ANZACATT Parliamentary Law and Practice: short paper

The Passage Through the New Zealand House of Representatives of the Local Government (Auckland Reorganisation) Bill

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Introduction

The Local Government (Auckland Reorganisation) Bill (henceforth "the bill") passed through its first and second readings, committee stage, and third reading under urgency from 13 to 16 May 2009.[1]

The passage of the bill was fraught, with more than 30,000 amendments tabled at the committee stage. It called into question the fitness of the House's practices regarding the tabling of amendments in the digital age and prompted discussion of whether the use of delaying tactics brought the House into disrepute. These events had a strong influence on the revision of related Standing Orders that came into effect for the following Parliament.

Auckland's local government was the subject of an inquiry by a Royal Commission established in October 2007 by the Clark Government. The Royal Commission reported in March 2009. It proposed replacing all existing councils with a single unitary authority.[2]

By the time the Royal Commission reported, the National-led Government of John Key was in power. The Key Government accepted the structure recommended by the Royal Commission and initiated the law changes necessary to implement the new structure in time for the local elections scheduled for October 2010.

The bill was the first of three, the enactment of which would bring the Auckland unitary authority into being. It established the new council and laid out the transitional arrangements.

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[1] As the bill passed under urgency, in parliamentary time the process took place on one day: Wednesday, 13 May 2009.

[2] Executive summary of the Report of the Royal Commission on Auckland Governance, accessed 8 September 2012: http://ndhadeliver.natlib.govt.nz/ArcAggregator/frameView/IE1055203/http://www.royalcommission.govt.nz/.

The political background

As had become the practice under the New Zealand mixed-member proportional system, the minor government parties had supply-and-confidence agreements with the National Party. The issue of Auckland governance was not a confidence issue and the Māori Party voted against the Government on the content of the bill. However, ACT and United Future supported the bill, so the Government's majority was assured.[3]

The Labour Party supported the creation of a unitary authority, but opposed the bill because of what it regarded as the haste of its passage through the House under urgency, and the by-passing of consideration by a select committee.

The Green Party agreed with Labour's objections to the bill, but also opposed the unitary authority in principle. The Greens lodged only amendments that were in line with their policy on this issue and did not seek to delay the bill.

Procedural notes

Amendments

Amendments can be lodged in the form of a Supplementary Order Paper if presented in time to be formatted and printed. Otherwise, amendments must be signed and delivered to the Clerk at the Table with six copies attached.[4] Except for three SOPs all amendments to the bill were tabled amendments in this form.

Voting

Except for personal votes on matters of conscience, voting in the House of Representatives is by party vote—the Clerk at the Table calls each party and a member announces the votes. A vote takes from 45 seconds to a minute, though this time was extended by a few seconds on many occasions during the passage of the bill when opposition parties voted in Māori, which necessitated interpretation.[5]

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[3] The bill was in the name of Hon Rodney Hide, Minister of Local Government and leader of the ACT Party.
[4] In practice, amendments are often lodged at the Table Office.
[5] The Māori Party usually voted in the Māori language. It was a departure from the usual practice for other parties.

The committee stage

If a bill is drafted in Parts, consideration by committee of the whole House is Part-by-Part (unless the committee is instructed otherwise by the House). Voting on amendments to each Part, and on that Part standing part of the bill, takes place at the end of the debate on that Part. Consideration of the preliminary clauses takes place after that on the Parts of the bill.

The passing of the bill

The preliminaries

The Government had signalled its intention to move urgency for the bill and other legislation on Wednesday, 13 May 2009. The debate on the first reading began early on Wednesday evening. The second reading was completed by mid-morning on Thursday, when the committee stage began.

Committee stage

Though the vehemence of the Labour Party on the bill was clear, the extent of the party's ability to prolong the committee stage was not apparent as the committee stage began. The bill was only 29 pages long, after all. Few felt that the House would sit beyond Friday morning, at the latest.

