

OPINION

Why shouldn't we shoot the messenger?

Senator Bronwyn Bishop recently exhorted the Federal Parliament to spend a whole session *repealing* legislation, rather than passing more. She said that this was a way of 'removing the fetters' on individuals.

This is not exactly a novel idea. Some 250 years ago, Montesquieu expressed similar sentiments, when he said that '[j]ust as useless laws weaken the necessary ones, those that can be evaded weaken all legislation'. Closer to home, however, another 'prominent' Australian told the House of Representatives Select Committee on the Print Media in 1991:

... from the time that I was 18 or 19 years of age to now, I would imagine that 10,000 new laws must have been passed through the Parliaments of Australia. I do not think it is a much better place.

He went on to say:

I would like to make a suggestion to you which would be far more useful: if you want to pass a new law, why not do it only when you have repealed an old one? This idea of passing legislation every time someone blinks is a nonsense; nobody knows about it, nobody understands it, you have to be a lawyer to understand it and there are books up to the ceiling. Laws are put in place purely and simply to do the things that we used to do. Every time you pass a law, you take somebody's privileges away from them.

The prominent Australian in question was Kerry Packer. As if to underline his views, the volume of legislation produced by the Federal Parliament has been well-documented in the last 12 months. In its report on *The Cost of Justice: Checks and Imbalances* (discussed elsewhere in this issue), the Senate Standing Committee on Legal and Constitutional Affairs noted that the Parliament had gone from passing a mere 1860 pages of legislation in 1980 to a massive 6905 pages in 1991 (para 2.11 of the Report). Similar figures were produced by the House of Representatives Standing Committee on Legal and Constitutional Affairs, in its report on *Clearer Commonwealth Law* (also discussed in this issue).

While readers might have some sympathy for Mr Packer's perspective, it might be considered to be a bit of a cheek for a member of the Parliament to come out and complain about the amount of legislation that is passed every year. After all, who actually passes it?

There is, clearly, much support for the notion that the Parliament makes too many laws. More important, however, is the argument that the Parliament makes too many *bad* laws.

Though there do not appear to be any figures available, it seems that a significant proportion of the legislation going

through the Federal Parliament is remedial legislation. An indicator of this is that in the first six months of the current Parliament, of the 166 bills introduced, 117 were amending bills. Put simply, over two-thirds of the bills amended existing legislation.

It is too often the case that the legislation going through the Parliament is intended to fix up errors, omissions, 'unintended consequences' and loopholes in prior legislation. Often, amending legislation applies to legislation that was only passed in the previous sittings of the Parliament.

Why is this so? Why are there so many bad laws? One answer is that they are not bad laws so much as badly thought-out laws.

One reason for this is the way that the Parliamentary sittings are 'organised'. In the House of Representatives, towards the end of every sitting, bills are guillotined through the House in order to meet the deadlines imposed by the Senate (and it should be noted that the Senate was imposing such deadlines for several years before the Greens came on to the scene). In the Senate, there is then a similar end-of-sittings scramble, as the senators battle to get through the Government's legislative program before they can go off on their winter or Christmas vacation (as the case may be).

The nature of this problem is illustrated by the following example. On 6 September 1993, Australian Democrats leader, Senator Cheryl Kernot, asked the acting Manager of Government Business in the Senate, Senator Bob McMullan, how much of the 44 hours of Senate sitting time since the Budget had actually been spent on legislation. The answer was *55 minutes*.

If legislation is not being dealt with in these early weeks of a parliamentary sitting, then it must be getting dealt with at the end. Indeed, a high proportion of bills is passed by the Senate in these closing weeks, when senators are, no doubt, worn-out from the rigours of the preceding weeks of the sittings. The bills tend to be passed in a great rush, with senators under the threat of having to stay in Canberra for extra weeks (a particularly perverse form of detention!), to ensure that all the Government's 'essential' bills are passed.

Is it any wonder that mistakes are made or that aspects of these bills do not receive adequate scrutiny? One of Senator Bishop's colleagues, Senator Amanda Vanstone, recently touched on this in the course of debating a bill in the

Senate. She said:

The quality of work we do in this place – not just what we as senators and members in the other place do, but what we expect of the Public Service – fits a timetable which is, by and large, decided by executive whim. It is widely acknowledged that as a consequence of our failure, collectively, to set up sensible arrangements for dealing with legislation, mistakes are made. [Senate, *Hansard*, 27 October 1993, p.2654]

While the dominance of the Parliament by the Executive should not be underestimated, neither should it be over-stated. Successive Governments have, in recent times, found it difficult to dominate the Senate. Many would argue that the Government's experiences with its most recent Budget demonstrated exactly the opposite. At the very least, it is arguable that the Senate cannot avoid its share of the responsibility for the kinds of problems alluded to by Senators Bishop and Vanstone simply by blaming the Executive.

So, what about something positive? According to Senator Vanstone, one ray of hope lies in the judicious use of the Senate committee system. Justice Michael Kirby's article in this issue serves as a timely reminder that Lionel Murphy had a pivotal role in the development of the Senate committee system. There is much evidence to support the view that Senate committees, properly utilised, have much to offer. If this is to occur, however, the wider community needs to be made aware of the work of those committees and also of the ways of making an input into their deliberations.

Another positive development is the recent report of the House of Representatives Standing Committee on Procedure, entitled *About Time: Bills, Questions and Working Hours*. That committee, chaired by Dr Neal Blewett, has made some fairly revolutionary recommendations about how the procedures of the House of Representatives might be better organised so as to make more efficient use of the time available and to improve the procedures for dealing with legislation. The Report is too detailed to deal with here. It is worth reading in full.

Clearly, there is much unhappiness about the volume and quality of legislation emanating from the Federal Parliament. The bottom line is that it is the Parliament that is ultimately responsible *and* that has the capacity to do something about it. Let's just hope that it does.

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