

The Parliamentary Process – A View From Outside

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What happens in the course of passing legislation is very public. When the Act is in force, and particularly if it requires interpretation, reference may be made by lawyers and courts to the parliamentary process of its enactment.

1. Courts frequently track amendments made to the bill on its way through the House. Changes to the wording of the relevant provision can be helpful, even decisive. Thus in *Awatere Huata v Prebble* [2005] 1 NZLR 289 the “before and after” versions of the relevant provision of the Electoral Act were compared, and significance was attached to the difference. (See Keith J at [88])

2. It is common now, although it did not used to be, for lawyers and judges to refer to the documents built up around the bill on its progress through the House. In some cases counsel cite explanatory notes, select committee commentaries, parliamentary debates, and even cabinet papers in an attempt to support the meaning on which they rely. While some judges in the UK courts are beginning to have second thoughts about the use of this material, there has been little sign of retrenchment here. Striking examples include *Frucor Beverages v Rio Beverages* [2001] 2 NZLR 604 (explanatory note) and *Agnew v Pardington* CA109/05, 22 Dec 2005 (select committee commentary).

3. Sometimes amendments made at a late stage in the legislative process cause difficulty, for example because they do not comply with fundamental principles (e g *R v Pora* [2001] 2 NZLR 37 – retrospectivity of penalty) , or because they are not clear (e g *W v W* (2000) 14 PRNZ 157), or because they use a form of words which has not been subject to scrutiny and submissions at select committee (eg the phrase “increase the opportunities for gambling” in s11 of the Gambling Act 2003, which is now before the High Court), or because they do not fit with the overall scheme of the Act.

4. Unusual departures from standard process, even though the outcome may be not unsatisfactory in the particular instance, can still lower confidence in the eyes of observers. Instances include the Weathertight Homes Resolution Services Act 2002 which resulted entirely from an SOP to

the Construction Contracts Act 2002, and the Electoral (Vacancies) Amendment Act 2003, retrospectively validating an MP's tenure of his seat, which was passed through all its stages in one day.

Conclusions Documents like explanatory notes, select committee commentaries and Ministers' speeches in the House are not just for the edification of members of parliament and officials. They can eventually reach a wider audience in a court of law. Their wording is important. Amendments made during a bill's passage may also be scrutinised in court, and if they have been made too hastily and without proper reflection can have unfortunate downstream effects.

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