

## **WILLIAM & LONSDALE – Lives in the Law**

### **EP10: Julian Gardner AO**

**voiceover** [00:00:09] This is William and Lonsdale, a podcast about the legal eco system in Victoria and the fascinating people and stories that make it tick. This week, your host, Michael Green speaks with the inimitable Julian Gardner. Although he swears he never planned out his career, he has ended up working in some of the most interesting organizations in our system, including being a founding member of the iconic Fitzroy Legal Service, the inaugural director of Victorian Legal Aid and co editing, the first incarnation of the law handbook. Although he may not have mapped out a plan, purpose and meaning have always been central to Julian's career choices early on in his life in the law. This actually resulted in him walking away from the profession before his career had really begun.

**Julian Gardner** [00:00:51] I had formed the view that the law was no way creative. It seems to me that all I created was bills, so I decided I was not going to do anything, have anything to do with the law again, I was quite disillusioned, but I found it's struggle to to make a living in London. I had rarely ever kept a diary, but I did keep a diary then, and I remember writing it one night that I was going to go back to Melbourne and do something useful. Not a terribly interesting word, but I had no idea what it meant. But it was it was quite a significant moment for me because after I came back within a year, I had found that something useful.

**Michael Green** [00:01:58] Good morning Julian, and welcome to Lives in the Law. Julian, someone once said, give me the boy and I'll give you the man. You han interesting childhood in a Quaker family post-World War II England, the youngest of three children. What was it like growing up in that environment?

**Julian Gardner** [00:02:16] Well, it was there was still lots of physical manifestations of the war that I remember as a child. And rationing went on for a while. But it was pretty good. We were a family that didn't have much money. My father was still a student on a scholarship at that stage, and I was the youngest by nine years of my sister. So but there didn't seem to trouble us. We we were wealthy in the sense we had a house full of books.

**Michael Green** [00:02:42] And where did those books come from?

**Julian Gardner** [00:02:43] Oh, look, I don't remember them in detail other than the fact that they were there. And, you know, I was an avid reader.

**Michael Green** [00:02:52] Your father sounds an interesting man. He'd been a conscientious objector during World War II, which I assume came out of his Quakerism.

**Julian Gardner** [00:03:00] Yes, I think that's right. It was consistent with it.

**Michael Green** [00:03:02] He drove an ambulance as a conscientious objector, had left school at 15, but ultimately obtained a PhD in psychology. Did he have a big influence upon you?

**Julian Gardner** [00:03:11] Look, he was a bit of an absent father, really, because he often he'd leave before I got up and come home after I got home. I mean, a lot of the years that I was capable of remembering he was a student. So clearly, you know, the Quakerism with which he was very much involved had an influence upon me. He had a very inquiring mind. And I think that stimulated me.

**Michael Green** [00:03:38] And your mother must have been a remarkable person because she was left to bring up three children. When you arrived here in Australia, your father left the family.

**Julian Gardner** [00:03:46] That's right.

**Michael Green** [00:03:47] She's a migrant, a mum in a foreign country. And she's got three children to look after. She must have been a remarkable woman and she must have had a big influence on you.

**Julian Gardner** [00:03:58] Look, she did. And it was pretty tough for her when she first arrived here. There were no family, no support at all. My sister was at that stage university, so it wasn't as though we were three little children. But financially, things were tough. She ultimately got a morning job with the local GP, which she did for about 50 years until he retired and she was effectively made redundant at the age of 99

**Michael Green** [00:04:33] That is amazing.

**Julian Gardner** [00:04:34] I was she was I mean, towards the end, she didn't go to work every day, but he'd bring the accounts and things to her.

**Michael Green** [00:04:42] So at the age of ninety nine, your mother still had every mental faculty in perfect working order?

**Julian Gardner** [00:04:47] Yes. She would tell you the same story more than once, but yes.

**Michael Green** [00:04:51] Don't we all.

**Michael Green** [00:04:56] So you as a 12 year old, arrive in Melbourne. You finish up at University High School. You'd been at a private school in the UK, Abington Grammar. What was your experience like at an English private school compared to a state high school here in Australia?

**Julian Gardner** [00:05:19] Chalk and cheese. The English school was 400 years old. It was steeped in tradition. The Prefects could cane. We played rugby twice a week and I walked mainly in fear. To go to University High School was the first time I think I'd felt really comfortable at school. I didn't walk in fear. And it was then a highly academic school, but also highly sporting school. And there were a lot of very multicultural, a lot of Eastern European children there who among them, you know, some very, very bright kids. So it was it was stimulating.

**Michael Green** [00:06:04] My recollection of that time is that University High School and Melbourne High School were the premier schools in the state. The expensive private schools really struggled to keep up with the academic, sporting, artistic standards at University High in Melbourne set.

