

Parliament of Victoria *Making the Law* DVD transcript

MAKING THE LAW : PART 1

“Hi, Mrs Hall? “

“Linda.”

“Right, Linda.”

“Kate said you wanted to see me?”

“What do you know about the new anti-bullying law?”

“Do you mean Brodie’s law?”

“Yes, come in.”

“Well, just what I read, it’s a law designed to combat bullying in the workplace, isn’t?”

“I’m thinking about doing a piece on how laws actually get made, the nuts and bolts, you know, the process.”

“Right.”

“It could be something for you to get your teeth into.”

“Well, to be honest I don’t know much about it.”

“Research Jack, we can’t always write about what we do on our holidays, can we?”

“Right.”

“Normally I’d say start at the top and work my way down, but getting an interview with the Premier could take a while.”

“Anyway, Kate has a contact you can talk to.”

“Should I get his number from Kate?”

“I need it in a week.”

“A week?”

“Ok?”

“Many people have taken their lives due to criminal acts committed against them, and just can’t work their way out.”

“The parents of Brodie Panlock have welcomed the Halkich finding, their 19 year old daughter killed herself in 2009 after suffering relentless torment at her workplace.”

“People now realize it is a serious crime and this is a consequence as it can end with young people taking their life.”

“Tougher penalties for workplace and cyber bullies, known as Brodie’s Law will likely be passed in state parliament tomorrow.”

“You don’t mind if I record this, do you? It just helps. Further down the line”

“That’s fine Jack.”

“From the reading I’ve done so far, it seems as though there are several different ways to enact the law, not just one”

“That’s true, but I think the key point to remember is that we have two Houses of the Parliament, we have a bicameral system. In the case of Victoria, we have the Legislative Assembly, the Lower House, the seat of government, and we have the Legislative Council which is the Upper House, seen as a House of Review”

“Could you explain the role of the Parliament as the legislative arm of the government?”

“Well, the Parliament represents the people between elections. Its key function is a law making body, but it does more than just pass bills, pass legislation, its role of course is to scrutinize bills, to debate them. Those bills will be initiated primarily of course by the government of the day, and more particularly, the Executive which is made up of the Premier and the Cabinet, and his ministers or his/her ministers.”

“So how does the parliament as the legislative branch acts as sort of a check or a balance for the executive branch, the Cabinet? “

“In a number of ways, primarily by debating, by scrutinizing that proposed legislation, those bills, but there are other means, for example through question time. That’s an opportunity where members of the opposition get a chance to quiz, to potentially embarrass government members about the issues of the day. But primarily it is through debating proposed legislation. Now in talking about checks and balances we should note that because a government commands a majority in the Lower House, that the ability of the Lower House to check the executive is constrained. It’s a different matter in the Upper House, in the Legislative Council, because as we’ve said, governments don’t necessarily have the majority up there.”

“I was hoping to speak to the Premier later on, about how an idea for a bill gets introduced into Parliament”

“That’s a terrific idea because of course he is the head of government and he’s the chair of the Cabinet, so he’s very important in setting the agenda for the executive, and for what bills are proposed to come before the parliament. “

“Oh hello, I’m calling for the Premier’s Office , my name is Jack Simmonds, I’m an intern at the Leader newspaper, yes I was wondering if I could talk to someone about arranging an interview with the Premier?.....Jack Simmonds”

“As the leader of the government what’s your role in the legislative process? “

“The vast majority of bills for Acts of parliament, so draft laws that then finally become the law of our state they come from the government of the day, so the chair of the Cabinet and the leader of the government is involved at every step along the way. We’re supported of

course by my ministerial colleagues, parliamentary counsel, who do all the legal drafting and of course public servants from all the different government departments and agencies who feed in good ideas and make possible all the drafting and the hard work to come up with the best statute book, the best laws, the most contemporary laws to reflect what the community wants and make sure the community gets what it needs. “

“As you are aware, the focus of the article is on how laws are enacted. We are just using the Crimes Amendment Bullying Bill as an example.”

