



EVIDENCE BASED POLICY ANALYSIS: 20 CASE STUDIES
A report commissioned by the Evidence Based Policy Research Project
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About Per Capita

Per Capita is an independent progressive think tank, dedicated to fighting inequality in Australia. We work to build a new vision for Australia based on fairness, shared prosperity, community and social justice.

Our research is rigorous, evidence-based and long-term in its outlook. We consider the national challenges of the next decade rather than the next election cycle. We ask original questions and offer fresh solutions, drawing on new thinking in social science, economics and public policy.

Our audience is the interested public, not just experts and policy makers. We engage all Australians who want to see rigorous thinking and evidence-based analysis applied to the issues facing our future.

About the authors

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Introduction

Evidence-based policy

The Evidence Based Policy project highlights how policy design frequently fails to incorporate the best available evidence, or policy development practices. Far too often the news cycle, or narrow party politics determines what policies are enacted by state and federal politicians. Recent examples, from the ‘sports rorts’ scandal,¹ to federal bushfire recovery spending², to car park funding allocations³ indicate a growing and worrying trend for policies to be developed with significant political bias, motivated by electoral party politics rather than optimal policy outcomes.⁴

This can result in failed policy implementation and poor results for citizens, politicians, and society at large, especially when it undermines public confidence in policymaking.

The Institute of Public Administration Australia (IPAA) 2012 discussion paper *Public Policy Drift* argued that governments must replace “policy on the run” with a “business case approach” to address the “sense of crisis in the policymaking system”.⁵ This approach would involve designing policies based on evidence, consultation, analysis, and debate. The paper outlined a business case approach based on Professor Kenneth Wiltshire’s *Ten Criteria for a Public Policy Business Case* and analysed 18 federal policies against that criteria, finding that only eight satisfied these standards for policymaking.

In 2018, the newDemocracy Foundation commissioned two think tanks with different ideological leanings – Per Capita and the Institute of Public Affairs – to repeat the analysis, ranking 20 recent high-profile policies (eight federal, and four from each of New South Wales, Victoria, and Queensland) against the Wiltshire criteria.

In 18 of the 20 cases, the two think tanks were able to find at least 80% agreement in scoring, revealing the importance of taking a rigorous and consultative approach to policy development and implementation at all levels of government. The project demonstrated that, while no policy analysis can be completely free of ideological perspective, there are several elements that should be common to all well-conceived and implemented policies if they are to efficiently and effectively serve the public interest.

The 2018 project received extended coverage in the media including in *The Age*, *The Australian Financial Review*, and *The Mandarin*.⁶

In 2019 the project was re-commissioned, with updates to the methodology to address some of the previous year’s inconsistencies. We prioritised policy decisions that had been legislated and introduced a questionnaire to accompany the Wiltshire criteria. Once again, the project demonstrated that two ideologically opposed think tanks could come to agreement on processes that represented good – and bad – policymaking. It also included some reflections on election policymaking, on the state/federal comparison, and on consensus versus controversy.

In 2020, in light of the extraordinary policy-making times, the project’s Steering Committee consulted with Professor Kenneth Wiltshire to revisit the methodology.

For 2021, with emergency legislation somewhat less necessary, the methodology has reverted to the 2019 criteria. The selected policies are outlined in the table below.

Federal and State Policies Under Review

Federal	New South Wales	Victoria	Queensland
Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery Bill) 2020	Bushfires Legislation Amendment Act 2020	Justice Legislation Amendment (Drug Court and Other Matters) Bill 2020	Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019

1 <https://www.abc.net.au/news/2021-03-18/sports-rorts-inquiry-faced-obstruction-from-federal-government/13260610>

2 Lloyd-Cape et al, 2021, Smokescreen: The rhetoric and reality of federal bushfire recovery funding

3 <https://www.smh.com.au/politics/federal/when-47-car-parks-660-million-and-one-election-collide-20210630-p585h9.html>

4 <http://www.ipaa.org.au/documents/2012/05/public-policy-drift.pdf/>

5 <http://www.ipaa.org.au/documents/2012/05/public-policy-drift.pdf/>

6 <https://www.theage.com.au/politics/federal/half-baked-opposing-think-tanks-unite-to-condemn-policy-failures-20181005-p507y9.html>,

<https://www.afr.com/news/finally-something-left-and-right-can-agree-on-evidencebased-policy-20181005-h16a3l>,

<https://www.themandarin.com.au/100035-in-praise-of-proper-public-policy-process-if-professional-pundits-can-agree-cant-we-all>

EVIDENCE BASED POLICY ANALYSIS

Federal Circuit and Family Court of Australia Bill 2019	Stronger Communities Legislation Amendment (Domestic Violence) Bill 2020	Change or Suppression (Conversion) Practices Prohibition Bill 2020	Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020
Social Services Legislation Amendment (Strengthening Income Support) Bill 2021	Electricity Infrastructure Investment Act 2020	Summary Offences Amendment (Decriminalisation of Public Drunkenness Bill) 2020	Queensland Future Fund Bill 2020
Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020	COVID-19 Recovery Act 2021	Constitution Amendment (Fracking Ban) Bill 2020	Forest Wind Farm Development Act 2020
Economic Recovery Package (JobMaker Hiring Credit) Amendment Bill 2020			
Social Services Legislation Amendment (Drug Testing Trial) Bill 2019			
Higher Education Support Amendment (Freedom of Speech) Bill 2020			
Corporations Amendment (Corporate Insolvency Reforms) Bill 2020			

Methodology

The aim of this project was to coax more evidence-based policy decisions by all tiers of government by reviewing and rating 20 high profile government decisions against the Wiltshire business case criteria. These criteria are outlined below:

- 1) Establish Need: Identify a demonstrable need for the policy, based on hard evidence and consultation with all the stakeholders involved, particularly interest groups who will be affected. ('Hard evidence' in this context means both quantifying tangible and intangible knowledge, for instance the actual condition of a road as well as people's view of that condition so as to identify any perception gaps).
- 2) Set Objectives: Outline the public interest parameters of the proposed policy and clearly establish its objectives. For example interpreting public interest as 'the greatest good for the greatest number' or 'helping those who can't help themselves'.
- 3) Identify Options: Identify alternative approaches to the design of the policy, preferably with international comparisons where feasible. Engage in realistic costings of key alternative approaches.
- 4) Consider Mechanisms: Consider implementation choices along a full spectrum from incentives to coercion.
- 5) Brainstorm Alternatives: Consider the pros and cons of each option and mechanism. Subject all key alternatives to a rigorous cost-benefit analysis. For major policy initiatives (over \$100 million), require a Productivity Commission analysis.
- 6) Design Pathway: Develop a complete policy design framework including principles, goals, delivery mechanisms, program or project management structure, the implementation process and phases, performance measures, ongoing evaluation mechanisms and reporting requirements, oversight and audit arrangements, and a review process ideally with a sunset clause.
- 7) Consult Further: Undertake further consultation with key affected stakeholders of the policy initiative.
- 8) Publish Proposals: Produce a Green and then a White paper for public feedback and final consultation purposes and to explain complex issues and processes.
- 9) Introduce Legislation: Develop legislation and allow for comprehensive parliamentary debate especially in committee, and also intergovernmental discussion where necessary.
- 10) Communicate Decision: Design and implement a clear, simple, and inexpensive communication strategy based on information not propaganda, regarding the new policy initiative.

Although we aimed to put ideology completely to one side, total objectivity is, of course, impossible. Broad ideas like 'the public interest' and 'key affected stakeholders' are open to interpretation. To make the assessment of the policies

against the Wiltshire criteria more objective, Per Capita and the IPA were also provided with a set of guiding questions, where a 'Yes' answer would indicate the policy had met the corresponding criterion, and a 'No' answer would mean it had not. These questions are listed below:

- 1) Is there a statement of why the policy was needed based on factual evidence and stakeholder input?
- 2) Is there a statement of the policy's objectives couched in terms of the public interest?
- 3) Is there a description of the alternative policy options considered before the preferred one was adopted?
- 4) Is there a disclosure of the alternative ways considered for implementing the chosen policy?
- 5) Is there a published analysis of the pros/cons and benefits/costs of the alternative options/mechanisms considered in 3 and 4?
- 6) Is there evidence that a comprehensive project management plan was designed for the policy's rollout?
- 7) Was there further consultation with affected stakeholders after the preferred policy was announced?
- 8) Was there a) a Green paper seeking public input on possible policy options and b) a White paper explaining the final policy decision?
- 9) Was there legislation and adequate Parliamentary debate on the proposed policy initiative?
- 10) Is there an online official media release that explains the final policy in simple, clear and factual terms?