**Julian Gardner** [00:06:22] That together with MacRobertson girls.

**Michael Green** [00:06:25] Yes, of course. And so it was a school which you and your niche and fitted into well.

**Julian Gardner** [00:06:30] I did, yeah. It was a joy not to to be walking, as I say, wondering what was going to happen to you next.

**Michael Green** [00:06:37] I'll just digress for a moment. And this is a bit of self-indulgence. But I used to read a lot about as English boarding schools when I was a young boy, and it always intrigued me that the prefects could contain some of the younger students. Yes. And I thought I don't think I'd allow another boy to cane me, but there was just accepted.

**Julian Gardner** [00:06:59] Well, you just didn't have any choice. You didn't have any choice. I mean, look, as I say, it was steeped in tradition. There were 15 rugby pitches, I might say had won a scholarship there. That was the only reason I managed to go there. We went to school Saturday mornings. It was yeah, it was pretty rigorous,.

**Michael Green** [00:07:15] As much as you and University High were a very good fit. You said that you and Melbourne University Law School were not such a good fit, but your accommodation was at International House, which was called a college and maybe a hall of residence. Now, that was a very good fit. What was the law school like and what was International House like?

**Julian Gardner** [00:07:38] Well, the law school I just found intimidating. It was at that time filled with a lot of people who seem to have come from fairly wealthy and privileged backgrounds with whom I had nothing in common. There was very little pastoral support, you didn't expect tutors to be able to talk to you or anything like that. You walked in awe of them. And I didn't know anybody in the law. I mean, I'd never met a lawyer. I'd never been in a lawyer's office. So I just didn't feel comfortable there. I was also doing an arts degree, which I enjoy. In those days it was a rarity to do a dual degree, now it's, of course, very common. In contrast, International House was a college residential college, which was based on the principle that 50 percent of the students were Australian or 50 percent overseas. So its fundamental principles were about valuing difference and and it was only six years old. It was quite new. And it arose from some terrible racism that was being experienced by Colombo Plan students coming here to study in Melbourne. So it very much fitted in with the values that I had of equality and tolerance and an absence of prejudice.

**Michael Green** [00:08:52] It contributed towards some of the management and leadership skills that you developed and you use later in your working life. How was that?

**Julian Gardner** [00:09:01] I became president of the students club, so I, you know, had to learn how to manage committees and and so forth. I produced the first play we we put on these plays at the Union Theater and that involved an enormous amount of logistical and management. And also the head of college at that time was very well connected and used to have fascinating people come to dinner and sit at my table. So I found myself having to learn to to make conversation with people who I found totally intimidating and awe inspiring. So there were a whole lot of things that International has taught me that I wouldn't have got if I hadn't been a residential student.

**Michael Green** [00:09:39] Among those awe inspiring people who you met and spoke with were Lee Kuan Yew. Yes. Later, the quasi dictator of Singapore. Yes. And Tom Mboya, who was the prime minister of Kenya?

**Julian Gardner** [00:09:54] I believe so.

**Michael Green** [00:09:55] Did they have an impact upon you?

**Julian Gardner** [00:09:57] Look they were both young, idealistic men. I mean, you refer to Lee Kuan Yew as being a quasi dictator. But at that stage, he was he was a really he was a socialist in his thinking. Maybe that's an exaggeration, but he really was visionary. They were both visionary and inspiring. They were young. They were firebrand's the wrong word but they had that that fire in the belly. And I was I was really inspired by both of them. I mean, they were just people there who wanted to make a difference and change the world.

**Michael Green** [00:10:36] Through assistance by tutor, I think you obtained articles at Pavey, Wilson, Cohen and Carter An established and conservative Melbourne legal firm at the time. How did that articles interview go?

**Julian Gardner** [00:10:50] Well, I had to do some very fast footwork because I was asked who I voted for and I think I said something bland, like, I thought both parties had some good and bad policies. And I was also asked what I thought of the recent socialist legislation. And I had no idea what that was. It turned out it had something to do with licensing laws because they acted for the brewery. So I was almost astounded when they decided to give me a job.

**Michael Green** [00:11:18] Despite that possibly unpromising beginning, in fact, you had what we would call in those times, good articles where they gave you good work and they did and helped you develop as a lawyer.

**Julian Gardner** [00:11:31] Oh, yes. Look, I've got no complaints about that. In fact, in some things I was thrown into the deep end. I was never used as a filing clerk. And I found myself being given the task of writing some fairly long letters of advice, some of which got a big red pencil through, because having studied Latin for nine years, I thought that lawyers were supposed to use the Latin. And I was told that insurance companies didn't understand what I was talking about.

**Michael Green** [00:11:53] Yes, I remember Latin was just going out at that time, in the law I guess, but yes, it was there. When you finish your articles, you go to the UK for 12 months. You have what may be today might be called a gap year or something. You decided to go and go back and have a look around the UK. What was the result of that trip?

