MAKING THE LAW

Law making in New South Wales follows much the same steps as in most other Australian states, the Australian Federal Parliament, and the British Parliament upon which our system of Government is based.

The main steps in the process of making a law are:

1. Developing a Policy
   See ‘Sources of Laws’ below.

2. Drafting the Bill
   The difficult task of turning an idea or a policy into the precise language of a law is the work of expert lawyers in the office of the Parliamentary Counsel.

3. The Parliamentary Process
   See the diagram on the next page for more detail. Each house has a slightly different process.

4. Royal Assent
   The final stage in the process by which a Bill becomes an Act. Once it has passed through all stages in both Houses, the Governor signs it to give it formal approval.

5. Commencement.
   An Act will come into force 28 days after the Governor’s signature unless the Act specifies otherwise.

Sources of Laws
Any Member of Parliament may initiate a Bill, but actually most are introduced by Ministers of the Government. Most Acts begin as decisions of the political party in Government, and policy may come about after pressure from community groups, the media or public opinion pointing out particular needs, advice from Government Departments, or even because of court decisions. When the Government is satisfied that laws are needed, the Minister concerned submits the proposal to the Cabinet for approval.

Where a Bill is introduced by individual Members of Parliament, be they Government, Opposition or Independent Members, the Bill is known as a Private Members Bill. In practice such Bills have much less chance of getting majority support and thus becoming law.

House of Origin
In New South Wales most legislation originates in the Legislative Assembly. However, there are also Government Ministers in the Legislative Council and some Bills originate there. If the Legislative Assembly is where the Bill originates, then the ‘second house’ will be the Legislative Council, and vice-versa. As the diagram on the next page indicates, each house has a different process and uses somewhat different terms.

Powers of Houses in Respect to Bills
Under Section 5 of the Constitution Act, ‘Money Bills’ (Bills for raising or allocating money) can only be introduced in the Legislative Assembly and, if the Bill is part of the ordinary annual services of Government, the Legislative Council cannot prevent it becoming law.

The Defeat of a Bill
A Bill can be defeated in the Legislative Assembly at the Agreement in Principal stage or in the Legislative Council at the Second or Third Reading stage. Sometimes, it may be presented again later, perhaps in a different form or in another session of Parliament.

Differences between Houses
If the Second House wishes to amend a Bill passed by the House of Origin, it will send the amended legislation back to the House of Origin. If the amendment is agreed to, it then becomes part of the Bill - if not messages will pass back and forth between the Houses until there is agreement. If necessary, a conference of managers will be appointed by both Houses to sort the issue out. Should this fail, the Governor can call a joint sitting of both Houses to discuss the Bill. Finally, the Bill, if still unsuccessful, can either be set aside or submitted to a referendum of the voters of New South Wales.
Types of Law

Statute Law is the law made by Parliament. It is introduced in a Bill and, if passed, becomes an Act.

Common Law is judge-made law, developed through centuries of precedent, or earlier judgements on cases before courts.

The Commonwealth and States’ Constitutions set out the basic structure of the legal and parliamentary systems.

Stages in Passing a Law in New South Wales

Statute Laws

begin with an idea from:
- public service
- advisors
- party policy
- interest groups
- committees
- media

Government Bill
Minister or MP
Cabinet or Party discussion

Private Member’s Bill

Bill drafted
(Parliamentary Counsel)

Party discussion

Cabinet

House of origin
Most Bills begin in Legislative Assembly
some begin in Legislative Council
> introduced > defeated > amended
> voted on
defeated
passed

Private Member’s Bill

House of review
Mostly in Legislative Council but can be Legislative Assembly
> introduced > defeated > amended
> voted on
defeated
amended
passed

Royal Assent
Governor of NSW
Enacted

Becomes LAW of NSW on date specified

The Law becomes the responsibility of the Executive (Minister and government departments) to administer

Regulations, Subordinate or Delegated Legislation

Some Acts only outline broad guidelines or principles, leaving details to be defined later in regulations made through a Minister (e.g. Traffic Act, Planning Laws).

A Parliamentary committee reviews regulations and Parliament may alter them. This Legislation Review Committee also considers whether or not proposed bills have any negative impact on citizens’ “personal rights and liberties”.

Parliamentary Education Section May 2010