It became apparent that Labour's strategy was to delay proceedings by the lodging of huge numbers of amendments. The aim was to prolong the time spent in voting in an attempt to force the Government to refer the bill to a select committee.

The amendments were lodged in batches, as late as possible during the debate on the relevant Part. This was to minimise the time the Government had to consider procedural counter-measures that would knock out some amendments, and possibly to reduce the time the Chairperson had to take advice.

The great majority of amendments involved a range of dates or numbers. Such amendments could be mass-produced via a spreadsheet. The House's rules for the tabling of amendments had been devised in an age in which no aid to their production more sophisticated than carbon paper could be envisaged.

In total, 30,046 amendments were lodged. Of these, 962 went to the vote. Even though 96.8 percent of the amendments were ruled out-of-order, the committee stage lasted until Saturday afternoon, a total of just over 31 sitting hours. Had as few as 10 percent of the amendments been in order, Labour's strategy would probably have been successful.

The largest number of amendments were to Part 3, which dealt with the transitional arrangements. Labour lodged 9,899 amendments to the maximum number of members to be appointed to the Transition Agency by the Minister to replace "4" with numbers from 102 to 9,999.

The use of blocking amendments by the Government accounted for most amendments by taking advantage of the Minister in charge of the bill's ability to have government amendments taken first. The committee having reached a decision on an issue, further amendments become out of order as being inconsistent with a previous decision of the committee.

On the first two occasions on which this tactic was used, the Government used Labour amendments to knock out other Labour amendments, firstly to subclause 3(1), which consisted simply of the statement:

> Local government arrangements for the Auckland region have caused considerable concern for at least 50 years.

Thirty-one amendments substituting a different timespan were negatived. The Government then accepted an amendment replacing "50 years" with "49 years". This had the effect of rendering out-of-order a further 101 amendments.

Thereafter, Labour took the precaution of lodging amendments with the date or number that differed most from that in the bill first, leaving the Government to devise its own amendments.

The 9,899 amendments to clause 11(1) mentioned above were dealt with in this way, by a Government amendment increasing the number of ministerial appointees to the authority to five.

The blocking amendment was not a universal panacea. In some cases, amending dates was impractical. The most obvious example of this was the one-clause, Part 2 of the bill. There were 849 amendments to it lodged, of which 391 were voted upon. Those

amendments proposed changes to the date on which the new council would be established. A change, even of one day, would have left Auckland with no local government. With more time it might have been possible to craft amendments that overcame these problems. At short notice it was too great a risk.

Amendments without numbers were more difficult to counteract with blocking amendments, though the name of the Act—the Local Government (Tamaki Makaurau Reorganisation) Act—is evidence that it was not impossible.[6] This change to the title clause acted as an effective disincentive for the lodging of alternative names.

Number-free amendments had other procedural obstacles to overcome. Sixteen amendments proposing alternative names for the council were ruled out-of-order as not being serious amendments, but the inclusion among the 48 that were put to the vote of "Super Cone Council" and "Auckland Supremo Council" suggests that this remedy was lightly applied.

Amendments such as these could not be produced in the industrial quantities of those with numbers, but had a slightly better chance of getting through the procedural obstacle course.

Some amendments proposed new Parts. Each would be a new question with a new debate. However, amendments creating new Parts have extra hurdles to surmount, particularly in terms of being in scope, or being relevant to Parts already considered. Only two of 20 proposals for new Parts were debated.

Consequences

In the short-term

Most of the media coverage of the committee stage of the bill focused on the proceedings rather than the content of the bill. Coverage was overwhelmingly negative, the tone disparaging. The cynicism prevalent in coverage of Parliament was given ample sustenance by the passage of the bill. Public reaction was mostly hostile, but partly mystified.

[6] Tamaki Makaurau is the Māori name for the Auckland area.

There was awareness across the parties that the public perception of Parliament had been diminished by the events of 13 May 2009 (a few days after the first publication by the *Daily Telegraph* of British MPs' expenses ignited the furore about Members' expenses that quickly spread around Westminster parliaments of the Commonwealth).