**Julian Gardner** [00:12:10] I had formed the view that the law was no way creative. It seems to me that all I created was bills. So I decided I was not going to do anything, have anything to do with the law again, I was quite disillusioned, but I found it's a struggle to make a living in London. I had rarely ever kept a diary, but I did keep a diary then, and I remember writing it one night that I was going to go back to Melbourne and do something useful. Not a terribly interesting word, but I had no idea what it meant but it was quite a significant moment for me because after I came back within a year, I had found that something useful.

**Michael Green** [00:12:52] Which was the iconic Fitzroy Legal Service.

**Julian Gardner** [00:12:55] That's right.

**Michael Green** [00:12:57] It was a very influential body at that time. What we're talking early 70s, I guess?

**Julian Gardner** [00:13:03] December 72, it opened its doors.

**Michael Green** [00:13:06] Can you tell us a bit about prior to December 72, how it got to the stage of opening its doors?

**Julian Gardner** [00:13:12] Well, there was one particular youth worker there who found that he had all these kids who could never get any legal help when they were in trouble. He was organizing a barrel on a Sunday to raise money for draft resisters, which we stood around and talked about the fact that we needed to do something about this. Somehow from that emerged, this idea of, well, let's set up a legal service. None of us actually knew what that meant. In fact, there was such an argument about how to manage it that in the end the hotheads said, well, let's just open next Monday. And we did.

**Michael Green** [00:13:43] Now, at that time, you've reverted to your conservative roots and you're working with Moule Hamilton and Derham, a conservative legal firm. But at the same time you're involved in the establishment of the Fitzroy Legal Service. What sort of work are we doing at Moules? How did that mesh with the legal service or will it mesh at all?

**Julian Gardner** [00:14:04] It didn't really. I was doing general litigation, a variety of commercial litigation as well as some injuries as well as some patent work. There was no connection between the two.

**Michael Green** [00:14:16] And then at some stage, you obtain sufficient funds to employ a person full time for the legal service. And who was that person?

**Julian Gardner** [00:14:25] Well, I applied for that job. So in 1975, I left Moules went to to work there full time with the strange title of lawyer initiator, which the idea was that they didn't want my primary focus to be casework, they wanted my primary focus to be initiate change and develop and grow The Service, of course I was doing casework as well. So I took a 50 percent drop in income and had a very supportive wife who was teaching and therefore allowed me to do that. I couldn't have done it without her.

**Michael Green** [00:14:57] Julieann, when you say they is, they still a committee that controls the federal legal service made up of young, idealistic lawyers, or is there some government involvement?

**Julian Gardner** [00:15:07] No, no, no, no, no government involvement at all. And it wasn't just lawyers, though. We had a very strong principle of involving the community. So in those days, interviews with a client were conducted by a lawyer and a non lawyer. The nonlawyer was there to make sure that the lawyer was communicating properly and at times to translate and to humanize the process, because we believe that the lawyers didn't deal very well with with the sort of clients we had. So the committee management was actually called an implementation group because it was there to implement the wishes of the general meeting, it was a very 1970s flower flower child type of organization.

**Michael Green** [00:15:45] But it survived and flourished. It threatened the mainstream profession, which I was a part of the mainstream profession at the time, and I had no idea of that. The bar council declared you off limits. And some people even sought advice on obtaining an injunction to stop the Fitzroy Legal Service. Why was it so threatening to the profession?

**Julian Gardner** [00:16:05] Well, it's hard to to imagine today, but you've got to think then just how radical this was. The idea that here was a legal office, presumably that's how they saw it, were offering free legal work. So presumably the local lawyers were worried about their livelihoods because that was the group that sought to get some advice. The bar council a bit more understandable because then it was probably still is barristers weren't allowed in solicitors offices. And so they deemed this to be a solicitors office. But that caused problems for us because a number of our volunteers were at the bar. But, yes, it was it was radical. It was different.

**Michael Green** [00:16:42] And more power to you and to it then and now. Out of the Fitzroy Legal Service came a very useful, powerful tool, the legal resources handbook now called the Law Handbook. How did that come into existence? I mean, that my if I got it right, you can now buy it round the corner at the Law Institute Bookshop Shop, and a new edition comes out regularly. What was the genesis? How did it come about?

**Julian Gardner** [00:17:11] Well, it came about because we had lawyers who were so expert in family law or crime who would volunteer in the evenings but didn't know anything about tenancy. And so what we did was to start to write some simple sheets about, you know, the basics of crime or the basics of, you know, to help our volunteers. And it grew like Topsy. It was never it's hard to determine at what point the decision was made for it to be put into a book. But we did. That's that was its genesis. And the decision was to try and write something which was just about Victorian law. It was practical. It was easy to read. It was written in plain English or attempted to, which is exceedingly difficult if you've ever tried to work out how to describe the term consideration in contract law in in less than a whole paragraph, it's impossible. And so it just grew like Topsy.