In 2021, we are continuing to take a 'wide' rather than a 'narrow' view to answering these questions and to be more thorough in justifying how and why policies did or did not meet the criteria, rather than using the questions as a tick box exercise. With this in mind, we have explicitly and specifically addressed each criterion in turn throughout our analysis.

Disclaimer

Each case study was analysed and rated on whether it complied with good policy making **processes** as defined by the Wiltshire criteria, not on whether it achieved its intended social, economic, or environmental **outcomes**, many of which may not yet be known.

Findings

Under the criteria set out by the project steering committee, policies are graded in the following manner:

- Excellent: 9.0 -10.0 score
- Sound: 8.0 – 8.5
- Acceptable: 7.0 – 7.5
- Mediocre: 5.0 – 6.5
- Unacceptable: 0 – 4.5

	Establish need	Set objectives	Identify options	Consider mechanisms	Brainstorm alternatives	Design pathway	Consult further	Publish proposals	Introduce legislation	Communicate decision	Total score
FEDERAL	1	2	3	4	5	6	7	8	9	10	
Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery Bill) 2020	Y	Y	Y	N	N	Y	Y	N	N	N	5/10
Federal Circuit and Family Court of Australia Bill 2019	N	Y	N	N	N	N	N	Y	Y	Y	4/10
Social Services Legislation Amendment (Strengthening Income Support) Bill 2021	Y	Y	N	N	N	N	N	Y	Y	Y	5/10
Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020	Y	Y	N	Y	N	Y	Y	Y	Y	N	7/10
Economic Recovery Package (JobMaker Hiring Credit) Amendment Bill 2020	Y	Y	N	N	N	N	Y	N	Y	Y	5/10
Social Services Legislation Amendment (Drug Testing Trial) Bill 2019	N	Y	N	N	N	Y	Y	N	Y	Y	5/10
Higher Education Support Amendment (Freedom of Speech) Bill 2020	Y	Y	Y	Y	N	Y	Y	N	Y	Y	8/10
Corporations Amendment (Corporate Insolvency Reforms) Bill 2020	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	9/10
NEW SOUTH WALES											
Bushfires Legislation Amendment Act 2020	Y	Y	N	N	N	N	N	N	Y	N	3/10
COVID-19 Recovery Act 2021	Y	Y	N	N	N	Y	Y	N	Y	Y	6/10
Electricity Infrastructure Investment Act 2020	Y	Y	Y	Y	N	Y	N	N	Y	Y	7/10
Stronger Communities Legislation Amendment (Domestic Violence) Bill 2020	Y	Y	Y	N	N	Y	Y	Y	Y	Y	8/10

VICTORIA

Justice Legislation Amendment (Drug Court and Other Matters) Bill 2020	Y	Y	Y	Y	N	N	N	N	Y	N	5/10
Change or Suppression (Conversion) Practices Prohibition Bill 2020	Y	Y	Y	Y	N	Y	Y	N	Y	Y	8/10
Constitution Amendment (Fracking Ban) Bill 2020	N	Y	N	N	N	N	N	N	Y	Y	3/10
Summary Offences Amendment (Decriminalisation of Public Drunkenness) Act 2021	Y	Y	N	N	Y	Y	Y	Y	Y	Y	8/10
QUEENSLAND											
Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020	Y	Y	Y	N	N	N	Y	Y	Y	Y	7/10
Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020	Y	Y	Y	Y	N	N	Y	Y	Y	Y	8/10
Queensland Future Fund Bill 2020	Y	Y	N	Y	N	N	Y	Y	Y	N	6/10
Forest Wind Farm Development Act 2020	Y	Y	Y	Y	Y	N	Y	Y	Y	N	8/10

Federal case studies

Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery Bill) 2020

Policy background

On the 9th December 2020, the government introduced the Fair Work Amendment (*Supporting Australia's Jobs and Economic Recovery*), an omnibus Bill which amends the *Fair Work Act 2009*, to align industrial relations reforms with Australia's economic recovery, opportunities for job creation and wage growth, and the "urgency to get more people back into work"⁷.

The measures outlined in the Bill were informed by a six-month consultation period with Australia's largest employer organisations and union groups⁸. From the outset, the federal government insisted it would maintain the same collaborative approach with employer and employee stakeholders that guaranteed the initial success of the JobKeeper subsidy. Yet there is perennial divide between the unions, who "espouse the need for protective regulation"⁹ and decent working conditions, and business and political groups, who firmly maintain that employers should have "greater freedom and choice"¹⁰.

There have since been two major reviews of the *Fair Work Act*: the first was undertaken in 2012 by a Review Panel appointed by the Department of Education, Employment and Workplace Relations and the second was prepared by the Productivity Commission in 2015¹¹. The suite of measures in the Fair Work Amendment (*Supporting Australia's Jobs and Economic Recovery*) Bill address a small number of the recommendations from these reviews and largely relate to defining casual employment, greenfield agreements for major projects, creating and approving enterprise bargaining agreements, flexibility under modern awards for industries impacted by successive lockdowns and employer compliance, enforcement and wage theft¹².

One of the Bill's core provisions is to incorporate the first statutory definition for casual work into the *Fair Work Act*¹³. There were 2.6 million casual employees in Australia as of December 2020, and over 1.3 million of them worked regular shifts for their employer for over one year¹⁴. Despite this, there has been ongoing confusion surrounding the legal status of casual employment in Australia¹⁵. According to the Bill, a casual employee will be defined as one where their employer "no firm advance commitment to continuing and indefinite work according to an agreed pattern of work, the [casual employee] accepts the offer on that basis and the person is an employee as a result of that acceptance"¹⁶. In addition, the Bill also refers to 'eligible casual employees' as those who have been working for their employer for 12 months, and also prevents all casual workers from "double dipping" to claim both annual leave and casual loadings worth 25 percent of their pay¹⁷.

The Bill's second provision aims to alter modern awards, which provide the minimum terms around leave entitlements, overtime and shift work and establish a "fair...and minimum safety net"¹⁸ for worker conditions. In this case, the Bill grants employers and eligible part-time employees the flexibility to work additional hours at ordinary pay rates upon entering into a simplified additional hours agreement¹⁹. In order to be eligible for a simplified additional hours agreement, employees work at least 16 hours per week and must be covered by the modern awards listed in the Bill, which include those from the worst affected industries due to the pandemic, such as the Restaurant Industry Award 2020

7 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F7358472%22>

8 <https://hallandwilcox.com.au/thinking/industrial-relations-reforms-what-you-need-to-know-about-whats-to-come/>

9 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2F7858072%22>

10 Ibid.

11 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2F7858072%22>

12 Ibid.

13 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F8d35ad3a-06a6-4b15-b4bc-d5f91eeb30c9%2F0025%22>

14 <https://www.smh.com.au/politics/federal/casual-workers-earn-new-right-to-permanent-employment-under-workplace-reforms-20201206-p5611v.html>

15 <https://theconversation.com/what-defines-casual-work-federal-court-ruling-highlights-a-fundamental-flaw-in-australian-labour-law-139113>

16 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2F6653_ems_25563409-64de-4650-b28f-2f5b1084c374%22

17 Ibid.

18 <https://www.theguardian.com/australia-news/2020/dec/09/how-australias-industrial-relations-bill-will-affect-you-and-your-workplace>

19 [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024625/toc_pdf/FairWorkAmendment\(SupportingAustralia'sJobsandEconomicRecovery\)Bill2020\[Provisions\].pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024625/toc_pdf/FairWorkAmendment(SupportingAustralia'sJobsandEconomicRecovery)Bill2020[Provisions].pdf;fileType=application%2Fpdf)

and Hospitality Industry (General) Award 2020²⁰. The Bill also enables employers operating under one of the modern awards listed in the Bill to issue flexible work directions for two years with respect to the employee's duties and location²¹. These directions must adhere to a minimum rate of pay guarantee to mitigate the risk of underpaying and abusing employees.

