ask a Minister about the activities, spending, policy and legislation implementation of a government department to keep the Executive accountable.<sup>8</sup>

Questions for Written Reply are, much like Questions for Oral Reply that are heard in plenary sessions, designed to extract information from Members of the Executive. As with Oral Questions, Written Questions can secure commitment from the Executive. However, unlike Oral Questions, Written Questions create an opportunity for the provision of context and detailed information, from Members of the Executive and the government departments for which they are responsible.

Parliamentary questions have a history going back to the first recorded parliamentary question in the British Parliament in the early 1700s.<sup>9</sup> Over time, various jurisdictions have altered the format to suit their specific needs, but the purpose remains the same<sup>10</sup>— to exercise oversight over the Executive.

Many legislatures now frequently prefer Written Questions to Oral Questions to secure informative responses. The United States Congress is a noteworthy exception to this trend, as it lacks the mechanism for Written Questions.<sup>11</sup> In one study of parliamentary questions in the European Union (EU), it was found

that Written Questions have become the most popular form of questioning.<sup>12</sup> This is due to the tight restrictions placed on the oversight mechanism of Questions for Oral Reply, which must be submitted by a parliamentary party, a committee or a minimum number of MPs.<sup>13</sup>

While questions are submitted in the name of an MP to the National Assembly (NA) Table, the source of questions varies.<sup>14</sup> Questions are inspired by political, socio-economic and other constitutional issues, encountered by MPs through the execution of their daily duties, but also through interaction with civil society, other organisations, constituents, and individuals with a vested interest in the response to the question. Interest groups are especially interested in written questions since they can obtain precise information and commitment from the administration through this means.<sup>15</sup>

Written Questions can generate significant media attention and public interest, which has the potential to lead to meaningful dialogue and action. In spite of this interest and importance, the nature and consequences of Written Questions in Parliament remains obscure. Further, because they are not given the same public stage as Oral Questions, it can be argued that they play a 'silent' role in the overall oversight machine.

This paper seeks to evaluate the use of Written Questions and Replies, and investigate whether it is an effective oversight tool in the South African Parliament. It is an opportune time as a new mechanism for holding Ministers accountable for delayed replies has finally been approved in the National Assembly on 2 September 2021 after many years. While this tool is used in both Houses of the South African legislature, for the purposes of this paper, only Written Questions and Replies tabled in the NA during 2020 will be evaluated.

# Background

The history of British imperialism means that as with numerous other jurisdictions, a large portion of South Africa's legislative structure was inherited from the Westminster parliamentary system of the United Kingdom (UK).<sup>16</sup> However, the South African parliamentary system has experienced numerous significant changes since its establishment in the 1800s. What we see today is a hybrid system, but one that is still fundamentally based on the Westminster structure.<sup>17</sup> A number of the main features of South Africa's current system reflect some of the traditions of Westminster, but in many respects, the country has departed from it.<sup>18</sup>

Written Questions as a means by which to hold the Executive accountable, is an example of those inherited features. The South African Parliament library has copies of Written Questions dating back to 1954. The Standing Rules – which were in operation between 1991 and 1999 while new rules were being written for the new constitutional era – made provision for written questions.<sup>19</sup>

In 1999, the 1st Edition of the Rules of the National Assembly (the Rules) makes provision for Questions for Written Reply.<sup>20</sup> In Chapter 10, the Rules on Questions for Written Reply stipulate when Written Questions may be submitted, their format and how many questions each MP may submit per week. They speak to the process to be followed if Ministers do not submit Written Replies on time.

While Questions for Written Reply feature in numerous jurisdictions, they are distinguished from each other by elements such as format and procedure. For example, in the UK, Ministers do not have a deadline for when they should provide Written Replies to questions. The accepted convention is that MPs can expect a Written Reply seven days from the day the question is submitted. However, there is no rule requiring questions to be answered by a certain date.<sup>21</sup> Unlike the UK, South African Executive Members are instructed by the Rules<sup>22</sup> to submit answers to Written Questions at the latest, 10 days after the question is submitted.<sup>23</sup> It obliges Ministers to submit Written Replies within a time frame, as a means of securing accountability from the Executive.

Another significant feature of the South African Questions for Written Reply mechanism is the three-question limit. According to the Questions Office, the first Rules published in the new democratic era, reduced this number from six to three. While a cap on the number of questions is not unique to South Africa, the limit varies from jurisdiction to jurisdiction. In India, for example, the present limit is five questions per member, per day. This limit was introduced in 1962. Earlier, there was no such limit, but this caused a deluge of questions being submitted at an unreasonable rate.<sup>24</sup>

Finally, the evolution of Questions for Written Reply has done away with interpellations. Simply put, these are written requests for information with the intention to launch a (mini) debate, usually in response to an unsatisfactory reply to a Written Question.<sup>25</sup> Interpellations made it into the democratic legislature and were provided for in the 1<sup>st</sup> and 2<sup>nd</sup> Editions of the Rules. In March 2000, however, a House resolution was adopted to temporarily suspend the use of interpellations from April to June 2000. This resolution was regularly extended until interpellations were abandoned altogether in June 2002. The reason for this departure was that interpellations were not considered to be effective as a form of interaction with Ministers. Further, they did not allow sufficient time for the answering of the large number of Questions for Oral Reply in plenary sessions. The 3<sup>rd</sup> Edition of the Rules (2002) ceased to provide for interpellations.

# Questions for Written Reply process

In South Africa, Written Questions may be addressed to the President, the Deputy President and Ministers.<sup>26</sup> Written questions are not dealt with in the House as are Oral Questions, but appear on the Internal Question Paper – the document in which all questions are recorded. Written Questions are used to address matters that are not considered to be particularly urgent, or for issues that require long and/or statistical replies.<sup>27</sup> Written Replies are prepared by the relevant departments and signed by the Minister and then sent to the Questions Office for processing. The Questions and Replies are then distributed to relevant stakeholders, including the Member who asked the question, the Speaker, the media, and published on Parliament's website.

The procedures governing questions are set out in both the Rules and the NA Guide to Procedure (the Guide).<sup>28</sup> The Guide states that Written Questions must conform to these rules and conventions to ensure that the mechanism remains effective for garnering information from Members of the Executive.<sup>29</sup> The Guide identifies the purpose of questions (both written and oral), as the obtaining of information and pressing for action from the Executive.<sup>30</sup> Questions are required to meet the standards set out in the Rules (supplemented by the Guide). This is aimed at ensuring that the process remains effective for obtaining information from the Executive.<sup>31</sup>

## Role-players

The Questions Office is the linchpin of the entire questions process. Its role is, among others, to help MPs comply with the Rules, advise on style and content, as well as offer clarity where necessary.<sup>32</sup> According to Mr Michael Plaatjies, the Questions Office's Procedural Advisor for the NA, the Questions Office receives and processes parliamentary questions from MPs in consultation with political party staff such as researchers. It ensures that the Rules are adhered to. The Questions Office has the authority to edit submitted questions before they are published and a Member is notified of such edits.

The Office of the Speaker plays a critical role in the functioning of the NA in general. As the guardian of the rights and privileges of MPs, the Speaker is the head of the NA and is the final authority when it comes to the interpretation and enforcement of the Rules.<sup>33</sup> In terms of the Written Questions process, as an impartial actor, the Speaker's Office plays a much-needed oversight role for both MPs and Members of the Executive. For instance, when a Minister needs more time to reply to a Written Question, such permission is sought from and granted only by the Speaker. Or, where a Minister fails to reply to a question, the Speaker is charged with escalating the matter to the Leader of Government Business (LOGB). The Speaker's role in the effective monitoring of Questions for Written Reply has been recently highlighted and will be discussed at length later in the paper.



MPs are the primary role-player in this process as it is in their names that Written Questions are submitted. Some MPs submit their own questions, after researching, drafting, formatting them and signing them. This is particularly true of MPs who belong to parties with limited resources. MPs who belong to larger parties with access to more resources, can still choose to draft their own questions, although they might not have the same pressure to do so. In addition, the digitisation of the questions process means that MPs are able to submit Written Questions from anywhere in the world.

Parliamentary Liaison Offices (PLOs) are units within ministries and departments whose responsibility it is to communicate with and liaise with Parliament on parliament-related matters. For Written Questions, they are tasked with receiving Written Questions, placing them on a template, and sending them to the Ministry timeously for processing. The Ministry refers the question to the relevant officials for response. PLOs are also the conduit for the return of the Replies.