**Michael Green** [00:18:05] And existed to this day. And I among the many tens of thousands I should thank you, because I when I was in practice, I had it when I was working out of my own comfort zone, I would use it as a road map to direct me in in the right direction. And even in the second half of my career as a barristers clerk, I still bought a copy and had it behind me just in case. How did it get to be so widespread and become the bestseller that it now is?

**Julian Gardner** [00:18:31] Well, we took it to a number of publishers who said you'd have to sell four thousand, it's only Victorian, nobody's interested in this sort of thing. Public are not interested. So I produced what I would laughingly now call a business plan, it wasn't certainly that, that if we paid the printer to publish and sold 100 copies a week for the rest of the year, we could continue to pay the wages, having used all of the wages to pay the printer. So that's what we did. I got a gig on the 7.30 program on the ABC with Peter Cashman. He thought it was better than sliced bread, the four thousand copies we sold in eight days. It was just extraordinary. We printed another 4000 and I think they slowly took about three weeks or four weeks to sell and then we printed another 10,000. So it hit and an untapped market. It was radical, it was new, it was different. And as you say, suburban solicitors, social workers clamored for it. And the fact that it's going 43 years later with an annual edition, I would never have imagined.

**Michael Green** [00:19:31] And all credit to you, to you and to those who worked with you A) to have the idea and B) to bring it to fruition. What a wonderful thing.

**Julian Gardner** [00:19:40] Well, it was. And it was it was it was it was it was an exciting moment.

**Michael Green** [00:19:48] Legal Aid has been a large part of your career. You're involved with the drafting of the new legal aid legislation.

**Julian Gardner** [00:19:56] Well, to say I was involved with the drafting, the law institution, set up a committee with five people from each and came up with something pretty conservative. I attacked it. They decided to have another look at it. And I was put on as one of those five Law Institute nominees on that committee. So, yes, that committee did come up with essentially what the then Liberal government enacted.

**Michael Green** [00:20:20] You are the inaugural director of Victorian Legal Aid Commission, now called Victorian Legal Aid. Just to go back a little bit, I can't recall what was there by way of legal aid before the Legal Aid Commission existed?

**Julian Gardner** [00:20:34] There were three bodies. There was a Legal Aid Committee which was run by the Bar and Law Institute. There was the public solicitor's office, which was part of the State Law Department, and there was the Australian Legal Aid Office, which had been set up by Lionel Murphy for the Commonwealth. These three bodies didn't really talk to each other to know to which of the three you had to go to get help. You have to answer some simple questions. Am I a commonwealth or state person? Is my law a commonwealth is the law I'm involved with Commonwealth or State? And if it's crime, is it indictable or summary? If you can answer those questions, you knew which which of the three officers to go to. So. So my job was to amalgamate them and they didn't actually talk to each other.

**Julian Gardner** [00:21:17] Can you take us back to that and tell us a little bit about how you did that job of bringing the three of them together and getting them to be the coherent body, which I think it still is Victorian Legal Aid or what was then called the Victorian Legal Aid Commission?

**Julian Gardner** [00:21:30] Look, it was difficult in its early days. There were the three different cultures. And my job was to try and and create a new culture. And I don't think you can create cultures, you know, in a short time. It takes a long time. And I would say that when I left there, nine years later, there were still some vestiges of the old thinking in, you know, a small number of people. So it wasn't it wasn't easy to amalgamate.

**Michael Green** [00:21:56] It appears to me in our community at the moment that access to justice is a major problem because of the cost. I think when you start in the law, when I started in the law, ordinary citizens of our community could have some access to justice, at least at least to the level of magistrates court, possibly civil matters in the Magistrates Court. But today, the costs are so high that I don't think apart unless you are very wealthy or you are a wealthy corporation, it's difficult to get access to our court system anyway.

**Julian Gardner** [00:22:24] Yeah, I don't think I don't think it I don't think it was easier then. It was easier if you could find somebody. But how did you find somebody? And look, the only legal advice office open before Fitzroy was the Law Institutes one, which was I think the 17th floor of a building in Collins Street where you could get free legal advice, hardly accessible. I mean, one of one of the enduring memories I have was one week where a migrant woman with three children left by her husband was convicted for shoplifting for a chocolate bar and a pair of panties and was fined what was then the equivalent of three weeks pension. In the same, she was unrepresented and now interpreter in a different magistrates court, the son of a well-known family album family was charged with having urinated from a tram stop in Bourke Street through the open door of a driver's window represented by a QC. He got a good behavior bond and no conviction. And the contrast between those two cases, which happened in the same week, I think illustrates part of my motivation, but also illustrates the people. Whereas today that woman would have a duty lawyer. She might not get legal assistance, which she would have a duty lawyer, and she certainly wouldn't suffer the fact that she suffered then.