The Bill then turns to enterprise agreement and bargaining reforms. Enterprise agreements are settled by employers and employees and set out the relevant entitlements, terms and conditions of employment for up to four years. Crucially, the Bill demands employers take reasonable steps to give employees a "fair and reasonable opportunity"²² to decide whether to enter into an agreement. It also allows employers two years to apply for pay deals that fall short of the 'better off overall test' (the BOOT), but lends the Fair Work Commission the right to approve any agreements so long as they consider "all circumstances"²³, including the impact of COVID-19. The government defended their rationale behind suspending the BOOT, contending its temporary removal would boost the number of workplace pay deals and number of jobs returned to the economy during the recovery from the pandemic recession²⁴. The Bill also amends Greenfields agreements for new worksites, extending them to eight years' duration for projects valued over \$500 million and \$250 for those in the national interest. This provision safeguards major projects from being derailed by employee strikes four years into construction²⁵.

Another critical provision outlined in the Bill is a series of crackdowns on employers who systemically, intentionally and dishonestly underpay their employees. The Bill deems this a criminal offence and imposes a maximum penalty of four years imprisonment or a \$1.1 million fine for individuals, and a penalty of \$5.5 million for corporations. Additionally, employers who refuse to comply with notices issued by Fair Work Inspectors will increase by 50%²⁶. Employers will also be prohibited from publishing job advertisements with pay rates specified at lower levels than the national minimum wage²⁷.

The Bill sparked controversy during its second reading debate on February 17, 2021 and was strongly opposed on all fronts by Labor and the Greens, who echoed union organisations' views that it would "attack job security...and pay"²⁸. By contrast, crossbenchers such as Rebekah Sharkie of Centre Alliance²⁹ and independent MP Zali Steggall were more receptive to the Bill, though they urged greater consultation with unions and business groups to settle concerns that the Bill favours employers and businesses over their employees³⁰.

Unsurprisingly, the Bill stoked division among major interest groups and stakeholders and underscored the split between peak bodies that represent industries and employers, and those that represent employees and workers' rights. Employer stakeholders and business groups broadly supported the statutory definition for casual employees and changes to flexible work directions under modern awards and enterprise agreements, including the removal of the BOOT test, alongside the amendments to Greenfields agreements³¹. By contrast, the only provision in the Bill supported by worker representatives was the changes to employer compliance and crackdowns on wage theft³².

The Bill entered its second phase of consultation after it was referred to the Senate Standing Committee on Education and Employment and later the Standing Committee for the Scrutiny of Bills in February and March 2021 respectively, and both reports recommended the Bill's passage³³. The Bill was also referred to the Parliamentary Joint Committee on Human Rights (PJCHR), which sought further advice from Christian Porter on whether the majority of the provisions in the

20 <https://hallandwilcox.com.au/thinking/industrial-relations-reforms-what-you-need-to-know-about-whats-to-come/>

21 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr6653_ems_2249024a-6c3e-4084-9081-16148d0c9b27%22

22 <https://www.abc.net.au/news/2020-12-08/workplace-reforms-collective-bargaining-better-off-overall/12962736>

23 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr6653_ems_2249024a-6c3e-4084-9081-16148d0c9b27%22

24 <https://www.theguardian.com/australia-news/2020/dec/09/how-australias-industrial-relations-bill-will-affect-you-and-your-workplace>

25 Ibid.

26 [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024625/toc_pdf/FairWorkAmendment\(SupportingAustralia'sJobsandEconomicRecovery\)Bill2020%5bProvisions%5d.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024625/toc_pdf/FairWorkAmendment(SupportingAustralia'sJobsandEconomicRecovery)Bill2020%5bProvisions%5d.pdf;fileType=application%2Fpdf)

27 <https://www.theguardian.com/australia-news/2020/dec/09/how-australias-industrial-relations-bill-will-affect-you-and-your-workplace>

28 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F14059f01-aa4f-4143-a7dc-fa5f407d6e45%2F0048%22>

29 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F90baf2c3-8e0f-4a7a-b199-2f7d126f9de3%2F0203%22>

30 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F9a1e24b1-0e45-4b80-ba2d-d97d388965e1%2F0114%22>

31 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2F7858072%22>

32 Ibid.

33 https://www.aph.gov.au/-/media/Committees/Senate/committee/scrutiny/scrutiny_digest/2021/PDF/d05_21.pdf?la=en&hash=C3A28E391F1597187F88A9D82563E50A18E07C3C

34 https://www.aph.gov.au/-/media/Committees/Senate/committee/scrutiny/scrutiny_digest/2021/PDF/d05_21.pdf?la=en&hash=C3A28E391F1597187F88A9D82563E50A18E07C3C

Bill “were compatible with human rights”³⁴. The PJCHR approved the amendment in the Senate removing the provisions related to the BOOT test³⁵.

On March 22, the Bill returned to the House of Representatives and passed with the amendments made in the Senate³⁶. However, the Government removed the provision in the Bill to crack down on wage theft, despite this provision having the support of the Opposition and cross-bench. No reason was given for removing a provision that had wide parliamentary support, and was the priority measure for unions representing workers³⁷.

Following its passage through both Houses, the Bill received Royal Assent on March 26³⁸.

Policy Process

Criterion 1 - Establish Need: Identify a demonstrable need for the policy, based on hard evidence and consultation with all the stakeholders involved, particularly interest groups who will be affected.

Guiding question: Is there a statement of why the policy was needed based on factual evidence and stakeholder input?

Yes. The government made a case for the need to reform some aspects of Australia’s national industrial relations system to safeguard Australia’s path to economic recovery from the COVID-19 pandemic. They further emphasised the two-stage consultative process that would pair business and employer organisations with unions to reach a consensus on each of the proposed reforms in the Bill. The need for the policy was also supported by the government’s intentions to act on the recommendations made in two comprehensive reviews of Australia’s industrial relations system in 2012 and 2015.

Criterion 2 - Set Objectives: Outline the public interest parameters of the proposed policy and clearly establish its objectives.

Guiding question: Is there a statement of the policy’s objectives couched in terms of the public interest?

Yes. The Prime Minister outlined the case for an evidence-based review of Australia’s national industrial relations system that “protect[s] the rights and entitlements of workers and [presents] clear gains for the economy and...working Australians”³⁹ in an address to the National Press Club while roundtable negotiations with business and union groups were underway. Former Attorney-General and Minister for Industrial Relations, Christian Porter, also included a press release on his website outlining the need for reform across the national industrial relations system that was “holding back Australia’s economic recovery”⁴⁰ and an update on the first stage of the consultation process with business organisations and union groups.

Criterion 3 – Identify Options: Identify alternative approaches to the design of the policy, preferably with international comparisons where feasible. Engage in realistic costings of key alternative approaches.

Guiding question: Is there a description of the alternative policy options considered before the preferred one was adopted?

No. While the Bill’s design was partially informed by the Productivity Commission’s 2015 inquiry⁴¹ into Australia’s industrial relations system and the 2012 Fair Work Act Review⁴², there is no evidence that new or different policy options were considered to reflect the Government’s stated intention of ensuring Australia’s IR system did not “hold back Australia’s economic recovery”. Nor were serious alternatives to Enterprise Bargaining considered, even though all stakeholders agreed the current system was not working.

34 https://www.aph.gov.au/-/media/Committees/Senate/committee/humanrights_ctte/reports/2021/Report_4/Report_4_of_2021.pdf?la=en&hash=91E471A7BC6AECF1584671F679E2EA7A961F9E6A (p. 49).

35 Ibid, p. 59.

36 https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6653

37 <https://www.theguardian.com/australia-news/2021/mar/18/coalition-abandons-crackdown-on-wage-theft-as-senate-passes-gutted-industrial-relations-bill>

38 Ibid.

39 <https://www.abc.net.au/news/2020-05-31/coronavirus-jobs-industrial-relations/12300118>

40 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F7392981%22>

41 <https://www.pc.gov.au/inquiries/completed/workplace-relations#report>

42 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fcatalog%2F00459572%22/>

Criterion 4 – Consider Mechanisms: Consider implementation choices along a full spectrum from incentives to coercion.

