

## HOW MANY ACTS MAKE A BILL?

BY N. J. JAMIESON, B.A. (NZ), LL.B. (V.U.W.).

*Senior Lecturer in Law, University of Otago; Former Parliamentary Counsel, New Zealand.*

An exceedingly innovative legislative process originated by our own parliamentary counsel office in 1977 already shows signs of posing problems. This is the legislative process whereby different principal Acts are amended by provisions which, although introduced to the legislature by way of the same Bill, end up by way of being enacted as separate Acts. The process is an extension of the Statutes Amendment Bill procedure,<sup>1</sup> unique to the New Zealand legislature.

Last year, some 42 separate amending Acts (Nos 60-101) originated in the Statutes Amendment Bill. In 1982 there were two Statutes Amendment Bills giving rise to 61 separate amending Acts (Nos 56-111, and Nos. 170-174). The same legislative procedure in 1981 accounted for 50 Acts (Nos 58-107), in 1980 for 57 Acts (Nos 99-155), and in 1979 for 55 Acts (Nos 70-123, and 128).

Statutes Amendment clauses deal with every conceivable issue. In 1980, for example, they amended the law, among other things, in relation to apple and pear marketing, boilers, lifts and cranes, carriage of goods, coal mines, commerce, the dairy industry, fisheries, gaming and lotteries, geothermal energy, immigration, industrial relations, innkeepers, margarine, marine reserves, medical practitioners, walkways, and workers' compensation. In 1981, among other things they dealt with accident compensation, animal remedies, company law, criminal justice, family proceedings, fisheries, the fishing industry, forests, gaming and lotteries, the gas industry, insolvency, meat export, medical research, moneylenders, noxious plants, pawnbrokers, the police, the potato industry, radiation protection, real estate agents, unit titles, trespass, and wildlife.

There are various rules which have to be complied with for inclusion of proposed legislation in the Statutes Amendment Bill. The proposals must be non-controversial and capable of expression in not more than two substantive clauses. On the whole the result is to deal in the one Bill with many minor if not trivial amendments. Most of these, although numerically large in the recorded output of enactments, involve no real issue of substantive law and certainly none of legal principle. Indeed, should the provision prove controversial, it will be culled from the Bill during the legislative process.

The dangers of the excellent legislative process provided by the Statutes Amendment Bill arise first inherently from the assumption that what is politically non-controversial lacks legal significance, and secondly from the risk of political pressure (to be withstood by strength of parliamentary counsel) to tuck away contentious issues among the non-contentious, and to proliferate Statutes Amendment Bills until there are (as for 1982) more than one a year.

Despite these dangers, the Statutes Amendment procedure has established its worth in New Zealand's legislative process. It enables a single Bill to

<sup>1</sup> See D.A.S. Ward "Current Problems in the Legislative Process" (1976) 3 Otago L.R. 535-537 for an account of this process.

encompass a diversity of minor matters, each of which will, on enactment, be accorded individual indexing in the Statute Book as an amending Act, in relation to its principal Act. This avoids the plethora of law reform, finance and omnibus Acts which encumber the Statute Books of other jurisdictions. The result is to preserve the literality of our Statute Book which we profess by way of our doctrine of textual amendment. The purpose of this paper is to examine the consequences of extending the Statutes Amendment procedure for our Statute Book since 1977.

In 1977 the Industrial Law Reform Bill gave rise to four separate Acts — the Agricultural Workers Amendment Act 1977, the Aircrew Industrial Tribunal Amendment Act 1977, the Industrial Relations Amendment Act 1977, and the Waterfront Industry Amendment Act 1977. By the same legislative process, the Contraception, Sterilisation and Abortion Bill resulted in eight separate Acts, and the University Acts Amendment Act gave rise to seven separate Acts.

In 1978 four separate Acts resulted from the Misuse of Drugs Amendment Bill; three from the Industrial Law Reform Bill; and two from the Contraception, Sterilisation and Abortion Amendment Bill.