Their task is not without obstacle. Written Replies may only be submitted to the Questions Office for publishing if the responsible Minister has approved and signed the reply. If, for whatever reason, the Minister (or the individual delegated for signing replies on the Minister's behalf) delays in doing so, or does not request an extension from the Office of the Speaker, that reply will be considered late. Also, some questions require the acquisition of information that is difficult to locate. This will affect the turnaround time.

It is worth noting that the Standing Rules acknowledged that some replies would require more time than others. Ministers could take 20 days to submit Written Replies to questions about provincial matters. This acknowledged that seeking information about provincial affairs would take longer to allow for the necessary communication between the different spheres of government. Since 1999, the Rules have been amended to discourage MPs from asking questions that do not have national bearing and use the relevant provincial and local government channels to seek related information.<sup>34</sup>

## When Are Questions Submitted?

Chapter 10 of the Rules prescribes the procedure for the submission of Written Questions. Rule 145(1) provides that Written Questions may be submitted on any working day.<sup>35</sup> A working day is any day that Parliament is in operation, that is, every day of the week excluding weekends and public holidays.<sup>36</sup> One can infer that Written Questions may not be submitted during recess periods. A Member of Parliament has confirmed that the Questions Office does not accept questions during recess. This was corroborated by the Questions Office in recent communication stating that '*[i]n accordance with the rules of the Assembly only Committees that have applied to meet may function. Every other process is in abeyance to afford members and Ministers to attend to matters of their constituencies. However, replies to outstanding questions are still provided by Ministers.*'<sup>37</sup>

While it may be acceptable that MPs be given a reprieve from in-House business to attend to their constituencies, it can be argued that the ability to submit Written Questions directly serves the very same constituencies. MPs could encounter issues on the ground to which relatively urgent replies are needed. Further, government departments do not cease operations in a similar manner, meaning that corresponding parliamentary oversight remains necessary, even during recess periods. Should MPs be barred from submitting Written Questions during recess, the responses and/or resolutions might come too late, and there is a reasonable expectation that problematic government conduct will go unchecked. Therefore, the reason proffered by the Questions Office does not seem to be a convincing argument for barring MPs from continuing to exercise oversight in this way. Particularly as most other means of oversight will be unavailable during such periods.

Having said this, it is necessary to recognise that the most likely reason for this limitation is to avoid overwhelming the Executive. For example, in New Zealand, where parliamentarians have no limit to the number of Written Questions they can submit and when, at Parliament's first sitting in 2020, almost 1000 questions awaited Ministers from those submitted during break.<sup>38</sup> This is an undeniable inconvenience and places immense pressure on the government to clear questions, some of which may have been resolved by the time replies are available.

During a review of the Chapter 10 of the Rules in 2015, one of the proposals was that MPs be permitted to submit questions on working days during constituency periods. This, however, was not accepted by the majority in the NA Rules Committee.

## Format

Rule 145(2) limits the length of questions stating that “[a] question for written reply may not contain more than 10 subdivisions”. Before the 9th Edition of the NA Rules was adopted in 2016, MPs were permitted 15 subdivisions per question. The limitation serves to allow MPs to provide context only where necessary, for the Minister. However, the subdivision provision does bear the risk of MPs asking more than a single question, or unrelated questions under a single submission. The likelihood of this is low due to the active role played by the Questions Office in the editing and formatting of questions. The rule is arguably vague as subdivisions are not an official unit of measurement. This means one must rely solely on the reasonableness of MPs when it comes to the drafting of concise questions.

After drafting questions that fall within these parameters, MPs (or their relevant staff members) hand in the signed questions to the Questions Office clearly marked for Written Reply.<sup>39</sup> Thereafter, where necessary, questions are edited under the authority of the Speaker in terms of the Rules, then made available to government departments, usually via the PLOs.

The Internal Question Paper (as opposed to the Question Paper which deals only with Oral Questions), is a running, up-to-date record of all questions that have yet to be answered. Written Questions must be submitted before noon on Tuesdays, and the Internal Question Paper that is issued on Fridays contains all the Questions for Written Reply received during that parliamentary working week. This Internal Question Paper is shared with MPs, whips, presiding officers, PLOs, the parliamentary library as well as the media.<sup>40</sup> The advent of technology has resulted in the digitisation of this process.

The Guide dictates the content in that questions may not contain offensive expressions, refer to the merits of a *sub judice* matter, or make discourteous reference to a friendly foreign country or Head of State.<sup>41</sup> Written Questions may also not contain arguments, inferences or imputations, unnecessary epithets, controversial, rhetorical, ironical or offensive expressions and extracts from newspapers, books or quotations from speeches.<sup>42</sup> Questions may not refer to the consideration of matters by a commission or a parliamentary committee or deal with matters within the jurisdiction of the chairperson of a parliamentary committee or a House of Parliament.

The Guide requires MPs to ensure that they are directing their questions to the correct authority. Questions that fall under the purview of local or provincial government will not receive useful responses from Members of the Executive. As previously noted, the current Rules do not make extra time accommodations for questions that do not fall under national jurisdiction. Questions on matters that are not the responsibility of the government,<sup>43</sup> such as the Stock Exchange, will also receive a response informing the asker that they have approached the incorrect authority.

## Three Question Limit

While there is no limit to the number of Written Questions that may be put to the President, Deputy President and Ministers by Parliament as a whole, as discussed, Rule 145(3) stipulates that a single MP may submit only three Written Questions per week. Again, the concept of a cap on questions is not unique to South Africa. The EU Parliament has a rule restricting the number of Written Questions that may be submitted. “Each Member, political group or committee may submit a maximum of twenty questions over a rolling period of three months”.<sup>44</sup> This is quite a lenient limitation and has resulted in a deluge of questions being submitted to the EU Parliament.<sup>45</sup>

A noteworthy fact about the three-question limit, is that MPs are not limited in terms of which Member of the Executive to whom they can address questions. While it is expected that MPs will direct the majority of their oversight questions to the Minister responsible for the parliamentary portfolio committee/s on which they serve, it is not unheard of for MPs to pose questions to other Members of the Executive.

## 10-Day Rule

Rule 145(5)(a) requires Written Replies from Members of the Executive to be sent to the relevant MP within 10 working days. Ministers, may request, in writing, an extension not exceeding a further 10 working days from the Speaker. This request may be made only if accompanied by a valid reason. Should the Speaker approve such a request, the MP who submitted the original Written Question must be notified, and the extension recorded in the Question Paper.<sup>46</sup> Questions which have not been replied to within 10 working days are endorsed to the effect that they have not been answered. This is done by placing a bold black line around them in the summary.<sup>47</sup>

Rule 146(1) governs where Members of the Executive fail to respond to Written Questions within the set time period, including when an extension has been requested and granted. If the MP who submitted the question to which a reply is outstanding so wishes, they may request that the Speaker place the question on the Question Paper for oral reply. This is an attempt to ensure that no questions go unanswered and that Members of the Executive are unable to evade their duty to be accountable to Parliament.

Where a question goes unanswered despite the measures in place to prevent this, the relevant question paper must be endorsed to the effect that the question was not answered, and the Speaker must inform the Leader of Government Business<sup>48</sup> (LOGB) - at present, Deputy President David Mabuza - of the lapse. The requirement that the Speaker inform the LOGB was added to the Rules in 2016 in response to Ministers consistently failing to submit responses timeously. Before that, the only recourse for MPs for an unanswered Written Question was that it be placed on the Question Paper for oral reply.<sup>49</sup> The involvement of the LOGB in the current Rules was intended to inspire some form of sanction for the failure to account to Parliament. This Rule has been contentious for MPs as there is a sustained pattern of delayed replies from Ministers. The attempts at resolving this problem will be discussed at length later in the paper.

## Withdrawal of Questions

A Member who wishes to withdraw a Question for Written Reply must instruct the Questions Office accordingly. This will be indicated on the summarised list of Questions for Written Reply on the Internal Question Paper, and the relevant Department will be informed.<sup>50</sup>

# Status of Written Questions in the South African Parliament and trends

In 2020, a total of 3097 Written Questions were asked by MPs.<sup>51</sup> Of these, 2914 (94%) were answered by Members of the Executive. 172 (6%) questions went unanswered, and 2209 (71%) were late replies. 2020 was a particularly challenging year for the South African legislature due to the advent and impact of the Coronavirus pandemic. As a result, some government departments and the corresponding parliamentary portfolio committees were busier than others, particularly those who were heavily involved in the government's Covid-19 response. MPs who serve on committees other than these were also heavily involved in the oversight of these government departments.