Guiding question: Is there a disclosure of the alternative ways considered for implementing the chosen policy?

No. We found no evidence of consideration of different mechanisms.

Criterion 5 – Brainstorm Alternatives: Consider the pros and cons of each option and mechanism. Subject all key alternatives to a rigorous cost-benefit analysis.

Guiding question: Is there a published analysis of the pros/cons and benefits/costs of the alternative options/mechanisms considered in 3 and 4?

No. This information was unavailable. Incidentally, the government did not specify the estimated cost of the Bill, noting it was “estimated to have a minor financial impact”⁴³ though it was “yet to be finalised”⁴⁴.

Criterion 6 – Design Pathway: Develop a complete policy design framework including principles, goals, delivery mechanisms, program or project management structure, the implementation process and phases, performance measures, ongoing evaluation mechanisms and reporting requirements, oversight and audit arrangements, and a review process ideally with a sunset clause.

Guiding question: Is there evidence that a comprehensive project management plan was designed for the policy’s rollout?

Yes. The Bill provides a comprehensive overview of its separate provisions⁴⁵ and intended aims. An Employer Advisory Service also commenced on July 1, 2021, to help employers understand how the workplace pay and entitlement obligations in the Bill affect them and their employees⁴⁶. Former Attorney-General and Industrial Relations Minister Christian Porter also reassured stakeholders that a Senate Committee would continue to review the legislation “in detail over the coming months”⁴⁷.

Criterion 7 – Consult Further: Undertake further consultation with key affected stakeholders of the policy initiative.

Guiding question: Was there further consultation with affected stakeholders after the preferred policy was announced?

Yes. After the Bill was announced in December 2020, the Senate Standing Committee on Education and Employment received 134 submissions from peak bodies, academics, think tanks, business and union groups during the second phase of the consultation process in early 2021. A full list of consultations is available on the Attorney-General’s website⁴⁸.

Criterion 8 – Publish Proposals: Produce a Green and then a White paper for public feedback and final consultation purposes and to explain complex issues and processes.

Guiding question: Was there a) a Green paper seeking public input on possible policy options and b) a White paper explaining the final policy decision?

No. While the Bill was informed by a series of submissions, consultations and reviews on the prominent themes in the Bill, such as strengthening penalties for employer non-compliance⁴⁹, consultation with affected workers and the public was limited.

43 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2F6653_ems_25563409-64de-4650-b28f-2f5b1084c374%22

44 Ibid.

45 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2F6653_ems_25563409-64de-4650-b28f-2f5b1084c374%22

46 <https://www.ag.gov.au/industrial-relations/industrial-relations-reform>

47 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F7695492%22;src1=sm1>

48 <https://www.ag.gov.au/industrial-relations/consultations>

49 https://www.ag.gov.au/industrial-relations/publications?f%5B0%5D=publication_type_section%3A1021&f%5B1%5D=publication_type_section%3A5538&f%5B2%5D=topic_section%3A676

Criterion 9 – Introduce Legislation: Develop legislation and allow for comprehensive parliamentary debate especially in committee, and also intergovernmental discussion where necessary.

Guiding question: Was there legislation and adequate Parliamentary debate on the proposed policy initiative?

No. The Bill was hotly contested by the Opposition and cross-bench in the Senate. Amendments seeking to strengthen protections for part-time workers were dismissed, and the only provision supported by the unions, the majority of the Senate cross bench and Opposition, to crack down on wage theft, was dumped without explanation. The legislative process was truncated and most of the measures in the Bill were abandoned.

Criterion 10 – Communicate Decision: Design and implement a clear, simple, and inexpensive communication strategy based on information not propaganda, regarding the new policy initiative.

Guiding question: Is there an online official media release that explains the final policy in simple, clear and factual terms?

No. Former Attorney-General and Industrial Relations Minister Christian Porter's media release included a summary of the provisions outlined in the Bill, and made direct reference to Labor's "predictabl[e]"⁵⁰ refusal to support it, even after it was amended in the Senate. After the legislation unravelled in the Senate, the Government apparently abandoned any efforts to address the ongoing problems the Bill was seeking to address.

	CRITERION	YES/NO
1	Establish Need (demonstrable, evidence-based need)	Yes
2	Set Objectives (public interest parameters)	Yes
3	Identify Options (consideration of alternatives)	Yes
4	Consider Mechanisms (implementation choices)	No
5	Brainstorm Alternatives (cost-benefit analysis)	No
6	Design Pathway (policy design framework)	Yes
7	Consult Further (further consultation after policy announcement)	Yes
8	Publish Proposals (produce Green then White paper, or equivalents)	No
9	Introduce Legislation (comprehensive parliamentary debate)	No
10	Communicate Decision (information not propaganda)	No
	Final Score	5/10

⁵⁰ <https://webarchive.nla.gov.au/awa/20210325234549/https://www.attorneygeneral.gov.au/media/media-releases/committee-recommends-passage-crucial-ir-reforms-12-march-2021>

Economic Recovery Package Amendment Bill 2020 (JobMaker Hiring Credit)

Policy Background

In June 2020, youth unemployment spiked to 16.4%, more than double the economy-wide average⁵¹. Of the 870,000 Australians who lost their jobs at the onset of the COVID-19 crisis, just shy of 40% were young workers aged 15 to 24⁵². In addition, individuals aged 15-24 and 25-34 years worked 12% and 6.9% fewer hours in August 2020 compared to March of the same year⁵³. By contrast, people aged between 35 and 54 worked 2.8% fewer hours relative to pre-pandemic levels⁵⁴.

In response, the Federal Government created the \$4 billion, three-year JobMaker Hiring Credit programme as a critical element of last year's budget, announced on October 6th 2020. JobMaker is a wage subsidy scheme designed to "improve people's prospects of gaining paid employment"⁵⁵. The rationale behind JobMaker is to reduce the cost of labour for employers, and thus increase demand for labour services, with international evidence to suggest that hiring subsidies improve economic outcomes for younger workers in times of crisis⁵⁶.

The subsidy targets people aged 16 to 35, with the aim of accelerating youth employment growth, to mitigate the "scarring from long-term unemployment".⁵⁷ Australia's efforts to bolster young people's workforce participation mirror those of 13 other OECD countries who have instituted new youth-focused hiring subsidies throughout the pandemic⁵⁸.

The JobMaker Hiring Credit bill amends the Coronavirus Economic Response Package (*Payments and Benefits*) Act 2020, enabling the Treasurer to extend the payments made under the *Payments and Benefits Act* and create the rules and provisions for the JobMaker scheme⁵⁹. These rules specify the criteria employers must satisfy to receive the hiring credit, the amount they will receive and the timing of their payments, alongside the criteria and obligations for eligible employees.

These amendments to the Act allow the Treasurer to include the subsidy's rules in the form of legislative instrument⁶⁰. The Treasurer defended this decision in a response to the Standing Committee for the Scrutiny of Bills, noting that the government will be better equipped to respond to changing circumstances and an evolving labour force, while maintaining consultation with stakeholders throughout⁶¹.

The Bill was introduced to and first read in the House of Representatives on October 7th and referred to the Senate Economics Legislation Committee following day for inquiry⁶². The Government initially withheld the release of the rules to enact the scheme until late October, and instead the Treasury released a fact sheet informing the public on its design⁶³.