Seven separate Acts emanated from the Courts Amendment Bill in 1979, and six more from the Courts Amendment Bill in 1980. Nine separate Acts originated in the Law Reform Bill in 1982. Nine separate Acts were also introduced in 1982 as part of the Official Information Bill. In 1983, eleven separate Acts originated as part of the Industrial Law Reform Bill, which so far holds the record for this sort of legislative profligacy. These are the circumstances in which the conundrum “How many Acts make a Bill?” is posed by way of enquiring into the consequences of this legislative process for the Statute Book.

When the Statutes Amendment process was extended in 1977, giving rise to Industrial Law Reform, and University Acts Amendment Bills, parliamentary counsel had a clear purpose in mind. Their object, in the case of the universities legislation, was to correlate within one Bill, provisions which had the same effect but which operated by way of amending the different principal Acts as they each applied to their respective universities. Parliamentary counsel must be congratulated on the exercise of this initiative. Separate principal Acts for each of the universities can be justified, if at all, only by their different dates of foundation and other claims to individuality. Arguing that each institution ought to have its own legislation seems at least odd if not altogether self-contradictory. This is so not only because in theory each university professes to be universal, but also because in practice the principal Acts applying to each of the universities are virtually identical. For the sake of our Statute Book therefore, the universities legislation stands in sore need of rationalisation. The University Acts Amendment Bill could be regarded as beginning this sort of endeavour. Unfortunately, however, the process was never continued, far less intensified. Since 1977, the universities legislation has been amended via the Statutes Amendment Bill.

The extension of the Statutes Amendment process has nevertheless continued and intensified in most other fields of legislation. This is interesting, because by grouping certain statutes together as relating to, say, industrial relations or courts, or official information, the endeavour to classify or categorise different kinds of law is affirmed. This is unusual

for a common law legislature. It was last expressly attempted for New Zealand, but given up thereafter, by the Public Acts of New Zealand (Reprint) 1908-1931.

Since 1977 we have experimented for more than half a decade with the extended use of the Statutes Amendment procedure. In the context of this experience we may summarise its advantages as follows:

1. Where identical amendments are made for the same common purpose to parallel legislation, the legislature may be helped towards obtaining a full view of the enterprise by encompassing all the amendments within the same Bill. The public too will be helped by this process, provided that the title and nature of the Bill clearly indicates the extent to which amendments to individual Acts are included. The University Acts Amendment Bill of 1977 is an excellent example of the success with which this legislative device can function.
2. By encompassing the same amendments to different principal Acts within the same amending Bill, attention is drawn, as with the University Amendment Bill, to the need for rationalising repetitive and thus redundant and needlessly complicated portions of the Statute Book.
3. Where different principal Acts, in dealing with issues belonging to the same legal category, such as company law, or torts, or contracts, are amended by virtue of enactments emanating from the same Bill, the classification of law is strengthened in proportion to the propriety with which the issues have been regarded as belonging to the same legal category.
4. Because amendments to different principal Acts under the Statutes Amendment procedure result in independent Amendment Acts, the old problem whereby consequential amendments to diverse principal Acts may be hidden away from both parliamentarians and public in a schedule to some other Act is ended.

These are all very important advantages, but as with every wordly advantage, none is gained without paying a correspondingly wordly price. This price is set by the surrounding circumstances of our Statute Book. Were our Statute Book in better overall shape there is no doubt that our innovative extension to the Statutes Amendment process would reap each of the rewards it fully deserves. As it is in the context of our Statute Book at large, however, the Statutes Amendment process is at risk of being misused. The likelihood is that the process, however well-intentioned, is in danger of subverting the Statute Book still further. This can be understood only by examining the context in which the process operates.