Year	2014	2015	2016	2017	2018	2019	2020
Written Questions	3414	4268	2745	4027	3930	2568	3097
Unanswered Questions	66	9	61	188	209	405	172
Response Rate	98%	99%	97%	95%	94%	84%	94%

*Table 1.*

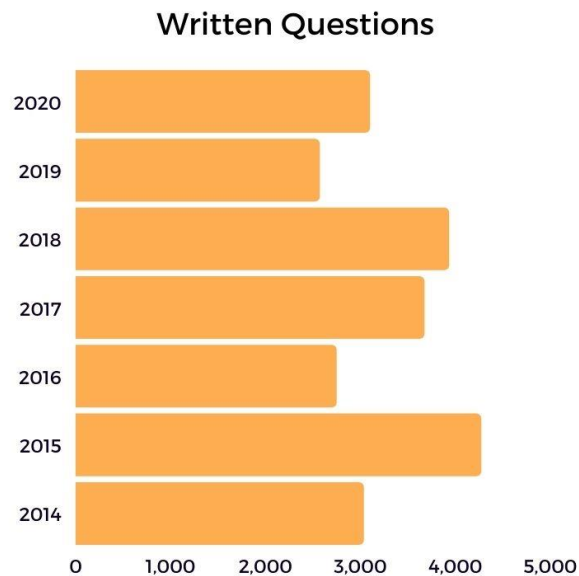
The Department of Police received the highest number of questions with a total of 272 (9%). Of those, 234 (86%) were replied and 38 (14%) were not replied. 224 (82%) of the questions received by law enforcement had late replies. It is likely that the Department of Police received many questions based on how officials were enforcing lockdown regulations.

Unsurprisingly, the Department of Health (DoH) received a great number of questions as well, as one of the key departments in the government's response to the pandemic. This department is one of those that answered all the questions it received, however, 201 (81%) were answered late. This represents the overwhelming majority of the questions received by the DoH. The Departments of Basic Education (DBE) and Social Development (DSD) were two other departments that experienced high volumes of written questions, particularly related to the impact of the pandemic. As with the Departments of Police and Health, the trend is that most or all the posed questions were addressed, but again, an high number were late responses. The DBE replied to 99% of all Written Questions, however, 58% were late. The DSD replied to all its Written Questions but 96% were late.

The following departments did not provide replies to more than 10% of the questions MPs asked: Defence & Military Veterans (28%), Transport (23%), Justice & Correctional Services (17%), Cooperative Governance & Traditional Affairs (17%), and Police (13%).<sup>52</sup>

The general trend from 2014-2020 is that Ministers do respond to questions. The response rate over the course of this period is 94% – in any objective assessment this is reasonable. It is the delayed replies that

is the problem. From 2018-2020, 71% of Questions were responded late. This is unacceptably high and warrants attention



*Graph1.*

If simple probability is employed, one would assume that the party with the most seats at any given point, would be responsible for the highest number of questions submitted. This assumption would be wrong. As is evidenced by the table below, the party responsible for the bulk of the Written Questions, consistently for the last seven years, is the opposition. Considering the role of the opposition parties in any multi-party democracy, “to oppose the government, to criticize it and to seek to replace [the governing party]”,<sup>53</sup> it is expected that the opposition has been steadfast in its exercise of oversight.

Party	Seats 5 <sup>th</sup> Plt	Seats 6 <sup>th</sup> Plt	2014	2015	2016	2017	2018	2019	2020	Total Questions
COPE	3	2	140	227	74	106	124	37	0	<b>708</b>
FF +	4	10	86	128	99	96	184	105	166	<b>864</b>
DA	89	84	2573	3526	2238	3118	2182	1677	2022	<b>17 336</b>
EFF	25	44	93	158	195	659	1340	564	578	<b>3587</b>
IFP	10	14	46	133	64	24	48	142	219	<b>676</b>
UDM	4	2	15	22	26	10	13	0	3	<b>89</b>
ACDP	3	4	17	17	16	8	9	7	16	<b>90</b>
NFP	6	2	18	13	15	4	0	4	12	<b>66</b>
AIC	3	2	2	1	0	0	3	0	0	<b>6</b>
ANC	249	230	42	43	18	0	27	22	26	<b>178</b>
AGANG	2	-	0	0	0	0	0	0	-	<b>0</b>
PAC	1	1	0	0	0	0	0	0	0	<b>0</b>
APC	1	-	0	0	0	0	0	0	-	<b>0</b>
GOOD	-	2	-	-	-	-	-	3	4	<b>7</b>
AL-JAMA-AH	-	1	-	-	-	-	-	6	24	<b>30</b>
ATM	-	2	-	-	-	-	-	1	27	<b>28</b>

*Table 2.*

Over the Fifth Parliament, Democratic Alliance (DA) MPs averaged 158 Written Questions per MP. However, in first place for that Term was the Congress of the People (COPE) – an opposition party that held a mere 3 seats, compared to the DA's 89 or the African National Congress' (ANC) 249. COPE submitted an average of 236 questions per member in that five-year period. In 2020, the DA once again led the pack with 2022 written questions asked and averaged 24 questions per Member. The governing party, with 230 seats, asked only 26 questions in 2020, an average of 0.1 questions per MP.

# Who asks Written Questions?

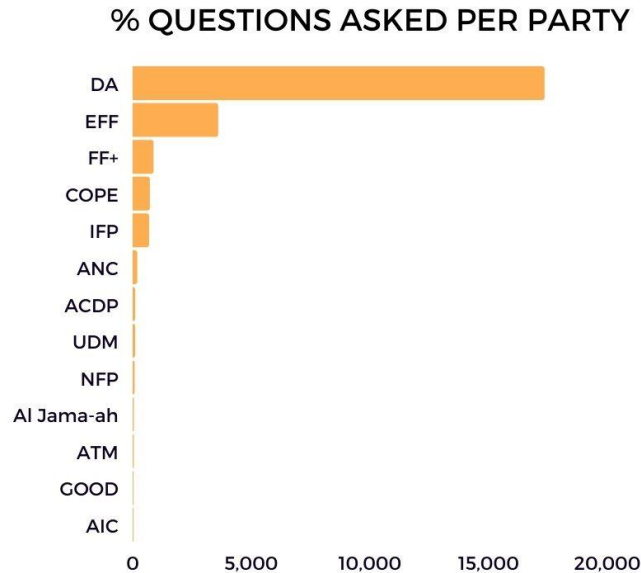
Written Questions are submitted in the name of an MP, however as has been stated, MPs are not necessarily solely responsible for the drafting of questions or their submission. While some individual MPs sometimes participate in the drafting of questions, many rely on the work of parliamentary staffers such as researchers.<sup>54</sup> It is also important to note that while some MPs have researchers and dedicated question writers to assist them, not all political parties represented in the South African legislature have the resources to employ staff to do so. Therefore, a significant contingent of MPs is responsible for its own interaction with the mechanism.

Political parties manage the Written Questions process differently. For example, some parties are heavily involved in determining the content of Written Questions. It is not unheard of for parties to have dedicated groups that draft, approve and veto certain content for Written Questions. This allows MPs to stay within party policy guidelines and promote issues in their party manifestos as part of the never-ending campaign for election. However, this also creates the undesirable effect of Members of a governing party posing what can only be characterised as ‘sweetheart’ questions that allow that government to put its best foot forward, regardless of any other concerning negative issues. Other parties, while still involved in the process, will only have one Member responsible for ensuring that Written Questions are filed, timeously and regularly. This Member will also be available to offer guidance where needed. The only undesirable effect in this regard, would be the filing of an overwhelming number of perhaps, repetitive or vexatious questions. However, not all parties are involved in the Written Questions process. Some parties leave it to individual Members to decide how and when to submit Questions for Written Reply.