**Michael Green** [00:23:44] That's encouraging. Did you find it satisfying work setting up the Legal Aid Commission?

**Julian Gardner** [00:23:51] Enormously so. I mean, it was creating new thing. And also we went through a period of one of our major sources of income was the excess on the solicitors guarantee fund. And at some stage during my time, their interest rates went to 17 per cent and we had more money pouring in. The problem was you didn't know whether it would last for more than 12 months, so you couldn't put people on permanently. But we did a lot of very creative things. It was a period of of growth and excitement.

**Michael Green** [00:24:21] You finished up as the director of Legal Aid in 1989. You'd had ten years there.

**Julian Gardner** [00:24:28] Well, nine.

**Michael Green** [00:24:29] Nine. You then the role that you've played since then are numerous. Member of the Refugee Review Tribunal, chair of the State Mental Health Review Board, Victorian Public Advocate member and vice chair of the Australian Press Council, chair of Mind Australia, involved with the Voluntary Assisted Dying taskforce and a member of the ministerial advisory panel for Voluntary Assisted Dying. That's not a smooth career path, it's not as if you took a partnership at Moules and worked your way through to being a senior partner and retired. Was it stressful moving from job to job or taking these positions, maybe not having positions, maybe having periods where you didn't have a role, or did it all run pretty smoothly?

**Julian Gardner** [00:25:09] No, it didn't. And look, I never had a career plan. So, yes, we did struggle financially. Then when I was at the Fitzroy Legal Service, after a year, the money ran out and I got a phone call from Moules saying, you've had your year off, come back and we'll make your partner. And I remember the most extraordinary telephone conversation where I said, I'm having too much fun, but thank you. I was at that time, the legal profession was quite linear in its progression. You know, you rose to the level of partnership and then for the next 30 years, you came in through the same front door. I couldn't quite picture doing that. So I didn't mind the movement around. When I left Legal Aid, I was seconded to set up a brand new tribunal to deal with all the workers compensation matters in Victoria. Which, having set it up, I then decided I better stay and try and make it work. When Jeff Kennett was elected, legislation was passed repealing the whole worker's compensation legislation. So I found myself suddenly out of work in my late 40s. And I traveled in South East Asia. I looked some work in human rights in Cambodia, which at that stage was just recovering from from Pol Pot. And I had seven months off there. And I'm eternally grateful to Jeff Kennett because otherwise I would never have taken long service leave. And it was it was a wonderful break in my life. Other than that time, really, I moved from time to time. I found each change invigorating. It really did stimulate me in terms of what I had to do.

**Michael Green** [00:26:40] Well, speaking of those changes we hear about the Public Advocate, I have got a general idea of what the role is. An office up in Carlton is my mental view of it. What does the role entail, Public Advocate and what is it important to our community?

**Julian Gardner** [00:26:59] Well, its role is very diverse, which is one of its attractions. I guess its primary role is to act as the guardian of last resort for people who lack capacity to make decisions for themselves and decisions need to be made about where they live or their health care or and who looks after them, etc.. That's the jurisdiction that the Supreme Court has had for centuries through the parents patriae jurisdiction and which still holds concurrently with the Public Advocate. So at one level, you're exercising an extremely important judicial or quasi-judicial role, but also it has a role of advocating for people with disabilities. It focuses on cognitive disabilities, not so much the physical. So we're talking about intellectual disability, acquired brain injury, mental illness and dementia. So it's a wonderful role because you have a chance to try and change the way laws, practices, policies of government are conducted. And you do so because you have to be appointed for seven years and you can only be sacked by a vote of both houses of Parliament. So it means that when you say you want to talk to the secretary of the department or you want to see a minister, you've got a very good chance of getting in. And yet, of course, you've got to play that role very subtly. It's not a matter of saying, well, you know, saying, you know, stomping on the front pages of the papers, a lot of the work you do is invisible behind the scenes. But you can actually achieve a lot of change through your advocacy.

**Michael Green** [00:28:35] Just so that it's clear. I say the public advocate as though it's one person and is one person, but there is a significant office and administration behind you, isn't it.

**Michael Green** [00:28:46] So VCAT makes the decision to appoint the Public Advocate as guardian and the public advocate, then delegates those to members of staff who actually do the legwork. And I would only get involved in individual cases which were either particularly significant or particularly contentious, such as the some critical end of life decision making, which which I had to do from time to time. And that that was that was a really challenging part of the role, deciding that now was the time that somebody should come to the end of their life, we should withdraw medical treatment and allow them to die. Difficult decisions and but ones that I found really challenging.