“Well, that’s a very tragic story, but one that in many respects shows Victorians how the legislative process works when it works really well, and through this process, through the tragedy that was her death, the Victorian Parliament changed the law, to make sure that bullying in the workplace is a crime. “

“In September 2006 Brodie Panlock, a young nineteen year old woman with her life before her tragically ended her life after enduring a persistent campaign of appalling bullying. Those responsible for the bullying were charged with a serious criminal offence under the Crimes Act. “

“That seems a very simple change but it’s a powerful one because it sets a standard, it sends a clear message and if you like, provides some justice for Brodie and her family. People who act in that evil way, people who torment and bully and, over such a long period of time make life so very difficult for people in the workplace, well they should feel the full force of the law. So following that tragedy came a change to the law, reform of the law really, and that becomes a protection, and a standard that can be afforded and must be met by every single Victorian. “

“How does the government find out what issues are important in people’s lives and then develop an appropriate legislative agenda that addresses those issues? “

“Well I think a good government firstly recognises that it doesn’t have all the good ideas for the future, and that you need to listen, we don’t know everything. So having an open door, being able to listen and if you like, setting a standard throughout government, to every day learn and better understand what the community wants, what the community needs, that’s really important the culture of government, is critically important. Obviously the media and public reporting of things that go on right across our state, right across our world really, that’s a very important part of it as well. But it starts with the government acknowledging that we don’t have all the answers, politicians don’t know everything and that a good government is one that listens and learns and then acts to set a standard, provide protection and make sure that the law in every way possible meets the expectations of Victoria in the 21st century.

There are many different groups that have an influence on the government of the day and indeed the parliament, the public debate, that list of issues that are considered to be important right now. When politicians come together in a bipartisan way leaving the politics at the door and work together with a very detailed reference, the work of parliamentary committees is critically important to really examine and get into an issue, sometimes over as long as twelve months sometimes even longer than that, and some of the best work in parliament, some of the most important work is done not in the political contest but in the bipartisan work that parliamentary committees do. Individual political parties have important values, things that they believe in, things that they stand up for and fight for. When you

campaign for office, politicians it'll come as no surprise, make lots of promises and often changing the law, updating the law, reforming law is an important part of those promises. So each side of politics agree on a lot of things but there are some things that we don't agree on, sometimes they require the law to be changed, so that our values can be best reflected in the law of the day. Then there'll also be other specific promises we make. Where changing the law, sometimes legalising things, sometimes banning things, changing the penalties and punishments that people can often receive if they do the wrong thing, they can be the subject of detailed election commitments. So in the broad and in the very specific, party policy is critical relevant to the way we change the laws and the way the laws evolve over time. "

"Hi Linda"

"So, how's that article going? Are you finished?"

"Almost. I'm just finishing it up now. But it'll be done on time, I promise"

"Don't forget we still need to sub it and load it up on the system. What approach did you end up taking?"

"Well, I tried a couple of things. In the end I realised that to really understand what I was writing about I had to get a proper overview of the whole process of how legislation works."

"The whole process?"

"After seeing the Premier, the next person I talked to was Attorney-General "

"Why him?"

"Well, as Attorney-General, this particular law is well within his area. Also I was hoping he could give me an idea of what happens inside Cabinet from the perspective of the actual minister introducing the bill."

"The Premier very kindly offered to give me an overview of his role and also the Cabinet's role in making new legislation. So as Attorney General but also a minister, could you guide me through the steps of how a legislation proceeds through the Cabinet.

"Well, a minister brings a submission for the bill to Cabinet that outlines what's in the bill, it will have some more detail than that. It then is approved by Cabinet after a conversation, and it goes back to the department for drafting and to the Office of Chief Parliamentary Counsel, and what will then come back to Cabinet is the bill with the second reading speech for Bill at Cabinet which is the final approval stage."

"Well, there are lots of different inputs that can influence and shape a government's legislative program and bills specifically. Governments often have to balance the agenda that they want to get done and they had brought to the people at election with issues that come out of the blue sometimes so they respond to community sentiment and community opinion. There are other influences such as lobby groups, interest groups are always trying to influence governments and have their wishes attended to, through the legislative's process. There are parliamentary committees, there is a series of standing investigatory

committees within the parliament that investigate issues and report to the parliament, issues like environment, road safety, and sometimes that will influence the legislative agenda.”

“I understand that the parliamentary counsel is also involved in the actual drafting process itself; could you explain that a little?”

“The parliamentary counsel is an office of the Department of Premier and Cabinet. Now, once a submission for a bill has got the green light within cabinet to go ahead to the drafting process, it will be sent there and that office which mainly comprises lawyers will attend to the actual drafting. Now, I can suggest someone you can go and talk to and give you an interesting perspective on how that drafting process is gone about.”