Similarly, the corresponding Written Replies are not prepared by the Minister concerned, but rather, by civil servants. This is because they have the time and information at hand that the Minister would traditionally not. Therefore, the Minister’s role is often ceremonial because they sign the replies but they are drafted by departmental staff.<sup>55</sup>

In the South African Parliament, the overwhelming majority of Written Questions are asked by Members of the opposition. During the course of the Fifth Parliament, 18 823 Written Questions were posed to the Executive. 74.5% of these questions were asked by the DA alone. The Economic Freedom Fighters (EFF) asked 14.6%. Only 0.73% of the questions were posed by Members of the governing party, the ANC.<sup>56</sup> A noteworthy statistic is that COPE which had a mere 3 seats in Parliament asked 3.7% of the Written Questions in the Fifth Parliament.





*Graph 2.*

In 2020, 3097 Written Questions were asked by MPs. The trend from the Fifth Parliament continued and the official opposition was responsible for the overwhelming majority of the Written Questions posed to the Executive. The DA asked at least 66% of the total Written Questions in the National Assembly at an average of 23 questions per MP.<sup>57</sup> In comparison, the ANC submitted 0.7 % of the total Written Questions. Other opposition parties including the EFF, the IFP and the FF+ also asked more questions than members of the ANC. As there are parties that ask more questions, there will also be MPs who use the tool more than others.

It is proposed the reason it is unlikely members of a governing party will utilise oversight mechanisms such as the Written Questions and Replies tool, is that government and opposition parties invariably have incompatible interests.<sup>58</sup> Usually, MPs who belong to a majority party choose to maintain the favour of their leadership and comrades. As a result, they are unlikely to make use of mechanism that might 'rock the boat' and alienate them from the party.<sup>59</sup> Further, even if MPs from a governing party have genuine policy concerns, they prefer to use informal channels to bring attention to them or acquire information. This is because they have easy access to the information and can obtain it without casting their party in a negative light or jeopardising their seat in Parliament.

Conversely, opposition parties are particularly interested in exposing the governing party's policy failures as this will draw negative attention to the government.<sup>60</sup> Therefore, we expect that opposition parties will ask more parliamentary questions than governing ones.<sup>61</sup>

It is established then that opposition parties use the tool more often than MPs from the governing party. However, this does not mean that MPs from the majority party do not use the tool at all. When they do use the tool, it is expected that they will refrain from posing questions that will tarnish the reputation of their Ministers, as part of towing the party line, but also, as part of an ongoing campaign for election – for themselves individually, and their party.<sup>62</sup> This will be discussed in greater detail later.

When it comes to which departments get asked the most questions, the answer is difficult to ascertain. Based on legislative, political and socio-economic factors, different departments will be inundated with questions or alternatively operate under the radar. For example, the Department of Police was asked the most questions (272) in 2020, followed by the DoH (248) and DBE (226).<sup>63</sup> The Deputy President received eight questions in 2020, making that office the one with the fewest questions that year. The Minister in the Presidency and the State Security Agency received 14 and 26 questions respectively.

# Why do MPs ask Questions?

Parliamentarians ask questions of the Executive for a myriad of reasons, not least of which is the constitutional onus to hold Ministers accountable. The constitutional obligations demand a commitment from MPs to engage constructively in oversight,<sup>64</sup> whether or not they are Members of the political party currently in government. Written Questions are a means by which MPs can effectively scrutinise government conduct, misconduct or inaction. It has been suggested that MPs ask questions because they must, to obtain information, press the government for action, attempt to gain personal publicity, demand an explanation, attack certain Ministers, or rally the opposition troops. Through this process, Ministers are asked to give precise and reliable information about their conduct.<sup>65</sup>

Written Questions are fundamental for the collection of critical information<sup>66</sup> in the process of monitoring government activity. This can be information about legislation, policy, the conduct of departmental functionaries, or other issues that have caught the attention of the legislators such as problematic expenditure, securing a commitment for funding, or the nation's international relations.<sup>67</sup>

This information does not always feed into the parliamentary agenda. MPs, as elected representatives, can also gather information based on requests from their constituencies. This serves to assist in the resolution of problems experienced by organisations and people who live in South Africa via the Written Questions mechanism. MPs are often influenced by people outside of Parliament to ask questions. For example, questions can be based on information from the business sector, civil society and individuals. Such interest groups will be interested in the responses to Written Questions as they will likely provide precise information and/or commitment from government.<sup>68</sup>

IFP MP, Liezl van der Merwe, notes that the majority of her questions are based on information received from members of her constituency, non-governmental organisations (NGOs) and civil society organisations. In addition, oversight visits are also an important source of Written Questions. This speaks to the important relationship between the various oversight tools that are available to MPs, and that one cannot employ one to the exclusion of the others.

Another reason that MPs submit Written Questions is obstruction. Sometimes MPs have an acrimonious relationship with particular Ministers, especially if an MP serves on the corresponding parliamentary portfolio committee. As a result, they are in direct competition for votes or they differ on critical manifesto/election issues. Therefore, they may submit questions that might be considered to be unreasonable.<sup>69</sup> Thus, there also is an ideological or obstructionist component to parliamentary questions.

MPs and their respective political parties also use Written Questions as a means by which to maintain and defend their ownership of issues. These are usually matters that have primacy in their party's election

manifestos and that they have used as a campaign header to garner votes. They use Written Questions to communicate to the media for instance, that they are 'working' on those issues, or that their competitors are not.

MPs play a dual role in the legislature. One as parliamentarians and the other as party politicians.<sup>70</sup> When it comes to oversight, one role may take precedence over the other. MPs occupy their seats in Parliament, often based on their performance plus their allegiance to their respective parties. This means that there may very well be instances where MPs ask questions because they have been delegated to do so by leadership.<sup>71</sup> Consequently, while 'the formal initiative for [Written Questions] belongs typically to individual MPs and answers are typically provided by individual ministers',<sup>72</sup> the process may very well be managed by a collective.

Mr Narend Singh, IFP Chief Whip and a long serving MP, says that 'experience over the years will show that written questions, along with motions and matters for urgent public debate, coming from the governing party, are all sweetheart content, initiated by the Minister themselves in study group'. This is arguably undesirable as its singular intent is to allow the governing party to put its best foot forward, regardless of other issues of concern that would serve the public best, if addressed.

With regard to the permanent campaign for election, while we see the expected spike in parliamentary output during an election year, and in the year preceding, it is important to recognise the existence of a permanent election campaign by political parties. This takes place in a significantly muted manner via parliamentary tools such as the Questions for Written Reply mechanism. Written Questions can be used to draw negative attention to issues that opposition parties believe are being handled poorly. This is known as negative campaigning.

Simply defined, negative campaigning is any criticism or attack levelled against a political opponent.<sup>73</sup> The use of Written Questions in negative campaigning, primarily by opposition MPs, is established. The posing of scathing questions that expose information that government may not want revealed is part of this permanent campaign for election. It has been argued that when utilised this way, Written Questions are symbolic as they are unlikely to yield tangible results such as a commitment from government or policy reform.<sup>74</sup>

Finally, MPs make use of the Questions for Written Reply mechanism because of the limitations that are placed on the use of Oral Questions. A political party can only ask so many Oral Questions per plenary session, and even then, there is no guarantee that it will be given an opportunity to pose its question and hear the reply from the relevant Minister on the floor of the House. Therefore, Written Questions and Replies form part of the overarching oversight machine that is available to MPs.

# Monitoring Unanswered Written Questions

## Background

The Rules Committee is responsible for developing the procedures, rules, orders and practices concerning the business of the NA, as well as monitoring their implementation. This is the forum in which the perennial issue of late replies and unanswered Written Questions has been raised over the years.

Unanswered Written Questions have been contentious, especially with opposition MPs, for many years. No sanction existed for Ministers who defaulted on questions. The only available resolution was the transfer of an unanswered Written Question to the Question Paper for oral reply by the relevant Minister.<sup>75</sup> Even then, an answer could not be guaranteed.