**Michael Green** [00:29:25] How do you go about making those decisions?

**Julian Gardner** [00:29:28] Well, of course, you do it as a good lawyer does within the construct of the law. But that's that's the easy part. I mean, let me give you an example. You may recall the case of Maria Korp, who was the victim of an attempted murder, put in the boot of a car found five days later at The Shrine. Went to the Alfred she was breathing and a heart was working, but she was totally unresponsive and she was kept alive by artificial feeding. The hospital wanted to withdraw treatment because it was futile. The husband had been on the front page of the Herald Sun saying she is a devout Catholic and I will fight in court any attempt to withdraw treatment. He, of course, was subsequently charged with her attempted murder and his lover was convicted of attempted murder. So the hospital said, well, this is all too high risk. It's all over the media because there's all sorts of stuff about swingers, parties and witches and previous deaths. It was, it was bizarre. So they shifted the risk by having a guardian appointed, namely me, to make the decision about whether she should and when she should die. So the process was to do a detailed investigation to try and find out whether she had any views on this matter. And she didn't nobody could recall it. So therefore, I sought to make a decision based upon what her values what were the critical beliefs that made her life meaningful and worthwhile for her, which was her Catholicism. And so I then had to find out what The Pope had to say about the circumstance. There was all sorts of research. I mean, it's not clear what the policies were, but I in the end came to the decision, having done all sorts of work of getting second opinions and quizzing the doctors and so forth, ultimately to make the decision that treatment should be withdrawn. And I sat down with her, even though she didn't know I was in the room and couldn't hear or see me and talk to her about it.

And I have to say, I threw everybody else out of the room because it was a very emotional and difficult conversation to have with her. I had at that stage got a guard put on her room because people were pretending to be family members and taking photographs of her and selling them to the papers. I mean, it was just fraught with problems. So you could only go and visit her if you got a letter of authority from me. And when the decision was announced, the front page of the Herald Sun was filled with huge letters saying starving to death. And as I say, the hate mail poured in and and some lovely positive supportive mail. And it was indicative, though, of those fairly rare but critical end of life decisions that, you know, not many people have to make in their lives. And technically, the decision wasn't that difficult. It was doing it in the full glare of publicity that made it so difficult. Other decisions were harder technically, but nobody knew who was doing them.

**Michael Green** [00:32:17] What period, what length of time did you have, Julian, to make these decisions? I'm assuming there was a degree of fraughtness, a high degree of fraud because it needed to be done very quickly.

**Julian Gardner** [00:32:26] Well, yes and no. This I think it was a span of about five months. The hospital after she died, said to me, oh, my God, this was costing us a fortune and we were just wishing you'd get on with it. And to their credit, never put any pressure on me. So there was never any question this was made for financial reasons. I mean, she was being sustained by artificial feeding and excellent hospital nursing care. But I had to make sure that we had done the most. I mean, I was ringing relatives in Portugal or the island of Madeira off the coast of Portugal to try and find out if they had any views and wishes and so forth. It was a most unusual, drawn out affair.

**Michael Green** [00:33:03] But it's an example of the role of public advocate plays and the necessity of having someone like the Public Advocate in an independent position. To make these difficult decisions.

**Michael Green** [00:33:13] Yes indeed. The Premier at the time, who himself was a Catholic, was three days in a row door stopped and said, this is a matter of the Public Advocate who will make a decision independent of government in in the woman's best interests. And he stuck to that mantra because he just didn't want to be involved.

**voiceover** [00:33:33] William and Lonsdale is brought to you by Greens List, one of the leading multidisciplinary barristers lists in Australia. Greens List believe in promoting conversation around the ideas and issues that shape not only our legal system but our wider community.

**Michael Green** [00:33:54] Julian, you were previously vice chairman of the Australian Press Council. You're still a panel member of the Australian Press Council. The press are an essential part of a functioning democracy. And of course, they are also or it is also contentious in itself. People have differing views of the press and the role it should play in our society. A defamation laws can be contentious as to whether they are too restrictive of a free press. Questions of the concentration of ownership of the press are current at the moment, and I think is a request for a royal commission into the ownership of the press, the concentration of its ownership. It must be a satisfying position to hold, to be on that council, to be playing a part or having a role to play in such an important part of our democracy.

**Julian Gardner** [00:34:37] Look, a free press is critical to surviving democracy. The Press Council's primary role is to set standards which the print media, newspapers, magazines must comply with and to receive and resolve and if necessary, arbitrate on complaints. But we are going back to the first point. Yes, look, I agree with you that those threats to the freedom of press exist, in addition to which a number of the major print organizations are losing revenue, which means that the extent to which you can exercise the role of being an investigative journalist, which is an expensive operation, is limited. But the fact that they've had to get rid of a whole lot of subeditors means that you have a lot of more problems of quality in terms of accuracy and so forth. And you used to have. So, yeah, I think there is a need to continue to be very vigilant and fight for freedom of the press, because without it, democracy is doomed in terms of the role of the press council. I

mean, in some ways, the most enjoyable bit for me is, is the arbitrations where I find myself having to ponder on questions about whether something is in the public interest or whether it's really just of interest to the public and the two are quite different. Or what is offensive and how, you know, how how offensive can you be before you limit somebody's right to say it? Those are really fascinating questions. And from time to time arbitrating on those matters, I just find really fascinating.