Consequently, when the Local Government (Auckland Council) Bill had its committee stage in September 2009 negotiations resulted in the leave of the House being granted for the debate to be one of 16 hours with one question. Though the committee stage was taken under urgency, this arrangement ensured that the rancorous tone of May was absent, as was the lodging of filibustering amendments. Also, provision was made to hold question time as usual despite the House being in urgency. This became the usual practice for the rest of the 49th Parliament, and went some way to placating the opposition parties.

Changes to Standing Orders

The Standing Orders Committee reported on its review of Standing Orders in September 2011.7 [8] The report did not mention the passage of the bill, but the influence of those events was clear. Without them the recommendations of the committee would not have been as extensive as they were. Those recommendations were accepted by the House and consequent amendments made to the Standing Orders for the 50th Parliament.

The Business Committee was given enhanced powers by the reforms to Standing Orders.

> An overall theme of our proposals is the promotion of constructive engagement through the Business Committee regarding how business will be dealt with by the House.[9]

Because the Business Committee makes decisions by unanimity or near unanimity it is essential for the Government to consult with other parties to achieve agreement for any course of action that it wants the Business Committee to agree to. In cultivating such engagement between parties, the Standing Orders Committee is attempting to prevent a repetition of the events of May 2009.

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[7] This is standard practice towards the end of every Parliament.
[8] *Review of Standing Orders*, Standing Orders Committee, September 2011.
[9] Ibid, p 9

Urgency and extended sitting hours

Urgency has long been a misnomer in the New Zealand House of Representatives. Little of the legislation passed under urgency is genuinely urgent. It has most commonly been used as a device to extend the sitting hours of the House, but during the 49th Parliament its use became the subject of heightened criticism, particularly after the passage of the bill.

A submission to the Standing Orders Committee by the Urgency Project—an academic group under the auspices of the New Zealand Centre for Public Law and the New Zealand Law Society—summed up the problem:

> …"urgency" can attract negative public attention even when it has been utilised in relatively benign circumstances. The very terminology of "urgency" sends out a false signal to the electorate and therefore confuses it as to the constitutional ramifications of what is occurring.[10]

The submission's analysis of the use of urgency showed that, up to November 2010, the 49th Parliament had spent some 27 percent of its sitting hours under urgency, with only the 45th Parliament being under urgency for a greater proportion of its time since the 1996-99 Parliament. The passage of the Local Government (Auckland Reorganisation) Bill was the main contributor to this statistic.

The committee's report to the House made recommendations to reform the mechanisms that produce extra sitting hours for the House. A new category of sittings—extended sitting hours—has been introduced for the 50th Parliament, enabling the House to extend sittings through to 1 pm the following day. An extended sitting can be triggered either by a motion without notice (but with the Business Committee having been informed), or by a Business Committee determination.

The Standing Orders Committee's report expressed its wish that:

> …urgency should be confined to situations that genuinely require an urgent approach…[11]

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[10] Standing Orders Review 49th Parliament, Submission to Standing Orders Committee, The Urgency Project, Claudia Geiringer, Polly Higbee, and Elizabeth McLeay

[11] *Review of Standing Orders*, Standing Orders Committee, September 2011, p 19

However, the use of urgency simply to make progress through the legislative programme was not ended. The bar for the use of urgency has been raised, but only slightly. The minister moving an urgency motion must now provide more than the perfunctory explanation previously required as to why urgency is necessary.

By the end of September there had been seven extended sittings in 2012, with three more signalled to take place before the end of the year. Urgency had been taken only once, for Budget-related legislation. The Government has appeared determined to exercise goodwill in the use of extended sittings. All such sittings to date have taken place by determination of the Business Committee, which requires near-unanimity among the parties represented in the House. All the business dealt with in extended sittings has been lacking in contention, the Government apparently prepared to leave more controversial measures to the time freed up by extended sitting hours. There appears to be a consensus in the 50th Parliament that the procedural antagonism on display during the passage of the Local Government (Auckland Reorganisation) Bill is to be avoided.