In 2002, the 3<sup>rd</sup> Edition of the Rules was amended to require unanswered questions to be endorsed to indicate that they had not been replied. Again, this did little to secure replies beyond perhaps shaming the Minister responsible on paper. This status quo prevailed until the problem made its way onto the Rules Committee agenda in 2003. The Rules Committee resolved to establish a mechanism to deal with unanswered (Written and Oral) questions. Under that mechanism, the Speaker would receive a quarterly report on unanswered questions. The Speaker would then write to the relevant Minister, copying in the LOGB, the appropriate MPs, and the committee that oversaw the Minister's portfolio. This letter was also published in the Announcements, Tablings and Committee Reports (ATC). However, the Independent Panel Assessment of Parliament later found the mechanism to be ineffective. In its 2009 findings, this Panel urged Parliament to recognise that unanswered or poorly answered questions undermine the effectiveness and dignity of Parliament.<sup>76</sup>

Unanswered Written Questions were only seriously considered again in 2015 by the Rules Committee<sup>77</sup> when the process of amending the rules to secure more accountability from Members of the Executive was set in motion. This led to the insertion of Rule 136 – 'Monitoring replies to questions'. Rule 136(1) stipulates that the Speaker must, in consultation with the Rules Committee, *establish a system via which monitoring and regular reporting to the House* on questions that have been endorsed as unanswered, takes place. Rule 136(2) states that the LOGB must be informed of any steps taken in respect of a Member of the Executive in giving effect to the monitoring of replies. Rule 146(3) stipulates that where a Minister fails to provide a response to a Written Question, the LOGB must be notified.

## 2016

After Rule 136 was adopted in May 2016 as part of the 9th Edition NA Rules, the Speaker, in consultation with the Rules Committee, was required by Rule 136 to establish a system to monitor unanswered

questions. All parties in the Rules Committee agreed that tightening compliance was needed.<sup>78</sup> In November 2016 the guidelines for such a system were announced by the Speaker. The guidelines proposed that a Subcommittee be established. Ministers who had failed to answer the questions would be required to respond, either in person or in writing, to the Subcommittee. Thereafter, that Subcommittee would submit its report to the Rules Committee with a view to strengthening executive accountability.<sup>79</sup>

## 2017 Resolution

During 2017, the Rules Committee deliberated on and finalised these guidelines for the monitoring system on unanswered questions. The Subcommittee to Monitor and Report on Questions Endorsed As Unanswered would engage defaulting Ministers quarterly on the reasons for their default. It would then report its findings to the Rules Committee, and make recommendations to address the identified challenges. It specified that the Subcommittee was to be established only for the duration of the Fifth Parliament.

The *'First Report of the Rules Committee of the National Assembly, 2017 on the Establishment of the Subcommittee to Monitor and Report on Questions Endorsed and Unanswered* was tabled in October of 2017.<sup>80</sup> However, the Report was not considered by the House and thus it lapsed when the Fifth Parliament was dissolved in 2019. When asked why the Report was not tabled in the House, the Questions Office's Procedural Advisor noted that the Programme Committee which includes all political parties never programmed it for the House's decision.

In response to MPs in the Sixth Parliament asking why the 2017 Resolution to establish a subcommittee had been abandoned, the National Assembly Secretary, Mr Masibulele Xaso, further explained that the then Speaker, Baleka Mbete, was of the view that Parliament should not create new structures for tasks that could be executed without them.<sup>81</sup> Rule 136 required the Speaker and the Rules Committee to establish a mechanism. It did not require the establishment of a subcommittee as the mechanism. The Speaker held that her office, together with the Rules Committee, should be able to implement a mechanism without establishing another committee or subcommittee.

According to the Questions Office's Procedural Advisor, despite a mechanism not being officially in place, the Questions Office – since the advent of Rule 136 – regularly submits a report on Ministers and their track record for responses to written questions to the LOGB. That report is then presented by the Deputy President as part of his report to Cabinet. This way, Ministers who have adverse reports on their Written Replies are expected to be admonished or encouraged to give timely replies to Written Questions.

## 2021

The Sixth Parliament started afresh to fulfil the requirement of Rule 136 for a monitoring and reporting system for unanswered questions. The arrival of the pandemic may have delayed this. Members of Parliament's Programme Committee complained about many Written Questions that went unanswered at the end of 2020. Those that were answered, were often replied well after the 10-day deadline, sometimes months after the fact, even though some questions were urgent in nature.<sup>82</sup> A quarterly 2021 report shows the Speaker had written to 24 Ministers to alert them to and request explanations for 271 delayed replies.<sup>83</sup> Only five Ministers replied to the Speaker, offering reasons and/or expressing remorse for the default. Incidentally, the Ministers whose departments had the most outstanding replies were not among those who responded to the Speaker.

According to the report, the Ministries that had most frequently failed to comply with the deadlines were Social Development (89%), Police (88%), and State Security (88%). The best performer was the Ministry of Forestry, Fisheries and Environment (5%).

In August 2021 the (now former) Speaker, Thandi Modise, proposed a completely new mechanism. This was presented to the Rules Committee as a memorandum.<sup>84</sup> On 13 August 2021, after deliberations on the mechanism, the Rules Committee adopted the proposal, with only two suggested amendments as highlighted in bold below:

### **Mechanism On Delayed Replies To Parliamentary Questions**

- i. The Speaker writes to affected Cabinet members on a quarterly basis, requesting reasons for failure to meet the deadlines of Rules 143(1) where relevant, and 145(5)(a) with regard to all questions that are late and not replied to.
- ii. The Speaker writes to the Leader of Government Business, also quarterly, informing that office of the outstanding replies and correspondence sent to affected Ministers.
- iii. A report on the responses by Ministers regarding unanswered questions be submitted to the Rules Committee for information and published in the Announcements, Tablings and Committee Reports (ATC) for the information of all members.
- iv. In the event of continuous non-compliance or lack of improvement, the Speaker [may] **should** consider a reprimand in the plenary sitting of the Assembly and such reprimand be published fully in the minutes of proceedings of the Assembly.
- v. As a last resort, the Speaker may escalate the matter through a formal complaint directed to the [President and copying the Leader of Government Business] **Leader of Government Business**.

The Subcommittee strengthened the wording to obligate – rather than merely allow – the Speaker to consider a reprimand. The second amendment was removing the formal complaint to the President as a last resort and instead sending it to the LOGB.

The intention behind wanting to communicate the non-compliance to the President is that, while the LOGB is responsible for communication between Parliament and the Executive, Ministers ultimately account to the President, who is responsible for their appointment. Members from the governing party did not want to involve the President in the process. They argued that the President delegated the necessary authority to the LOGB. Opposition Members were unsupportive of excluding the President as thus far, the notification of LOGB on defaulting Ministers, had yielded few results. It remains unclear what sort of action would be taken by the LOGB that would result in timeous action on the part of Ministers.

To buttress the mechanism, there was an acknowledgment of the need to strengthen liaison between Parliament and the Executive, particularly with the Office of the LOGB.

The Committee adopted its Report on the proposal,<sup>85</sup> but not without Members raising certain concerns. The vagueness when it comes to the nature of the reprimand was raised and the imposition of financial penalties was suggested as a reprimand for persistent non-compliance as demonstration of Parliament's commitment to holding Ministers accountable. This was not accepted. It was agreed that the Rules Committee wait to see the impact of the proposed sanctions before taking any other steps.<sup>86</sup>

While the resolution brought with it much optimism, a few glaring issues remained unclarified that could render the mechanism a blunt instrument. The most pressing could be understanding what censure or reprimand could be implemented, beyond naming and shaming by the Speaker in the NA. Further, departmental staff need to be involved in this review process as they are the ones who are largely responsible for the delays.

On 2 September 2021, the National Assembly adopted the mechanism without any objections.<sup>87</sup> There now finally exists a codified means by which to better hold the Executive to account.



# Quality of Written Replies

As with many elements of oversight, the quality of Written Replies depends on a myriad of factors. The state of human resources at government departments is critical factor to both the timing of the response as well as its quality. The content, specificity and subject matter of the corresponding Written Question will also contribute significantly to the quality of reply an MP will receive. It is not uncommon for the name of the MP who submitted the question to influence the type of response one gets. Any combination of factors will influence the kind of written reply that will be submitted.

## NGOs

In attempting to evaluate the quality of the Questions for Written Reply mechanism, several South African NGOs were approached and asked generic questions about their interaction with the tool. Generally, NGOs do not monitor the Questions and Replies mechanism beyond their areas of interest and expertise, and when they do, it is in relation to specific topics, laws and policies. Their interaction with the mechanism is primarily to inform their work, e.g., the focus and direction of their advocacy. From the insights of the NGOs that were interacted with for this paper, it is apparent the perception of the quality of Written Replies varies from department to department. More often than not, the Written Replies are comprehensive, concise and easy to understand. Sometimes, depending on the department and subject matter, Written Replies are verbose and overly-technical in nature. This has the negative effect of excluding members of the public from understanding the content. While the irritants of delayed responses and incomplete replies exist, the attitude towards Members of the Executive is that they fulfil their mandate in a generally fair and acceptable manner.