**Michael Green** [00:36:09] Absolutely fascinating. Does the Press Council have any role to play? I mean, media is now so different and so different from what we understood it to be. Where does the Press Council have jurisdiction?

**Julian Gardner** [00:36:21] Well over anybody who signs up to be a member. So all of the major publications except The Guardian Australia are members and except in Western Australia, where they set up their own process. So News Corp and and Nine are the major funders, it's funded by those members, by the publications themselves. So already there's a conflict, a tension there, but nobody's really come up with a satisfactory answer of how it could be funded, because once you allow the government to fund, there is a risk that government starts to have an influence in saying what can and can't be published. So I think they there are some brave moves that we could take for government to fund public interest advocacy by giving certain sums of money linked to some publications to allow them to do that. It's difficult. The Press Council struggles because as the revenues falling to the print media so they are less willing to fight to fund it.

**Michael Green** [00:37:18] Interesting indeed. But you would think it continues to have an important role to play. And I guess that does develop and the funding will change, too. So it's not an easy problem to solve. Watch this space. Julian on this topic of freedom of the press, there seems to be a tension between that freedom to say whatever you like and something which is too offensive and goes beyond the pale. How do we draw as a community or a society? How do we draw that line of enabling people to be offensive up to a certain point, but then saying beyond that point, your too offensive, you have offended yourself?

**Julian Gardner** [00:37:53] That's a really tricky one. Look, there are many restrictions on freedom of speech. You the classic legal one is you can't shout fire in the in a theater. And because that's putting people's safety and lives at risk. So there are clear limits you should let there. I think once we get to the point of saying you cannot be offensive, I think we've crossed the line. So the question is how offensive can you be? And that, I think, is exceedingly difficult to determine. But do you see you can offend. We don't find it difficult to to say that making comments about the Holocaust, questioning its reality are offensive to to members of the Jewish community. But where is it that we allow people to have genuine historical academic debate and where do we draw the line? So, yes, there is a limit to to offensiveness, but it's one that I think we need to draw very cautiously.

**Michael Green** [00:38:46] And would I be right in thinking that the line moves depending on society any given time?

**Julian Gardner** [00:38:53] Oh, it certainly does. And look, cartoon's going back to the start of the last century were often terribly offensive when you look at them now. And yes, clearly our standards change as as time goes on. What might have been offensive to the trans community, what is offensive now might not have been, you know, 20 years ago, for example. I think that the standards and there is a problem with cartoons because cartoons are recognized as being something where you're allowed to take a bit more liberty. They always have. But, yes, you've got to reflect current. I mean, you've got to decide, well, is this is offensive to people today.

**Michael Green** [00:39:30] And I'm assuming what is offensive today is being affected by the Internet and social media.

**Julian Gardner** [00:39:36] Look, it has to be and that makes it all the more complex.

**Michael Green** [00:39:43] One of the very interesting things you've been involved in over the past four or five years, Julian, is the drafting and implementation of the voluntary assisted dying legislation here in Victoria. You've called it the most challenging and exciting thing you've done in your career from a moral, ethical, legal and emotional viewpoint. Could you briefly explain the legislation to us? Because as much as we know it exists, I'm sure not many of us know the ins and outs of it. Secondly, why is it so challenging and exciting? And then thirdly, how is it actually playing out on the ground there?

**Julian Gardner** [00:40:16] Well, what the law provides is that somebody who is has a disease or illness or condition that is going to cause them to die. And it's likely considered that they will die within the next six months or 12 months in the case of diseases such as motor neuron disease. And they meet certain specific requirements, most important of which is that they must have a capacity to make decisions for themselves. So this is entirely voluntary. If they can meet the criteria and they're assessed by two doctors with certain qualifications and certain training, they can then get access to medication which they can administer to themselves at a time of their choosing or in a smaller number of cases where they're physically unable to actually raise a glass of liquid to their lips or to swallow the medication could be administered by a medical practitioner. The law in Victoria was described by the premier as being the most conservative in the world. And I think that's probably right. It has so many safeguards and protections that it is overly bureaucratic, but that was necessary in order to satisfy this balancing act. What made it challenging was that the goal of promoting individual autonomy has also to be balanced against the duty of the state to protect those who can't protect themselves, whether they be people who are victims of elder abuse, whether they be people who don't have a capacity to make decisions for themselves. So balancing those and balancing the rights of people to conscientiously object and say, I don't want to be involved and yet not restricting access, the balancing of safety, not only for the individual to make sure that they're not preyed upon or coerced and also to protect the public because there were significant concerns raised about having this lethal drug out there in the community. So there are ethical considerations, there are moral considerations, but there is the balancing of these rights. Ultimately, the goal of the legislation is to reduce suffering because person has to be experiencing suffering, which can't be relieved in any way acceptable to them. It's now been in operation for nearly 18 months. The data has been released for the first 12 months and there were 124 people who who ended their life using voluntary assisted dying. But I don't want to focus on that figure because the real goal is really reducing suffering. There are an additional number who got the medication but never took it, but received sufficient comfort to relieve their suffering. There are also the families who can join in with them in the voluntary decision, celebrate the last days and weeks and months as distinct from those families who previously had somebody who committed suicide. The coroner estimated that at least one death a week occurred in Victoria from people who would have otherwise qualified on suicide, often in grim, gruesome circumstances. So it's their suffering and it's also relieve the suffering for a lot of people who simply say, oh, I just feel so much more comfortable now. I know that that may be an option for me. So we focus on the number of deaths, but that's not the real indicator of success. I mean, I think laws that involve balancing acts. I mean, previously I had spent nearly a year doing a review of Victoria's Equal Opportunity Act. And there once again, you're you're balancing competing legal rights. I was involved chairing an expert committee for the minister on the Mental Health Act. Once again, you're looking at severe restrictions on personal liberties by taking my making somebody an involuntary patient. But at the same time, you've got to look at the duty of the state to protect those who can't protect themselves. I find those balancing acts challenging and rewarding to deal with.