Under the scheme, employers will be able to claim a credit of up to \$200 per week for each additional eligible employee aged between 16 and 29 years old, and up to \$100 per week for employees aged between 30 and 35⁶⁴. These credits are claimed once every three months in arrears and are paid for up to 12 months from the date each

51 <https://theconversation.com/jobmaker-is-nowhere-near-bold-enough-here-are-four-ways-to-expand-it-148980>

52 <https://theconversation.com/jobkeeper-and-jobmaker-have-left-too-many-young-people-on-the-dole-queue-158294>

53 <https://www.aph.gov.au/DocumentStore.ashx?id=c9009d52-ce9c-43ca-bb61-61632dbdcbbd&subId=695150>

54 <https://theconversation.com/jobmaker-is-nowhere-near-bold-enough-here-are-four-ways-to-expand-it-148980>

55 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2F7623125%22>

56 https://www.ilo.org/wcmsp5/groups/public/-/-ed_emp/documents/publication/wcms_466538.pdf

57 <https://www.aph.gov.au/DocumentStore.ashx?id=c9009d52-ce9c-43ca-bb61-61632dbdcbbd&subId=695150>

58 https://read.oecd-ilibrary.org/view/?ref=1099_1099609-ia84hp7m3s&title=What-have-countries-done-to-support-young-people-in-the-COVID-19-crisis

59 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2F6609_ems_3fa8a35d-f7a2-41a1-a775-cd34ff110cd8%22

60 https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6609

61 https://www.aph.gov.au/-/media/Committees/Senate/committee/scrutiny/scrutiny_digest/2020/PDF/d17.pdf?la=en&hash=F2861A940A1D36F73F7F78DB463B501828FA0D31

62 https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6609

63 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansard%2F7bf0b0b3-e260-451a-aa4e-ec6d77176285%2F0333;query=Id%3A%22chamber%2Fhansard%2F7bf0b0b3-e260-451a-aa4e-ec6d77176285%2F0332%22>

64

https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview202021/EmploymentServicesMeasures

new position is created. In addition, eligible employers can lodge claims for employees across eight JobMaker 'periods', with the first commencing on October 7th 2020 and ending on January 6th 2021, and the final quarter applicable from 7 July 2022 to 6 October 2022⁶⁵.

An integral feature of the subsidy is its 'additionality criteria'⁶⁶, where eligible employers will need to show that they've recruited an additional employee since September 30th 2020 by increasing their employee headcount and payroll. Critically, employers are ineligible for the scheme if they are claiming JobKeeper payments; under the JobMaker scheme, it is not possible for businesses pocketing JobKeeper payments to use the credit to rehire workers who had been previously laid off⁶⁷.

Unlike other wage subsidy programs such as Youth Bonus which are typically administered by the Department of Education, Skills and Employment, the rollout of the JobMaker Hiring Credit is facilitated by the Australian Taxation Office (ATO)⁶⁸. This is largely because the program will "rely heavily on ATO payroll data"⁶⁹ as a safeguard against potential employer exploitation to confirm businesses are attracting 'additional' employees.

The subsidy itself is demand-driven and hence the number of subsidies provided will depend on the take-up of the program and the rate of economic recovery. Treasury officials estimated that the scheme will attract 450,000 applications and create 45,000 jobs at a cost of \$89,000 to the taxpayer for every young job seeker who is employed under the scheme⁷⁰.

During the second reading, a number of Labor and crossbench MPs condemned the lack of detail within the bill and consistently voiced concerns that the subsidy actively discriminates against 928,000 individuals over the age of 35 who are currently receiving unemployment benefits.⁷¹ Despite their calls to abolish the age limit for the hiring credit, the Government felt this would undermine the subsidy's main objective: to incentivise employers to hire younger, low-skilled workers.⁷²

The draft rules for the hiring credit were released for public consultation in late October. The Senate Economics Legislation Committee inquiry was held on November 2nd, where a number of stakeholders - including independent labour economists, the Treasury, business organisations and think tanks - made several suggestions to improve the delivery of the scheme and to encourage employers to offer more hours to younger workers⁷³.

A concern shared by Labor and crossbench MPs and speakers at the inquiry was the potential abuse of the scheme "through the selective hiring and firing of workers".⁷⁴ A number of interest groups lamented the lack of employment security embedded into the subsidy⁷⁵ and suggested that the hiring credits should be increased for full-time positions⁷⁶.

Following the Senate's second debate of the Bill on November 10th, Labor senators and members of the crossbench supported a number of amendments to the Bill geared toward improving the transparency of the scheme⁷⁷. Their proposed amendments also aimed to prohibit employers from accessing the subsidy if they terminated or reduced another employee's hours upon receiving the hiring credit⁷⁸. However, the Government insisted the proposed amendments were unnecessary as the subsidy is unavailable to employers who fail to increase their headcount and payroll⁷⁹. The Government further contended that the subsidy draws on existing safeguards in the *Fair Work Act* to

65 <https://www.ato.gov.au/general/JobMaker-Hiring-Credit/Register-for-JobMaker-Hiring-Credit/>

66 <https://www.aph.gov.au/DocumentStore.ashx?id=c9009d52-ce9c-43ca-bb61-61632dbdcbbd&subId=695150>

67 <https://www.ceda.com.au/NewsAndResources/Opinion/Workforce-Skills/JobMaker-is-smart-policy-addressing-an-urgent-prob>

68 <https://www.aph.gov.au/DocumentStore.ashx?id=c5103f68-dca9-441f-a1eb-29c0755cb24f&subId=695026>

69 https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/RecoveryPackageJobMaker

70 <https://www.aph.gov.au/DocumentStore.ashx?id=c9009d52-ce9c-43ca-bb61-61632dbdcbbd&subId=695150>

71 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansard%2F7bf0b0b3-e260-451a-aa4e-ec6d77176285%2F0333;query=Id%3A%22chamber%2Fhansard%2F7bf0b0b3-e260-451a-aa4e-ec6d77176285%2F0332%22>

72 https://archive.budget.gov.au/2020-21/factsheets/download/jobmaker_hiring_credit_factsheet.pdf

73 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Festimate%2Fb25544f7-b923-401b-8be1-c78f424e58ef%2F0004%22>

74 <https://www.ceda.com.au/NewsAndResources/Opinion/Workforce-Skills/JobMaker-is-smart-policy-addressing-an-urgent-prob>

75 https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd2021a/21bd023

76 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Festimate%2Fb25544f7-b923-401b-8be1-c78f424e58ef%2F0004%22>

77 https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/RecoveryPackageJobMaker

78 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fsched%2F6609_sched_b8e008da-90eb-4e45-9e08-b6ae8922d9dc%22

79 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F7591851%22>

prevent employer discrimination against their employees⁸⁰. The Bill returned to the Senate on November 11th and passed with the support of One Nation.

Treasury officials reported an underwhelming uptake of the scheme in March 2021, confirming that a mere 609 young workers had received the subsidy⁸¹. Treasury documents shockingly revealed that employers could replace older, more experienced employees with their younger counterparts, pay them a third of the salary “and get a taxpayer-funded grant to do it”⁸². The limited uptake of the subsidy to date necessitates an ongoing review of its implementation, particularly in light of the ongoing lockdowns in Victoria and New South Wales, where labour-intensive industries such as retail and hospitality may lack the incentive to hire new employees.

Policy Process

Criterion 1 - Establish Need: Identify a demonstrable need for the policy, based on hard evidence and consultation with all the stakeholders involved, particularly interest groups who will be affected.

Guiding question: Is there a statement of why the policy was needed based on factual evidence and stakeholder input?

Yes. The primary objective of the JobMaker Hiring Credit is to improve employment growth and prospects for young people aged 16 to 35 who disproportionately bear the adverse economic effects of the pandemic. In particular, young workers aged 16 to 24 suffered the greatest increase in unemployment and reduction in hours worked.

Criterion 2 - Set Objectives: Outline the public interest parameters of the proposed policy and clearly establish its objectives.

Guiding question: Is there a statement of the policy's objectives couched in terms of the public interest?

Yes. The fact sheet produced by the Treasury outlining key facts, ‘additionality’ criteria, and employer and employee eligibility requirements, specific case studies where eligible businesses receive the hiring credits and answers to frequently asked questions provide an easy-to-digest overview of the subsidy’s objectives. From the outset, Treasury officials claimed that the subsidy would accept 450,000 applications and create 45,000 jobs for young workers aged 16 to 35 who struggled to secure lasting employment opportunities prior to and throughout the pandemic.

Criterion 3 – Identify Options: Identify alternative approaches to the design of the policy, preferably with international comparisons where feasible. Engage in realistic costings of key alternative approaches.

Guiding question: Is there a description of the alternative policy options considered before the preferred one was adopted?

No. This is largely because JobMaker was modelled in a similar fashion to its predecessor, JobKeeper. Treasury consulted the Government on the subsidy’s design prior to its announcement in the Budget and their submission to the Senate Economics Legislation Committee noted that the rationale for JobMaker was supported by a substantial international evidence-base.