To try and summarise the history of dissatisfaction with our Statute Book would be a lengthy thesis. Of our 1982-83 Parliamentary Session, however, Martin Fine<sup>2</sup> complained as follows:

A brief analysis of last year's legislation yields some rather surprising results: of those 185 Public Acts twelve can be considered as annual recurring pieces of legislation — eg, of appropriation, land tax, finance and regulation — confirming legislation. Subtracting those leaves a balance of 173 enactments: those can be further broken down to reveal 153 amending Acts, and a balance of twenty new statutes. Of those new statutes twelve are pieces of new legislation and eight are consolidating and amending legislation — consolidations of old Acts (eg, Law Practitioners Act) for consolidation of a series of older legislation (eg, Dog Control and Hydatids Acts). Of the twelve new Acts one was statutory recognition of a convention and two were precedent reversing measures — those relating to Samoan Citizenship and the Clyde Dam. The remaining nine new Acts made

<sup>2</sup> "Of Law and Legislation" (1983) NZLJ 29.

up some 4.7 percent of the grand total. A plain conclusion emerges from all this; our Parliament was responsible in the last Parliamentary session for only twelve new measures out of a total production of 185 Public Acts of Parliament.

Investigation in another direction reveals that at least 51 of last year's amending Acts were passed for the purpose of amending similar amending Acts in the 1981-82 Parliamentary session or amending new Acts which have been passed in the last year.

In the context of our present concern we should also note that in 1980 Parliament considered no less than 4 and enacted 3 different Criminal Justice Amendment Acts. In 1982 Parliament dealt with no less than 5 and enacted 4 separate Education Amendment Acts. It enacted 3 separate Post Office Amendment Acts, 3 separate State Services Amendment Acts, 3 separate Summary Proceedings Amendment Acts, and enacted 3 out of 5 Transport Amendment Acts (holding the remaining 2 Bills over). In 1983, Parliament busied itself with a Transport Amendment Bill No. 5.

This formal complexity of our legislative process cannot be justified in the absence of legislative innovation and in the face of the pre-occupation with triviality both complained of by Mr. Fine. If what Mr. Fine writes of our legislature for 1982-83 is true, and an examination of the data confirms its general conclusions, then there is a severe disparity between legislative form and function in the New Zealand Statute Book.

It is said that in the first innocence of our desire to communicate, we use words to share thought, in the adolescence of our desire, we use words to conceal thought, and in the cynicism of old age we use words to conceal the fact that we do not think at all. Whether the severe disparity between the formal complexity of our Statute Book and its lack of innovativeness in substantive law is explained by our desire to disguise our lack of legislative ability is a moot point far beyond the possibilities of this paper to discover. The limited task at present is merely to show how the Statutes Amendment process contributes to the increasing formal complexity of our Statute Book. If some legal commentators<sup>3</sup> consider New Zealand's intensely high legislative output to express a pathological hyperactivity, and others<sup>4</sup> express concern for the lack of innovation and substantive triviality of the same inordinately high legislative output, the risk is real that the process of extending the Statutes Amendment Bill is at present being misused by increasing the formal complexity of the Statute Book. We can see this more clearly by summarising the price paid for extending the Statutes Amendment procedure to other legislation:

1. A proliferation of small amending Acts, sometimes two or three to the same principal Act, occurs in any session.
2. The proliferation of individual amending Acts intensifies the need for reprints and consolidation.
3. Overactive reprinting and consolidation measures impose their own discontinuity and confusion on the Statute Book by confirming its constant state of flux.
4. The end result of obtaining separate Acts can encourage the inclusion of wider and more varied measures than would otherwise be countenanced within the same Bill.

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<sup>3</sup> Geoffrey Palmer, *Unbridled Power? An Interpretation of New Zealand's Constitution and Government* (Oxford, 1979) 77-94.

<sup>4</sup> Fine, *op.cit.*

5. A disparity is opened between Bills and Acts which requires extensive and accurate indexing systems to bridge.
6. A severe strain is imposed on the purposive interpretation of legislation because many diverse amending Acts can only be understood in the context of the Bill under which they were introduced.
7. A new and far more comprehensive system of providing explanatory notes for these omnibus bills is required; especially considering their considerable complexity and wide-ranging effect.
8. Unless the use of the Statutes Amendment process is severely curtailed or new supplementary services created, old problems for the construction, interpretation and administration of statute law will be compounded, and new problems introduced.

For these reasons it is recommended that the present extension of the Statutes Amendment process be reviewed to ensure that the legislative, judicial, and executive integrity of our Statute Book be maintained and continued.