**Michael Green** [00:44:23] Very interesting indeed. And I think we're very fortunate to have you as one of the people who is making or involved in that decision making process for us as a community. You've had an outstanding career of community service, which we are grateful for. Looking back to your childhood, would you put a great deal of emphasis on the Quakerism you grew up under in the formation of a person who's been who's worked in public service most of their life.

**Julian Gardner** [00:44:48] That's that's it's always difficult to to actually be sure about that. But look, I can say this. The Quakers or the friends society as they're sometimes known I admire very much. They are Christians who are social activists. They have been very active going back historically to the great, you know, Cadbury's and fries of the 19th century. Certainly the principles of of seeking to alleviate poverty and injustice and unfairness clearly formed part of my psyche or whatever. So, yes, it's hard to say that they weren't part of where I where I came to pursue my career.

**Michael Green** [00:45:28] So if migrants to Australia were still arriving on boats, which of course they're not, but if they were and we can go down to Port Melbourne and greet a migrant ship, there's a young 12 year old hopping off the boat, similar to Julian Gardner of all those years ago. What would you say to him?

**Julian Gardner** [00:45:44] Oh, goodness. Well, for a start, start trying to learn some of the local idioms as quickly as you can.

**Michael Green** [00:45:51] Such as who do you work for?

**Julian Gardner** [00:45:52] Well, that's right. I didn't know what the word barrack meant, so I had to find an answer to that question. Very quickly, what would I say to that 12 year old? Look, I, I would say to myself, have a greater belief in yourself and have more self-confidence. I've I know it sounds strange with the things that I've been privileged to be involved in, but I've never had a great deal of self belief and I think that's held me back. I would also say that if you want to be involved in working for change, you've got to you've got to be prepared to play the long game and not get frustrated too soon. If the pursuit of public good is going to bring you far more happiness in the pursuit of wealth and possessions.

**Michael Green** [00:46:28] Would you do anything differently if you could do it again?

**Julian Gardner** [00:46:31] In terms of career choices? No, look, I didn't ever have a career plan. It just sort of happened to me until I finally stopped full time employment when I left the Advocate then I set out a career plan for the first time in my life. And I said, I don't want to manage any longer, I've been a CEO for 27 years, somebody else can do the damn job. I only want to be involved in things which involve promotion of human rights and and justice. And I want to do something that I'm not going to do it unless it gives me some pleasure. And that was my then career plan. And I very happily for the last 12 years, have had a wonderful series of opportunities to realize that.

**Michael Green** [00:47:06] Which you weren't through all of the work before that. Julian, thank you very much for coming in this morning and telling us about your life in the law.

**Julian Gardner** [00:47:13] Michael. It's been a pleasure.

**voiceover** [00:47:21] Show notes from today's episode can be found at [greenslist.com.au/podcast](https://greenslist.com.au/podcast). There you'll find links to things talked about in this episode, a transcript of the show and some wonderful photos of our guests. If you're enjoying Lives in the Law, please tell your networks and subscribe, rate and review the show. It really helps others find out about us. Your host is former lawyer and Greens List clerk Michael Green. Our show is produced by me, Catherine Green, mixed and mastered by Windmill Audio and recorded by Alex Macfarlane, who also wrote and performed all the music for the series. With covid restrictions limiting numbers inside the County Court of Victoria we are currently recording our shows at Owen Dixon Chambers, on the corner of William and Lonsdale Streets in our beautiful city of Melbourne. We acknowledge The Wurundjeri People of the Kulin Nation as the traditional custodians of this land and pay our respect to their elders past and present. There is no doubt that conversations about justice have been taking place on this land for thousands of years, and we are privileged to continue the discussion here today.