“Parliamentary Counsel are an essential part of the process because parliamentary counsel effectively translate the policies of government into the laws of parliament. Parliamentary counsel should express themselves on the page clearly. Simply clearly and in plain English, that’s the aim. As you know of course, laws are often drafted in a convoluted and complex form, it should be as least complex as can be truly achieving the aim.”

“Is it the judge’s role to interpret any ambiguities?”

“Because parliament has to look to the future and expresses itself in general terms, cases may arise which don’t easily fit into that general expression, or the words themselves may be unclear and ambiguous. And that’s where the role of the judge becomes quite critical, because you can’t send a law back to parliament every time a problem arises, the judges have to deal with the law as it is stated. Occasionally laws go back to parliament to be amended but that’s an exceptional thing, generally judges have to work on what’s in front of them in the statute. If there is still uncertainty or ambiguity the judge can look at extrinsic material beyond the Act. The primary one that the judge can look at are matters which have been in parliament leading up to the passing of the Act, and in particular the second reading speech in which the relevant minister explains the reasons for the legislation to parliament in order to have it passed.”

“So how does the Victorian Law Reform Commission fit into the whole legislative process?”

“The Law Reform Commission performs a very valuable function because it does in depth specialist study of issues, issues of change, issues of gaps in legislation, issues of development of legislation, and it puts the quality in-depth work into it. The parliamentary counsel translates policy of government onto the page but doesn’t do the social and policy research that a Law Reform Commission can do.”

“Looks like you’ve been a busy bee!”

“Getting there. I’m just up to the point now where a well drafted bill gets presented to Cabinet, it’s called: ‘Approved in Principle’.”

“Approved in Principle.”

“I think some people might imagine that ministers almost act on their own when they’re developing a bill to get into parliament, but that’s not the case at all. Proposed bills will have gone through quite a complex process before they achieve approval. So a minister who’s responsible for a particular policy area, health, education, transport, whatever, will bring a

submission to the Cabinet, which is a collective body. And this is very important, it's another one of the safe guards in the system that governments have this collective, whole set of eyes that look for flaws and problems with potential legislation before giving it approval."

"If a new government wants to amend a law passed by a previous government, such as the Crimea Amendment Bullying Bill, what's the procedure there?"

"Well, I think the first thing to say there is that a new government doesn't come in and cast aside everything that's gone before, there's not normally a major rupture, there's an existing stock of legislation and most of that will remain intact. At the same time of course a new government will have its own priorities, its own agenda and so it will introduce some amendments to an existing law and the amendment to the Crime's Act is an example of that."

"Yeah, it's all coming together."

"No, it's great, it's fine, and it's going really well."

"I am getting everything from the horse's mouth so to speak which is great, but I don't know, everything so far has been about preparing the Bill, it's been not parliamentary examination, but...hey, I've gotta go, I've gotta meet the Speaker of the Legislative Assembly."

MAKING THE LAW PART 2

"The important point to bear in mind about the Legislative Assembly is that it is the house of government, is where the government is formed.

"To form government in Victoria, a party or coalition of parties has to have a majority in that Lower House, so in the case of Victoria, 88 seats they'll require at least 45 members. But that is the primary role of the Legislative Assembly. It is the seat of government."

"Could you explain what happens once a bill actually arrives in the Assembly?"

"The minister introduces the bill by moving that the bill is read for the first time. The first reading is when the bill is introduced and the Assembly is put on notice that the bill is coming to be debated. The second reading of the bill is the time for debate. This usually occurs within a day or two after the bill is introduced. A written speech is tabled in the House by a minister as a full explanation of what the bill intends to do. This second reading speech is used by the courts if there is any dispute regarding what the bill is about once it has become an Act of Parliament. Judges can refer back to the second reading speech to help them better understand what the minister or the government were trying to achieve when the legislation was passed. A printed copy of the speech and the bill is given to every member of the chamber. After the debate the bill is normally adjourned for two weeks. It is then taken away by the opposition parties and then talk to the public, stakeholders, and anyone who has a particular interest in that bill. The third reading of the bill incorporates any changes that have been made through the second reading stage. And so the third reading gives an opportunity for the House to formally agree to the final bill."