Criterion 4 – Consider Mechanisms: Consider implementation choices along a full spectrum from incentives to coercion.

Guiding question: Is there a disclosure of the alternative ways considered for implementing the chosen policy?

No. The Hansard transcript from the Senate Economics Legislation Committee includes a number of proposed changes to and potential overhauls of the existing subsidy. For instance, the Grattan Institute proposed a removal of the hiring credits, and instead suggested that the Government “simply pays employers a proportion of their payroll growth”⁸³. However, whether the Government itself considered alternative proposals to, or designs of, the JobMaker Hiring Credit prior to the delivery of the Federal Budget is unclear.

80 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2F6533_ems_1daae531-9b3a-493f-8596-23432c143fb3%22

81 <https://theconversation.com/the-successor-to-jobkeeper-cant-do-its-job-well-need-jobmaker-ii-158391>

82 <https://www.abc.net.au/news/2021-02-22/jobmaker-could-pay-bosses-to-cut-wages-jobs-treasury-foi/13157500>

83 <https://www.aph.gov.au/DocumentStore.ashx?id=35dad6c1-37ee-4152-a7c9-cebd54465a6a&subId=695269>

Criterion 5 – Brainstorm Alternatives: Consider the pros and cons of each option and mechanism. Subject all key alternatives to a rigorous cost-benefit analysis.

Guiding question: Is there a published analysis of the pros/cons and benefits/costs of the alternative options/mechanisms considered in 3 and 4?

No. The Treasurer insisted in his Budget speech that the 450,000 potential jobs supported by the subsidy were based on Treasury modelling, though a number of MPs during parliamentary debate bemoaned the scant foundation for these estimates. Neither the Government nor the Treasury indicated that they conducted analysis of viable alternatives to the JobMaker Hiring Credit.

Criterion 6 – Design Pathway: Develop a complete policy design framework including principles, goals, delivery mechanisms, program or project management structure, the implementation process and phases, performance measures, ongoing evaluation mechanisms and reporting requirements, oversight and audit arrangements, and a review process ideally with a sunset clause.

Guiding question: Is there evidence that a comprehensive project management plan was designed for the policy's rollout?

No. Although the Government delegated the rollout of the subsidy to the ATO and requires that payments be made in arrears to ensure the scheme isn't exploited by ineligible employers, internal Treasury emails obtained in February 2021 suggest that there is an "issue register"⁸⁴ outlining a wealth of problems with the scheme. For instance, an email from the department asked to confirm if there are safeguards within the scheme to prevent age discrimination against older employers and employers from "axing higher-wage jobs"⁸⁵. Despite the Senate Scrutiny of Bills Committee's recommendation that the Government undergo an ongoing evaluation of the subsidy, it appears that they have not publicly committed to a review of the scheme.

A shared concern among the opposition, crossbench and external stakeholders is the administrative costs to businesses when they apply for the scheme. For instance, the Australian Council of Social Service advocated for the Government to pair the ATO's administration of the subsidy with readily available support from employment intermediaries such as JobActive to match "the needs of workers and employers"⁸⁶ and ensure the new employees will not be displaced once the business receives the maximum 12 months of hiring credits.

In the Government's view, a key strength of the JobMaker Hiring Credit's design is that the rules for the scheme are enacted as a legislative instrument to respond rapidly to changes in the labour market. There is some merit to this view – indeed, JobKeeper was similarly enacted as a legislative instrument and was amended seven times after its implementation in April 2020⁸⁷.

Criterion 7 – Consult Further: Undertake further consultation with key affected stakeholders of the policy initiative.

Guiding question: Was there further consultation with affected stakeholders after the preferred policy was announced?

Yes. Although there was little consultation with affected stakeholders prior to the announcement of the JobMaker Hiring Credit in the 2020-21 Federal Budget, the Hansard from the Senate Economics Legislation Committee reveals that a number of stakeholders, such as the Council of Small Business Organisations Australia, sought to consult further with Treasury throughout the subsidy's implementation. Treasury advisors also noted in the Senate Economics inquiry that they emailed a range of relevant organisations to participate in roundtable discussions until November 30th to provide any feedback on the draft version of the subsidy's rules.

84 <https://www.theguardian.com/australia-news/2021/mar/24/just-609-young-australians-have-been-hired-under-jobmaker-scheme-treasury-reveals>

85 <https://www.abc.net.au/news/2021-02-22/jobmaker-could-pay-bosses-to-cut-wages-jobs-treasury-foi/13157500>

86 <https://www.aph.gov.au/DocumentStore.ashx?id=fd361fe4-8af3-4106-9cec-717d38e0a0bd&subId=695061>

87 https://www.aph.gov.au/-/media/Committees/Senate/committee/scrutiny/scrutiny_digest/2020/PDF/d15.pdf?la=en&hash=0E87032716C174746E6D52387933B3B9DE96B94F&hash=0E87032716C174746E6D52387933B3B9DE96B94F

87 https://www.aph.gov.au/-/media/Committees/Senate/committee/scrutiny/scrutiny_digest/2020/PDF/d15.pdf?la=en&hash=0E87032716C174746E6D52387933B3B9DE96B94F&hash=0E87032716C174746E6D52387933B3B9DE96B94F

Criterion 8 – Publish Proposals: Produce a Green and then a White paper for public feedback and final consultation purposes and to explain complex issues and processes.

Guiding question: Was there a) a Green paper seeking public input on possible policy options and b) a White paper explaining the final policy decision?

No. Although the Government released an exposure draft of the rules for the scheme for public consultation until November 27th, this was designed to give employers “sufficient time” to prepare for the first of the eight JobMaker reporting periods.

Criterion 9 – Introduce Legislation: Develop legislation and allow for comprehensive parliamentary debate especially in committee, and also intergovernmental discussion where necessary.

Guiding question: Was there legislation and adequate Parliamentary debate on the proposed policy initiative?

Yes. Members of the House of Representatives had three weeks to debate the legislation before the Bill was introduced to and debated in the Senate on November 9th and 10th. The Senate Economics Legislation Committee inquiry also canvassed several proposed changes and overhauls to the scheme by external stakeholders.

Criterion 10 – Communicate Decision: Design and implement a clear, simple, and inexpensive communication strategy based on information not propaganda, regarding the new policy initiative.

Guiding question: Is there an online official media release that explains the final policy in simple, clear and factual terms?

Yes. Treasurer Josh Frydenberg published an online official media release on November 11th 2020 detailing the passage of the Bill in the House and the Senate, as well as a brief overview of the rules for eligible employers and their employees⁸⁸. The ATO and the Fair Work Ombudsman also published websites on December 4th 2020⁸⁹ and January 19th 2021⁹⁰ respectively with an overview of the scheme, eligibility requirements and links to further information for eligible employers.

Final Scores

	CRITERION	YES/NO
1	Establish Need (demonstrable, evidence-based need)	Yes
2	Set Objectives (public interest parameters)	Yes
3	Identify Options (consideration of alternatives)	No
4	Consider Mechanisms (implementation choices)	No
5	Brainstorm Alternatives (cost-benefit analysis)	No
6	Design Pathway (policy design framework)	No
7	Consult Further (further consultation after policy announcement)	Yes
8	Publish Proposals (produce Green then White paper, or equivalents)	No
9	Introduce Legislation (comprehensive parliamentary debate)	Yes
10	Communicate Decision (information not propaganda)	Yes
		5/10

⁸⁸ <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/jobmaker-hiring-credit-passes-parliament>

⁸⁹ <https://www.ato.gov.au/general/JobMaker-Hiring-Credit/JobMaker-Hiring-Credit-key-dates/>

⁹⁰ <https://www.fairwork.gov.au/about-us/news-and-media-releases/website-news/jobmaker-hiring-credit-scheme#hiring-credit-scheme>

Social Services Legislation Amendment (Strengthening Income Support) Bill 2021

Policy background

Over the past decade, Australia's unemployment benefits have declined a proportion of median incomes. Australia's income support system is governed by three pillars: the responsibility to support welfare recipients, to incentivise the unemployed to return to work and to ensure the welfare budget is sustainable⁹¹. Crucially, the government is expected to provide an adequate level of income support to maintain basic living standards, while balancing these payments with incentives to work⁹². Yet prior to the COVID-19 pandemic, stringent oversight of JobSeeker (formerly the Newstart Allowance for recipients aged over 22) payments - hovering at \$40 per day – saw Australia offer the lowest level of unemployment benefits in the OECD⁹³.