## MPs

MPs are more difficult to impress due to their consistent interaction with the Questions for Written Reply tool, among other oversight mechanisms. In general, MPs across the board agree that Written Replies are of an acceptable standard. While timeous response remains a perennial concern, the contents of responses are more often than not, accurate, verifiable and signed by the relevant Member of the Executive. One gets the sense that the Written Questions and Replies mechanism ranks highly amongst MPs as a means of oversight. The strict procedure and formatting rules should ideally leave no room for obfuscation. However, not all departments fulfil their role in the system. MPs indicate that the quality of the response can be honest and comprehensive, particularly where Ministers (and their staff) take pride in providing quality answers, regardless of the source of the question.

The quality of the replies can take a sharp drop where the Minister and MP have a less than amicable relationship, or the MP has been overtly critical of the Minister and/or that department in the past. Some

replies simply mirror the quality of the question; therefore, the responsibility for a comprehensive answer lies with the asker. There are also Ministers who will answer only some subdivisions of the questions, either because the effort of obtaining all the information is cumbersome, or, the Minister simply intends to be evasive and give as little detail as possible.

As MPs rely heavily on the Questions for Written Reply tool, there has been significant effort on the part of Members to compel Ministers to submit good quality replies that are complete and timely.

In early 2021, in a National Assembly Programme Committee meeting,<sup>88</sup> MPs raised two significant issues that they regularly encountered with the Written Questions. The first was the apparent reluctance on the part Ministers to reply to Written Questions on time – sometimes, at all. The mechanism to deal with delayed Executive replies was finally approved by the National Assembly in September 2021 and so is well on its way to what could be an effective resolution. The second problem is, as described by MPs, “procedural compliance”<sup>89</sup> when Ministers reply to written questions.

Procedural compliance can be described as the submission of poorly written replies to posed questions. So much so that the replies cannot be said to substantively answer the questions. The Minister will file a response that is perhaps evasive or does not address all the points raised in the Written Question. However, because a Written Reply has been recorded on all the relevant documentation, the Minister can show and prove that a response was sent, regardless of the standard of the contents.

Procedural compliance has been described by MPs as a form of non-compliance with the requirement to answer Written Questions.<sup>90</sup> The issue has been raised numerous times by opposition parties. However, a more lasting and effective solution is needed, otherwise, MPs draft and submit Written Questions in vain as the deliberate evasiveness makes a mockery of the oversight process. In truth, this conduct is problematic in so far as it obstructs the securing of accountability and transparency by parliamentarians.

A vital argument against the amendment of the Rules to address and possibly expressly sanction Ministers who file such responses is that it is difficult to evaluate what qualifies as a substantive response. Such an evaluation is largely subjective and the establishment of a uniform yardstick against which to measure Executive replies would be nothing short of a nightmare undertaking. Further, requiring answers to be ‘satisfactory’ would open up the mechanism to abuse from MPs. Finally, writing to the Speaker as an alternative would also be unlikely to yield positive results as it would require that office to adjudicate an endless deluge of Written Replies.

While the concern of procedural compliance is a valid one, unfortunately, MPs are at the mercy of Ministers and will have to trust the Executive to engage with questions reasonably and in a bona fide manner that aligns with the constitutional obligation to be accountable to Parliament.

# Who Uses Questions and Replies Data, and Why?

It is expected that Written Questions and their corresponding replies are monitored by MPs more than any other stakeholder. As the posers of the Written Questions, they have a vested interest in the replies submitted by the Executive. There are multiple ways in which these can be monitored and utilised.

According to EFF MP, Naledi Chirwa, a weekly question paper is circulated to all members of the legislature. This allows Members to keep track of the questions asked (by themselves and others) and answered, and note late replies as well as non-replies. The responses (or lack thereof) are used to influence the agenda of parliamentary portfolio committees and MP's interaction with Ministers and departmental representatives.

ANC MP Qubudile Dyantyi says that MPs have the option of monitoring any and all questions asked by MPs, but it is more likely that they will elect to monitor the questions that they pose themselves, along with questions to Ministers who are responsible for the committees on which they serve. Further, governing party MPs will probably monitor questions that come from the official opposition's camp more than any others. Due to the sheer volume of Written Questions and Replies, it is difficult, if not impossible, depending on the responsibilities and commitments of an MP, to follow up on all the questions that even they themselves ask. This is particularly true if an MP is quite active in using the mechanism. This is where issue driving and prioritisation become essential.

Ms Chirwa says there are various responses to the Written Replies. Replies could lead to oversight visits for further investigation, interaction with affected communities as well as sharing in the media to draw attention to the issues (negative campaigning or positive campaigning.) Many Written Replies are disseminated into the public arena for any of the above reasons. Political parties use the media - both traditional and social - to share information garnered from Executive replies. Those parties with websites will often share information there, others will hold press conferences, issue press statements or write opinion editorials on issues they believe deserve the added media attention. This could in turn trigger action from government in the form of investigations, the establishment of committees and policy creation or amendment. This could also trigger extra governmental and vested parties to initiate litigation or inform their advocacy strategies.

Mr Dyantyi says that responses can be communicated to the communities from which the inspiration for the Written Question arose, particularly in the area of an MP's deployment – bringing parliament to the people. Sometimes the replies will be used to assist NGOs or members of the community with a pressing issue. This has the potential to lead to further interaction with the relevant department, protest action, engagement with the local government, the drafting and tabling of Private Members Bills or even litigation in a bid for recourse.

# Comparative Analysis

As Questions for Written Reply are considered to be one of the most widespread forms of parliamentary scrutiny, understandably, numerous legislatures across the world make use of them. Legislators in these nations submit Written Questions, with the expectation of a Written Response from an Executive Member within a reasonable, pre-established period. However, drawing comparisons between jurisdictions is not a simple task. While Written Questions feature in many parliaments, individual institutional variables such as different procedures, make it complex.<sup>91</sup>

One of the reasons Written Questions are a popular oversight mechanism across the world is that, as opposed to the tight restrictions placed on oral questions, there are significantly fewer procedural restraints placed on written questions. Predictably, written questions will be used more in some jurisdictions than in others, as they feature as a core parliamentary function in some countries, and not others.<sup>92</sup>

## New Zealand – procedural features

Much like South Africa, New Zealand employs both Oral and Written questions to scrutinise the Executive. Like South Africa, there is a limited time allocated for engagement with Oral Questions in the House, so MPs resort to the use of Written Questions to secure Executive accountability. MPs are permitted to submit an unlimited number of Written Questions to a Minister.<sup>93</sup> Written Questions are submitted electronically to Ministers, who are then afforded a period of six working days by which to answer the MP's question.<sup>94</sup> The only time that this procedure may be deviated from is under exceptional circumstances and if the Speaker authorises it.<sup>95</sup> The electronic management of lodging and replying to Written Questions is done through the Office of the Clerk.<sup>96</sup>

Unlike in South Africa where an MP may only submit three Written Questions a week, MPs in New Zealand are not constrained by a limit to the number of Written Questions that they may submit. However, the Business Committee has asked members to show restraint when exercising this form of oversight to manage the volume of questions lodged<sup>97</sup>. Presumably to guard against abuse of the tool, the Standing Orders Committee reviews the overall volume of questions lodged from time to time.<sup>98</sup>

Once lodged with the Clerk (New Zealand's equivalent of the South African Questions Office), all questions are checked for compliance with the Standing Orders. Should it be found that that a question does not meet the standard, it is either returned to the relevant MP, or it is 'accepted subject to amendment or authentication of a statement or quotation contained in it'.<sup>99</sup> Written Questions are distributed electronically to the Ministers to whom they are addressed shortly after they have been accepted, and then published electronically on the same day as they are received.