"Did you have time to cover the opposition?"

"Yes, I did. Although they are not in government they still have an important role to play. "

“The role of the opposition fundamentally is to hold the government to account. An opposition will of course have its own program, its own priorities, it will have gone to the people too, so often it will interpret the government’s legislative agenda through that prism and seek to pursue changes seek to bring about amendments to proposed legislation on that basis.”

“The opposition’s role is around scrutinising legislation to make sure that the bill fits with all parts of what the draft legislation discussion had foreshadowed, to improve the bill, and offer some suggestions if need be, but mainly to make sure that all the “i’s” are dotted the “t’s” are crossed, and to make sure that the legislation is one that we believe will be acceptable to the state. Each one of our shadow ministers has a responsibility to look at their own piece of relevant legislation. They’ll seek a briefing from the government, they’ll ask a lot of questions, when the bill goes to the Lower House there’s a debate. Once a bill is first read, the opposition shadow minister will then seek a briefing from the government from the relevant minister or their office. They’ll then prepare a position paper, they take that back to the shadow ministry, the shadow ministry then votes whether to accept the bill or refer it onto the entire Liberal-National party rooms for discussion. It will then go there for discussion and debate again as to what the position, the final position of the opposition parties will be, and from then on that forms our position as a joint coalition parties as to how we will then proceed through the parliament focusing on a certain piece of legislation. Once the second reading debate comes on, firstly, usually in the legislative assembly, opposition members will put themselves down as speaking opportunity on that bill. It’s usually only a handful of people who gets to be able to speak on a bill, in most cases, four, five or six and so they’ll put themselves on the roster, usually first come, first served, and they’ll be able to make a presentation for around ten minutes on that piece of legislation. Very little legislation is in fact opposed; most legislation will pass the legislative assembly fairly smoothly because in most instances the government has a clear majority in that chamber.”

“I heard a bill can be amended, how and when this does happen?”

“The bill can be amended during the consideration in detail stage normally an amendment is moved by either the government or the opposition. The government might see that there is a typographical error in the bill, or the opposition may be completely opposed to the legislation and want to register their opposition. After the debate, the House might go into detailed discussion of the bill. This is called the committee stage. The bill is now examined clause by clause and members can discuss the bill and ask questions of the minister. If something has come out to the debate to make the legislation better, then this change can be incorporated into the bill through an amendment.”

“How is the debate moderated?”

“Parliament is a place of vigorous debate. The Presiding Officer’s role is to keep order. At times it can be very difficult because there are passionate issues. Members hold their convictions very strongly. If you are elected to parliament, you are a committed person so debate can be quite fierce.”

“So, once the bill has been passed in the Legislative Assembly, where does it go next?”

“Once the bill is passed here in the Assembly, it is then sent to the Legislative Council for debate. You should speak to the President of the Legislative Council to find out exactly what happens there.”

“So what is the role of the Legislative Council?”

“Well, as it was originally conceived right back in the middle of the nineteenth century, it was very much seen as a brake on the more democratic urges of the Lower House, the Legislative Assembly. By virtue of the electoral system it had and the powers that it had, it had the capacity to frustrate the Lower House, the government’s agenda and sometimes even break governments. It was almost always under the control of the conservative parties until the beginning of the twenty-first century when the Labour government, the Bracks Labour government finally won control of the Legislative Council at the 2002 election. At that point the Bracks government introduced major reforms to the Upper House. Most importantly it changed its electoral system by introducing proportional representation. The objective of that was to diversify representation in the Upper House. In particular to allow more minor parties into the chamber, potentially independents, there was also under those changes some diminishing of the powers of the Council and its ability to frustrate governments.”

“How does the bill actually arrive in the Council Chamber?”

“The Minister introduces the bill to the House and that’s by way of first reading which is a mention if you like of the bill, and then he does a second reading speech for the bill which leads to a comprehensive debate and members are all, members of the chamber are entitled to make a contribution on the bill and something like Brodie’s Law is actually a bill that has issues that all members are very concerned about and they want to achieve a result that will protect young people.”

“We have three messages from the Assembly; the first is the Crimes Amendment Bullying Bill 2011. The Legislative Assembly presents for the agreement of the Legislative Council, a bill for an Act to amend the Crimes Act 1958, Minister?”