However, it is too early to judge the extent to which extended sittings satisfy the need of governments for extra parliamentary time. That may not be possible until there is next a first-term government with a heavy and controversial legislative programme.

Committee stage

None of the issues raised by the events that occurred during the committee stage of the Local Government (Auckland Reorganisation) Bill were new, but it did put some of these issues in sharp relief. The Standing Orders Committee clearly has the passage of the bill in mind when it regrets:

> …last minute amendments…as a result of negotiations or procedural tactics.[12]

The committee's recommendations promote a no-surprises approach. The government is encouraged to signal the timing of committee stages in advance. The Business Committee may determine departures from the Part-by-Part approach to consideration by the committee of the whole House to ensure that there is proper and appropriate debate. The

[12] Ibid, p 44

Chairperson is able to group amendments in one member's name (there are early signs of a trend towards lodging amendments in the names of different members, possibly to counteract this power).

A direct response to the mass lodging of amendments on the bill allows the Chairperson to select amendments to be voted upon from multiple amendments on the same issue. This power makes such mass lodging futile, as a small, representative selection will be made from them that allows the will of the committee on an issue to be tested. For example, presented with 365 amendments, each changing a date to a different day of one year, the Chairperson might select six, giving the committee options at two-monthly intervals. Had such a power been available during the passage of the bill, the number of votes required would have been dramatically reduced.

Journals of the House

The form of the *Journals of the House of Representative* had to be reconsidered after the bill's passing. The Journals record all amendments, whether voted upon or ruled out of order. Amendments lodged in the form of a Supplementary Order Paper are referred to as "amendments set out on Supplementary Order Paper No XX". Before the passage of the bill, the full text of all amendments not in this form was recorded in the Journals. The lodging of an unprecedented number of amendments to the bill made this impractical.

While all amendments that were voted upon were recorded in full, sets of amendments in the name of the same member that had been ruled out of order were summarised. For example:

> *Clause 10(1):*
>
> To insert the following paragraph:
>
> > The Auckland Transition Agency shall also be known as the Auckland Transition Agency responsible for the Auckland Supercity Proposal until 1 January 2011.
>
> (*Hon George Hawkins*)
>
> Amendment ruled out of order as being inconsistent with a previous decision of the Committee.
>
> A further 939 amendments in the same member's name to add a new paragraph giving the Auckland Transition Agency the alternative name "the Auckland Supercity Proposal" until various dates from 2009 to 2011 were ruled out of order as being inconsistent with a previous decision of the Committee.

29,241 amendments were recorded in this way, without their full text being included. Even so, the Journal for Wednesday, 13 May 2009 consisted of 259 A4 pages. The inclusion of all amendments in full would have occupied an estimated further 2,437 pages.[13]

This approach has is now used whenever amendments differing from others only in a detail have been ruled out-of-order.

Conclusion

At the time, it appeared that the Labour Party's delaying manoeuvres during the passage of the bill were futile. In the short term, failure was absolute. No significant amendments to the bill were agreed, and its implementation was not delayed. In the face of hostility from the media and public opinion, there seemed to be acceptance that such tactics were counter-productive. Though it emerged with its bill intact, the experience also appeared uncomfortable for the Government, which had been caught unawares. The criticism of proceedings tended to be aimed at Parliament generally and did not discriminate between Government and opposition.

Though the relevant changes in Standing Orders for the current Parliament outlined here were not exclusively a consequence of the passage of the bill, it had a strong catalytic effect. While it is too early to judge how effective these reforms will prove to be, there are signs that the Standing Orders Committee's intentions that there should be better planning and greater interaction between the parties are in flower, if not yet bearing fruit. There have been benefits on both sides of the House in this respect. The long days and nights of May 2009 may not have been spent entirely in vain.

[13] Based upon the shortest recorded amendments occupying 2 column centimetres of the page.