The economic and health crises posed by COVID-19 underscored the paucity of Australia's welfare system as border closures and social distancing measures culminated in a "once-in-a-lifetime disruption to the labour market"⁹⁴. The pandemic inevitably shifted the ongoing debate on the low rates of unemployment benefits following the introduction of the temporary Coronavirus Supplement in March 2020 at \$275 a week added to JobSeeker, Youth Allowance and other working age payments⁹⁵. This increase to JobSeeker was championed as one of the Morrison government's "most significant responses"⁹⁶ to the COVID-19 pandemic; the supplement alone nearly doubled the pre-pandemic rate of JobSeeker and elevated Australia's unemployment payments to the OECD average⁹⁷. The increase lifted 425,000 people out of poverty⁹⁸ and poverty rates for households who primarily relied on social security payments fell to 26 percent⁹⁹.

By September 2020, the supplement was cut back to \$125 per week, and again in December to \$75 per week, before it ceased altogether at the end of March 2021¹⁰⁰.

Even as the Morrison Government's focus pivoted to job recovery, calls intensified to revisit the "vexed issue"¹⁰¹ of Australia's low levels of JobSeeker, imploring the government to enhance the welfare safety net for the 1.95 million Australians dependent upon social security payments¹⁰². Despite Australia's "stronger-than-expected"¹⁰³ economic recovery in late 2020 and early 2021, the number of people relying on unemployment benefits has doubled over the course of the pandemic, with an estimated "seven Australians on JobSeeker for every available job"¹⁰⁴. A broad coalition including welfare groups, policy experts, business organisations, Labor and the Greens, alongside a small number of Coalition MPs have long argued for a permanent boost in the base rate of JobSeeker payments, with the Australian Council of Social Service (ACOSS) leading the cause as part of their *Raise the Rate for Good* campaign¹⁰⁵.

In response, the government announced on February 23 2021, a permanent \$50 fortnightly increase to the base rate of working age payments including JobSeeker, Youth Allowance, Youth Disability Support Pension, Parenting Payment and Austudy¹⁰⁶. The Bill amends the Social Security Act 1991 to increase the income-free threshold from \$106 to \$150 per fortnight for JobSeeker and Youth Allowance recipients¹⁰⁷. In addition, the Bill extended until June 30 access to the

91 https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook46p/JobseekerPayments

92 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2F7859681%22>

93 <https://newsroom.unsw.edu.au/news/general/50-boost-jobseeker-makes-australias-payment-second-lowest-oecd>

94 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F7fb109e-19d5-47fd-8e41-e9c5c20fd619%2F0013%22>

95 <https://australiainstitute.org.au/wp-content/uploads/2020/12/P997-Poverty-and-a-reduced-coronavirus-supplement-WEB.docx.pdf>

96 <https://theconversation.com/when-the-coronavirus-supplement-stops-jobseeker-needs-to-increase-by-185-a-week-138417>

97 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Fcommsen%2F17429b8a-cfd4-421d-bc81-b26a94d15777%2F0001;query=Id%3A%22committees%2Fcommsen%2F17429b8a-cfd4-421d-bc81-b26a94d15777%2F0000%22>

98 <https://australiainstitute.org.au/wp-content/uploads/2020/12/P997-Poverty-and-a-reduced-coronavirus-supplement-WEB.docx.pdf>

99 [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024675/toc_pdf/SocialServicesLegislationAmendment\(StrengtheningIncomeSupport\)Bill2021\[Provisions\].pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024675/toc_pdf/SocialServicesLegislationAmendment(StrengtheningIncomeSupport)Bill2021[Provisions].pdf;fileType=application%2Fpdf)

100 <https://theconversation.com/top-economists-want-jobseeker-boosted-100-per-week-tied-to-wages-150364>

101 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansard%2F7fb109e-19d5-47fd-8e41-e9c5c20fd619%2F0013%22>

102 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F7fb109e-19d5-47fd-8e41-e9c5c20fd619%2F0013%22>

103 <https://www.aph.gov.au/DocumentStore.ashx?id=5772f078-e1f3-415c-8932-eb13cc2426f4&subId=703693>

104 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansard%2F7fb109e-19d5-47fd-8e41-e9c5c20fd619%2F0013%22>

105 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2F7859681%22>

106 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2F7859681%22>

107 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2F7859681%22>

\$75 COVID-19 supplement for JobSeeker and Youth Allowance payments for people who needed to self-isolate or care for others in quarantine due to the pandemic¹⁰⁸. This was supplemented by an extension of the waiver of the ordinary waiting period for working age payments until the end of June¹⁰⁹. The Bill also temporarily extended the portability period for recipients of the disability support pension and certain age pensioners who were unable to return to or depart from Australia within 26 weeks due to travel restrictions, allowing them to continue to receive entitlements until June 30¹¹⁰.

This suite of measures in the Bill was accompanied by stringent “mutual obligation” requirements to ensure that ‘job seekers’ are actively looking for and take up employment opportunities when offered. Although the Morrison Government largely relaxed mutual obligations in early 2020 due to COVID-19 restrictions, the Bill reinstates them to pre-pandemic requirements, where job seekers must attend face-to-face appointments and interviews with prospective employers¹¹¹. JobSeeker recipients will also be required to apply for 15 jobs per month from April until the end of June, and then 20 jobs per month from July onwards¹¹². Furthermore, recipients who have spent longer than six months on welfare payments will be required to complete an intensive training program to bolster their skills¹¹³. A critical addition to these mutual obligations requirements is the introduction of an “employer reporting line”¹¹⁴, which allows employers to report qualified job seekers who refuse job offers, as well as an increased audit of relevant job providers to ensure their employees are treated fairly.

The central focus of the Bill – namely the increase in the base rate of JobSeeker from \$565.70 to \$620.80 per fortnight – amounts to approximately \$44 per day, an increase of \$3.57 from pre-COVID payments¹¹⁵. The changes were designed to come into effect on April 1, coinciding with the loss of the \$75 COVID-19 supplement; in effect, JobSeeker recipients will face a “\$100 per fortnight cut to their household budgets”¹¹⁶.

Eligibility for JobSeeker payments will cease once recipients’ fortnightly incomes exceed a maximum \$1449 per fortnight for those receiving rent assistance¹¹⁷. The policy amounts to a 9.7 per cent increase in annual expenditure on social security, elevating the JobSeeker payment from 37.5 to 41.2 per cent of the national minimum wage – identical to the rate at which former Prime Minister John Howard left office in 2007¹¹⁸. These changes to income support measures are estimated to cost \$9 billion over the next four years¹¹⁹, in addition to the Morrison Government’s \$33 billion spent in emergency payments throughout the pandemic until March 2021¹²⁰.

The Bill was first introduced to the House of Representatives on February 25, and referred to the Community Affairs Legislation Committee. The Committee welcomed several welfare, social services and business organisations, as well as academics and peak bodies to make a submission into the Committee’s inquiry by March 5¹²¹. The committee received a staggering 317 submissions and over 70 submissions from welfare recipients detailing their personal experiences on social security payments¹²². A public hearing was held four days later, and the Committee tabled its report from the inquiry shortly thereafter on March 12. The committee inquiry unveiled the likely effects of the \$50 fortnightly baseline increase to working age welfare payments on nationwide poverty rates. ANU Associate Professor Ben Phillips estimated there would be a “small reduction in poverty”¹²³ by 100,000 to 150,000 people, culminating in a three-

108 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F7fb109e-19d5-47fd-8e41-e9c5c20fd619%2F0013%22>

109 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2F7859681%22>

110 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2F6684_ems_d53107bb-5028-47bc-a43f-d2d30b50ecb%22

111 <https://www.pm.gov.au/media/press-conference-australian-parliament-house-act-230221>

112 <https://theconversation.com/50-rise-in-jobseeker-comes-with-tougher-job-search-requirements-155858>

113 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2F6684_ems_d53107bb-5028-47bc-a43f-d2d30b50ecb%22