An interesting feature of New Zealand's Written Questions procedure is that it is entirely up to the MP that poses the question whether to seek an Oral or a Written Reply to it. While this prerogative exists, questions that require long or technical replies will likely receive a written response. The Minister to whom the question is submitted, upon realising the technicality or complexity of the required response, may advise the Speaker accordingly and seek a time extension.<sup>100</sup>

As with South Africa, the procedure for submitting Written Questions is carefully considered. While the procedure has become less strictly enforced over the years, its intention is to lend structure to the process and the content. An example is that MPs may not ask Members of the Executive about personnel actions taken in respect of identified public servants, though they are answerable for employment policies generally as followed in departments.<sup>101</sup>

The Minister's department is responsible for the Written Replies. Replies must meet the requirements set by the rules, including the six-day timeline, conciseness and being confined to the subject matter of the question posed. Replies must be signed by the Minister. Sometimes, MPs are dissatisfied with the replies they receive from the Executive. 'The Speaker does not judge the quality or correctness of an answer, but is concerned to ensure only that an adequate answer is given. This will often depend on the nature of the question asked. Where questions are clear and straightforwardly seeking information, the Speaker will require an informative reply'.<sup>102</sup>

In New Zealand, should a Minister deliberately attempt to mislead the legislature, that action would be contempt. "Contempt" is a term that may embrace all breaches of privilege as well as a great many other types of conduct that the House considers to deserve censure.<sup>103</sup> For a statement to be considered contemptuous, the statement must, in fact, have been misleading, the member must have known that the statement was inaccurate when it was made, and must have intended to mislead the House. The House reserves the right to decide how to address such contempt. Should a minister realise that the information provided in a written reply is incorrect, that minister bears the responsibility to correct that information expeditiously.

The sustained problem in the South African Parliament of delayed replies to Written Questions is also an issue in the New Zealand legislature. However, where delayed replies in South Africa are largely due to the incapacity to meet the set deadline, in New Zealand, its cause is entirely different. The New Zealand Written Questions procedure allows Ministers to give interim or 'holding' replies in certain cases. This feature also appears in the United Kingdom's House of Commons and can be described as an insubstantial answer given where, a Minister is unable, for whatever reason, to provide a substantive or final answer immediately, to hold time for a complete answer to be given at a later date. However, New Zealand has not recognised

holding replies since 2014 and any interim reply is considered unanswered. Thus, replies that arrive after the designated six working days, regardless of interim reply, are considered late.

## Jordan – procedural compliance

Jordan is one of the many jurisdictions in which Written Questions are a scrutiny tool. Where an MP is dissatisfied with the reply to a Written Question, that MP can raise it again with the Minister in plenary for Oral Reply.<sup>104</sup> If the MP is still not satisfied, they may turn the question into an interpellation. An interpellation is a 'formal request for information on or clarification of the government's policy'.<sup>105</sup> In some cases, votes are taken following interpellations, including motions of censure. Interpellations have developed through distinct practice in each country in which they feature, and are understood differently by each nation.

In a book published by the Inter-Parliamentary Union, it explains that 'interpellations often take the form of a written request for information with the intention to launch a debate.' According to the MP, Mr Singh, before 2002, the South African Parliament provided for interpellations which were short, fifteen-minute debates that allowed an MP to debate on the floor, usually about an issue to which the MP received an unsatisfactory reply.

In Jordan, if the relevant Minister does not respond satisfactorily within a month, the interpellation may be followed by a vote of no confidence in the Minister. According to reports, during a plenary in December 2015, as many as five MPs turned their questions into interpellations after receiving Written Replies that they did not consider to be adequate. Thereafter, between 2013 to 2016, members of the House of Representatives submitted over 32 000 Written Questions and initiated 77 interpellations - all to exert pressure on government. Their efforts appeared successful as interpellation is believed to have played a key role in pushing through a number of reforms.

## Brazil

Brazil which has a proportional representation system like South Africa and is a partner in BRICs, also employs Questions for Written Reply. In Brazil, the National Congress representatives may forward written requests for information to the Ministers of State. Refusal or a failure to comply within 30 days, as well as the rendering of false information, is a "serious offence".<sup>106</sup> The representatives are not as busy as their South African counterparts in using this oversight mechanism. Number of written questions asked in 2019 was 1896 with 1838 replies. In 2020, there were 1700 written questions but only a dismal 1354 replies which might be a reflection of the disarray that the pandemic wrought on that country.<sup>107</sup>

# Is the tool effective?

The Questions for Written Reply mechanism can be considered an integral tool in the bag of arsenal that MPs have in the execution of their constitutional mandate to hold the Executive accountable. However, as with any mechanism, it is important to remain mindful of its limitations. There are numerous variables that contribute to its reliability alongside those that lend to its imperfection.

As has been established, Written Questions are a critical tool for obtaining information from the Executive. Mr Singh, whose parliamentary experience spans almost three decades, notes that the accountability lies in the responses being written and on record. However, there is a caveat to this. The Rules allow MPs to withdraw Written Questions from the question paper. Similarly, Members of the Executive may withdraw Written Replies, citing error in the provided information. This opens the mechanism to abuse from both ends. On the one hand, MPs from the governing party may independently, or upon instruction, withdraw questions that could have a negative impact on the reputation or position of power of the relevant Minister and/or the party. On the other hand, Ministers may withdraw responses that do the same.

There have been instances where replies that could be considered as controversial to the Minister concerned are submitted, withdrawn and replaced with an alternative response. Here is a case study:

## Case Study

DA Member, Ms Emma Powell, submitted a Written Question requesting detailed information about a tender that had been awarded by the Department of Human Settlements. The civil servant that drafted the response went into the necessary detail and provided among other information, the names of the individuals who would benefit from the tender award. The (now former) Minister of Human Settlements, Water and Sanitation signed the reply and it was submitted to the Questions Office. The information was then used by the MP who posed the question to shed light on the Department's alleged hiring of unqualified individuals to perform highly specialised work. This information was disseminated in the media and a significant amount of negative attention was brought to the door of the Minister.<sup>108</sup> Following the media coverage, the MP received a notification from the Questions Office informing her that the Written Reply upon which she had based the media campaign had been withdrawn by the Minister and replaced with the following:

*'I am constrained and prohibited by the document titled "**Guide to Parliamentary Questions in the National Assembly**" from providing the Honourable Member with the name of name(s) of contractors involved in the Summit. The document referred to states that: "Questions are to be framed as concisely as possible. All unnecessary adjectives, references and quotations are omitted. **Names of persons, bodies and, for example, newspapers are only used in questions if the facts surrounding the case have been proven. As the mere mention of such names***



***could be construed as publicity for or against them, it should be clear that this practice is highly undesirable. If a question will be unintelligible without mentioning such names, the Departments concerned are notified of the name (-s) and this phrase is used: ".....a certain person (name furnished)".'***

According to Powell, this answer could have been submitted in an attempt to evade accountability by refusing to provide the requested information. Upon approaching the Questions Office about the Guide that the Minister relied upon in her new response, such a formulation could not be found. The 2016 Guidelines for Questions states: 'A question is not permissible which publishes any name or statement not strictly necessary to make the question intelligible, unless the Cabinet member has used the name or statement or it has been cited in a charge before a court'. However, the Questions Office pointed out that "As is evident from the header it is a guideline for questions and not for replies".

The LOGB Office was not aware of a guide for executive replies. Yet the above passage was cited by the Minister in five Written Replies during 2020, and four times in 2021. The Minister had also used this passage to reply to questions submitted by other Members who oversee that portfolio.

PMG was not able to confirm if such a document does indeed exist for the Executive. The intention to prevent the publishing of names in the manner in which it has been used thus far, has the potential to shield other Members of the Executive from efforts to secure accountability and transparency by MPs. This would be in direct contradiction of the powers extended to the legislature to do exactly this.

## Procedural Compliance

Procedural compliance is a problem that has been raised by numerous MPs as an obstacle in the path of accountability. The Executive may provide scant, incomplete or evasive answers to Written Questions. This serves to frustrate MPs who are not always able, due to their myriad commitments and responsibilities, to follow up on such responses. Where there are no effective or implemented consequences for procedural compliance, or for the failure to comply, 'the incentive of civil servants and ministers to provide full and sincere answers is uncertain'.<sup>109</sup>

However, over time, MPs have found creative means by which to circumvent procedural compliance. Members may request information from departments via the Promotion of Access to Information Act<sup>110</sup> (PAIA) process. While these requests may have a lengthy waiting time and an appeal might be necessary, the constitutional imperative for the access to information<sup>111</sup> means that MPs are more than likely to obtain the information they seek. MPs may also approach the relevant departments directly for information. This often removes the need for the Minister's approval, symbolic or otherwise. When it comes to financial information, National Treasury has been found to be a reliable source of information for MPs seeking clarity

and transparency. According to Ms Powell, where there is prima facie evidence of financial misconduct, National Treasury has been known to conduct independent investigations. The Special Investigating Unit (SIU) has also recently become an avenue for recourse.