“I move that the second reading speech be incorporated into Hansard”

“So, at the conclusion of that second reading debate it is certainly possible for us to go into committee and to make amendments, or to come to understand exactly how the bill will operate.”

“Most bills would be subject to consideration in detail and amendment in the Council far more than in the Assembly. Furthermore there is a far greater chance that the Council will refer the bill to a parliamentary committee for review and report back to the Council before it decides to proceed with the bill any further. Other details we check include the provision of a second reading speech with the bill and also a statement of compatibility with the Charter of Human Rights and Responsibilities Act.”

“We then pass the bill by a third reading and send it back to the Legislative Assembly to indicate that the Legislative Council is actually in agreement with it having scrutinised that legislation.

Most of the legislation originates in the Legislative Assembly; there are very few bills that start in the Legislative Council and that's because usually they have money implications and under the Constitution, any bill with money implications needs to start in the Assembly."

"And why is the Legislative Council also referred to as the House of Review?"

"We could obviously have the Assembly pass legislation all by itself and it could happily trip off to the Governor and be receiving Royal Assent. But we have a Westminster system, which has two Houses of parliament so we bring the bill here to enable all members to have a second look at it; it's a check and balance in the system. And what's particularly important obviously with the Legislative Council is that the composition of the membership of this House is quite different to the Legislative Assembly, we have more minor parties represented. So it gives everybody a chance to actually have a look at that bill and to scrutinise the different clauses of it, even in a committee process clause by clause to ensure that that bill is actually going to meet the intentions of the government and will have broad support in the community."

"So how does the composition of the government and the opposition members affect its function as a true House of review?"

"The Legislative Council as a House of Review works best where the government doesn't have the majority of members. Because indeed if the government does have the majority of members it can simply rely on its numbers to pass any particular proposal before the House, and it doesn't have to win the intellectual debate. Where a government doesn't have a majority in the House, it actually has to persuade other members of the House to support its propositions, and that tends to mean that in this House we get a better standard of debate, a much more comprehensive debate, a better contest of the ideas and opportunities that are proposed in legislation. And it is certainly my experience that where governments haven't had a majority here the standard of debate is higher, and obviously because there are different viewpoints coming into play, the scrutiny aspect, the review aspect of this House is really amplified, it's given life because the government can't rely on winning a vote without having other members support the proposition. And therefore the legislation does get looked at more closely and teased out, and sometimes are amendments that improve it. But certainly the House actually does have a second look at bills to make sure that they do meet government intentions and that they improve either services or facilities, infrastructure and so forth for all Victorians."

"And what happens once the bill has been passed by the Legislative Council?"

"Once we pass it in the Council we actually send a message to the Legislative Assembly to advise them that we've agreed to the bill, either as it was referred to us or with amendments. Provided they agree with the amendments or that there is agreement between the two Houses on the final form of the bill, it then goes to the governor for Royal Assent. And then there is a date at which that legislation comes into effect."

"So once the bill has been passed in both Houses, where does it go next?"

"Well, at that stage the Clerk of the Parliaments will take the bill to the Governor to seek Royal Assent."

Royal Assent is the formal approval stage at which the Governor, who is the representative of the Queen, will give approval, give assent to that bill, and at that stage that bill becomes law.”

“So, what do you think?”

“It’s not bad, a couple of edits and I think it’ll be good. Just take me through it again.”

“Well, the first stage is that someone has an idea that society needs a new law to redress a particular issue.”

“People now realize that it is a serious crime”

“This idea or policy may already be a part of the government’s legislative agenda but if it isn’t, it may have come from a variety of sources, for example, the Opposition, pressure groups or even government departments and committees can all be a part of the policy development. If it’s a government policy, a minister guides the bill through the Cabinet process which includes the parliamentary counsel drafting of the bill at Cabinet, the BAC. Once the bill has been approved in Cabinet, the minister then introduces it into the Legislative Assembly where through the first, second and third readings the bill is debated and examined in greater and greater detail. In some bills the debates can be pretty fiery but the majority of bills pass through relatively unopposed. Once it passes in the Assembly the bill goes to the Legislative Council and it’s examined again through a further three readings. Once the Council passes the bill, it’s returned to the Assembly where the Clerk of Parliaments processes it further and then takes it to the Governor for Royal Assent. Once the Governor has signed the bill, it becomes law.”