## PLOs & Department Staff

While the role of the Ministry's Parliamentary Liaison Office in the Written Questions system is limited, it is a critical one. They are the link between Written Questions and the corresponding replies. However, because they are neither competent to answer Written Questions, nor are they assigned that task; it falls on department staff to ensure that complete answers are made available on time. Once the PLO sends the Written Questions to the department, it is sent to the appropriate Divisional Head, who then identifies the suitable unit/person to address the question. Depending on the structure and length of the question, as well as the content being sought, multiple units might need to see the question before the Written Reply is ready. Sometimes, the question is political in nature, requiring guidance from the Office of the LOGB.

There are a number of hurdles in ensuring that timeous replies are made available, as the provision of Written Replies is but one (small) function of government departments. Some Written Questions require verification from numerous sources, and others need data analysis and statistical compilation. Certain questions require consultation with a public entity falling under the Minister's Executive authority. The information sought by MPs is not often readily available.

## Campaigning

As discussed, Written (and Oral) Questions are employed for campaigning - both positively and negatively. Thus, it is expected that parties will ask questions about issues that they are known to be vocal about.<sup>112</sup> The responses can and often do lead to a well-informed legislature that uses its knowledge to drive important issues and scrutinise government better. However, both the questions and replies can take on a symbolic nature which leads one to interrogate whether the mechanism is used as part of the permanent election campaign as opposed to an oversight tool as intended.<sup>113</sup>

MPs can use Written Questions to signal to Members of the Executive, voters and colleagues, sometimes with little regard for the quality of answer likely to be provided.<sup>114</sup> While the interaction between Written Questions and Replies can indeed lead to tangible results as part of the scrutiny of government, they often do not.<sup>115</sup> Governments have to answer parliamentary questions, but they do not need to take any specific policy action. This, therefore, dilutes the effectiveness of the mechanism as an oversight tool, and suggests that MPs can abuse it to further their political agendas, both for the collective party and for themselves individually. While this is arguably undesirable, it has been established that MPs are both political animals and legislators and it is not always possible to separate one from the other.

## Members of Parliament

Another notable observation is that opposition parties are likely to ask more questions than MPs from the governing party.<sup>116</sup> This is because MPs from the majority party are less inclined to intensely scrutinise their own Ministers – who are also their colleagues and leaders. More often than not, majority party MPs will focus on the policies that have been proposed by government and ask sweetheart questions. However, while majority MPs are unlikely to do so, Written Questions provide a key opportunity for them to voice dissent.<sup>117</sup>

This is particularly true when it comes to big ticket issues like health, education, financial mismanagement and even war. Were it that there were no consequences for public dissent among the ranks of the majority party, this tool would be instrumental in changing policy direction as well as possibly fostering better, accountable governance. In any case, majority MPs are more likely to use internal processes to address matters with which they take issue. Opposition parties, on the other hand, have an interest in exposing the policy failures of the government to draw negative attention to the government.

Party discipline presents an obstacle to the efficacy of a majority party MP asking piercing Questions for Written Reply, and this phenomenon is not unique to South Africa. Political parties have strong internal organisations such as study groups that influence how MPs behave. Study group structures that influence are not just standard practice in the Netherlands, but also in other systems with strong parliamentary parties, such as the German Bundestag.<sup>118</sup> It can be argued that South African MPs do not have as much independence as one would expect of an elected representative. This is a direct result of our electoral system that does not allow the voter to elect an individual, but rather the party. Thus, MPs occupy their seats to advance the party's collective agenda and operate as representatives for their party's policies.<sup>119</sup> Hence, nothing can be submitted without the approval of internal structures like the study group. However, sweetheart questions have become a prominent feature of numerous multi-party democracies that make use of questions as an oversight tool.

In the same breath, Written Questions can be relatively free of such constraints, predominantly for opposition MPs. Those party leaders tend not to control access. As such, their Written Questions are 'amongst the most sincere measures of what interests legislators, free from party control. This fact makes it all the more surprising that legislative scholars have been slow to use [Parliamentary Questions] as a measure of preferences, interests and geographical focus'.<sup>120</sup>

In terms of output, the trend is that parties with more resources, financial and human, will likely interact with the mechanism more than smaller ones. More MPs and more staff members will often lead to a correspondingly high interaction with the mechanism. This is not always the case, however. For example,

COPE, one of the smallest parties in the South African legislature, with only two seats in the House, closed the Fifth Parliament with the highest average for written questions per MP for that period.

A key obstacle to the effectiveness of the Questions for Written Reply mechanism is the 10-day limit on replies. When government ignores such deadlines, it undermines parliament's authority and effectiveness in conducting oversight.<sup>121</sup>

As the MP Liezl van der Merwe notes, the South African Executive possesses a considerable amount of power, and that this power has bred impunity and arrogance in some Ministers. Over and above the impunity exhibited by the refusal to respond timely to questions, or the procedural compliance, and even the obfuscation in replies, Ministers operate with the confidence of individuals who know that there are no consequences for their conduct. She believes that this apparent lack of political will replicates in the failure to appear before committees and reluctance to provide committees with information. She also believes that in some instances, Ministers are protected from scrutiny and robust engagement by the presiding officer as well as MPs. This only serves to ensure that effective governance regardless of the oversight used is still but a dream for South Africa.

About their impact, it could be argued that Questions for Written Reply are characterised by an absence of direct compulsory consequences both in terms of the legislative agenda and governmental censure. In South Africa, the failure to answer a question substantively, or the disclosure of politically embarrassing information by way of a Written Question or Reply, may have significant consequences for a government's reputation. However, it has limited impact on the Minister responsible for the department from which the embarrassment emanated. This speaks to the core of the reform that has been adopted to lend credence and efficacy to the mechanism.

# Recommendations and Conclusion

It can be argued that the Questions for Written Reply tool is utilised as effectively as possible by, in particular, MPs. Many MPs and Members of the Executive engage bona fide with the tool, and take this duty seriously. As discussed, it is unlikely that the system can ever attain perfection. However, the Mechanism for Delayed Replies is one reform that can assist it to work better as part of the family of oversight options. This tool can indeed be effective for oversight in the scrutinising of Executive action, or lack thereof. This however depends on the Members of the Executive and their willingness to participate in the oversight and accountability processes that are available.

This tool is not the only available means for MPs to hold Executive accountable, however, it is a critical one and is arguably the most used one, especially as plenary sessions and committee meetings have immense time restraints. Since the Replies are recorded, it is perhaps the most reliable tool for the securing of accountability. As we have seen, it is not impossible for members of the Executive to frustrate the efforts of MPs in seeking accountability. It is therefore imperative for members of the legislature to use every available tool by which they can secure accountability from the Executive.

Effective and proper oversight of the Executive requires both MPs and Members of the Executive to fully understand the constitutional reasons and rationale behind accountable government and the purposes it serves. Accountability and oversight can only be effective if recognised by those in power as the central organising principle of our Constitution. The Rules as they exist could not have been drafted better. The fault lies with those who are unwilling to exercise political will to give effect to them. The responsibility for their enforcement lies with Members of Parliament, the Office of the Speaker, the Leader of Government Business as well as members of the Executive themselves. Amendments to the Rules and their guidelines are not effective on their own – political will is required.

We started working on this research before the new Delayed Questions monitoring mechanism was established. The mechanism is well rounded and considered. However, it remains to be seen whether it will provide a strong enough system to ensure effective oversight and accountability. It was agreed that the Rules Committee wait to see the impact of these sanctions before taking any other steps.

Some recommendations emerging from this paper:

- Conduct workshops for MPs, Ministers and department staff to ensure all stakeholders understand the Rules and Guidelines for Written Questions and how and to whom they apply.
- A clear definition of what a reprimand is, so as to ensure clarity within the process.
- Before the end of the Sixth Parliament, an objective assessment is made of the new Mechanism for Delayed Replies guidelines and its reform impact.

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- <sup>29</sup> National Assembly Guide to Procedure. 2004. P192.
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