114 <https://www.pm.gov.au/media/press-conference-australian-parliament-house-act-230221>

115 <https://theconversation.com/50-rise-in-jobseeker-comes-with-tougher-job-search-requirements-155858>

116 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F7fb109e-19d5-47fd-8e41-e9c5c20fd619%2F0013%22>

117 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2F7859681%22>

118 <https://www.pm.gov.au/media/press-conference-australian-parliament-house-act-230221>

119 <https://www.smh.com.au/politics/federal/it-breaks-my-heart-jobseekers-hit-back-at-25-a-week-dole-increase-20210225-p575p9.html>

120 <https://www.pm.gov.au/media/morrison-government-commits-record-9b-social-security-safety-net>

121 [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024675/toc_pdf/SocialServicesLegislationAmendment\(StrengtheningIncomeSupport\)Bill2021\[Provisions\].pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024675/toc_pdf/SocialServicesLegislationAmendment(StrengtheningIncomeSupport)Bill2021[Provisions].pdf;fileType=application%2Fpdf)

122 Ibid.

123 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Fcommsen%2F17429b8a-cfd4-421d-bc81-b26a94d15777%2F0002;query=Id%3A%22committees%2Fcommsen%2F17429b8a-cfd4-421d-bc81-b26a94d15777%2F0000%22>

percentage point reduction in poverty rates for welfare recipients to 80 per cent. Phillips' estimates draw on the relative poverty line, derived from half the median household income¹²⁴ of approximately \$457 per week¹²⁵.

The second reading of the Bill in the House of Representatives on March 17 was met with fiery criticism from opposition and crossbench MPs and echoed the dominant view presented in the submissions to the Community Affairs Legislation inquiry: the baseline increase to working age social security payments was insufficient and amounted to a "betrayal"¹²⁶ of welfare recipients. There was also a shared view that the income-free area should return to \$300, identical to the threshold the federal government used when the Coronavirus Supplement was introduced, to shield welfare recipients from mounting financial stress. Despite this "single largest increase [to JobSeeker] since the mid-1980s"¹²⁷, Australia now offers the second-most stingy suite of unemployment benefits relative to other OECD countries, ahead of Greece.

ACOSS has extensively campaigned for JobSeeker to be permanently increased to at least \$150 per fortnight, lingering slightly below pension payments¹²⁸. The Grattan Institute insisted that JobSeeker is a valuable "form of fiscal stimulus [because] unemployed people...spend...most of what they earn"¹²⁹ and its proposed \$200 fortnightly increase aligns with the views of over half of Australia's leading economists¹³⁰. In response, the Morrison government defended their proposed increase, noting that almost all JobSeeker recipients receive additional payments to supplement the base rate, and almost 60 percent of them receive rent assistance and the emergency Energy Supplement, which were excluded from the changes in the Bill¹³¹.

The federal government's refusal to increase welfare payments beyond \$50 per fortnight is largely underpinned by the belief that it would discourage welfare recipients from seeking work. Although the Coalition insists "the best form of welfare is a job"¹³², modelling conducted by labour economist Jeff Borland suggests that a higher income supplement at \$250 per fortnight poses "no significant financial disincentive"¹³³ for the unemployed as they cover the additional costs of applying for jobs, such as travel and interview attire. By contrast, the Grattan Institute suggested that the current level of JobSeeker will instead cost 40,000 jobs, rather than create unfilled vacancies¹³⁴.

A critical issue with Australia's social safety net expressed by several Labor and crossbench MPs is that JobSeeker payments have scarcely increased in real terms since the mid-1990s. The root of this problem lies in the way that unemployment benefits are indexed. Unlike pension payments, which are adjusted according to wages and consumer price index (CPI) to reflect the costs of living, unemployment benefits are solely benchmarked using CPI. Yet over the past 25 years, living standards have climbed more than 80 per cent¹³⁵. In turn, wages have increased at a faster rate than prices (reflected in CPI) and so unemployment benefits have continued to fall behind incomes.

Moreover, there was a strong consensus outside the Morrison government that the Bill's mutual obligations requirements were "counterproductive and punitive"¹³⁶. In particular, the employer reporting line was cited by Australian Retailers CEO Paul Zahra as an administrative burden for employers and drew fierce criticism out of concerns that it would "coerce vulnerable people"¹³⁷ into accepting a job offer that isn't tailored to their personal circumstances. In light of this, Labor MP Linda Burney, proposed an amendment to the Bill that called on the government to abandon its "dob in a jobseeker hotline"¹³⁸ and further relax the income-free threshold as a greater incentive to return to work. A second amendment to the Bill was proposed after the third reading of the Bill on March 17 by Leader of the Australians

124 <https://newsroom.unsw.edu.au/news/general/50-boost-jobseeker-makes-australias-payment-second-lowest-oecd>

125 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F603a9de-2c8c-4969-8f69-e9d1b686d0ae%2F0044%22>

126 [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024675/toc_pdf/SocialServicesLegislationAmendment\(StrengtheningIncomeSupport\)Bill2021\[Provisions\].pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024675/toc_pdf/SocialServicesLegislationAmendment(StrengtheningIncomeSupport)Bill2021[Provisions].pdf;fileType=application%2Fpdf)

127 <https://www.pm.gov.au/media/press-conference-australian-parliament-house-act-230221>

128 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Fcommsen%2F17429b8a-cfd4-421d-bc81-b26a94d15777%2F0001;query=Id%3A%22committees%2Fcommsen%2F17429b8a-cfd4-421d-bc81-b26a94d15777%2F0000%22>

129 <https://www.aph.gov.au/DocumentStore.ashx?id=5772f078-e1f3-415c-8932-eb13cc2426f4&subId=703693>

130 <https://theconversation.com/top-economists-want-jobseeker-boosted-100-per-week-tied-to-wages-150364>

131 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2Ff5c9bec8-81e0-4aad-a8c2-c100853201a4%2F0125%22>

132 <https://www.pm.gov.au/media/press-conference-australian-parliament-house-act-230221>

133 https://cdn.theconversation.com/static_files/files/1343/Borland_Labour_market_snapshot__71.pdf?1606359052

134 <https://www.abc.net.au/news/2021-02-26/grattan-institute-jobseeker-cuts-could-cost-40000-jobs/13192834>

135

https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook46p/JobseekerPayments

136 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2Ff5c9bec8-81e0-4aad-a8c2-c100853201a4%2F0124%22>

137 <https://www.smh.com.au/politics/federal/it-breaks-my-heart-jobseekers-hit-back-at-25-a-week-dole-increase-20210225-p575p9.html>

138 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansard%2Ff5c9bec8-81e0-4aad-a8c2-c100853201a4%2F0128;query=Id%3A%22chamber%2Fhansard%2Ff5c9bec8-81e0-4aad-a8c2-c100853201a4%2F0125%22>

Greens, Adam Bandt, contending that the baseline rates for JobSeeker should be increased to above the poverty line¹³⁹. The Bill was introduced to and read in the Senate for the first and second time on the same day, before a third reading was agreed to on March 18.

The Morrison government refused to accept any amendments to the Bill, citing them as “unnecessary”¹⁴⁰. Coalition MPs further defended the Bill’s stricter mutual obligations requirements, which consider each JobSeeker recipient’s personal circumstances when applying for a job, such as their education, experience, health status and caring responsibilities, alongside any travel or financial costs. Job seekers are also offered administrative protections including “two-day resolution time”¹⁴¹ to explain why they refused a job offer before they lose their unemployment benefits. Following the rejection of both amendments and its passage by both Houses, the Bill received Royal Assent on March 18¹⁴².

Policy Process

Criterion 1 - Establish Need: Identify a demonstrable need for the policy, based on hard evidence and consultation with all the stakeholders involved, particularly interest groups who will be affected.

Guiding question: Is there a statement of why the policy was needed based on factual evidence and stakeholder input?

Yes. The bill outlined the need to increase unemployment benefits.

Criterion 2 - Set Objectives: Outline the public interest parameters of the proposed policy and clearly establish its objectives.

Guiding question: Is there a statement of the policy’s objectives couched in terms of the public interest?

Yes. The government described the Bill as the largest increase to unemployment benefits in almost 40 years, increasing JobSeeker payments to 41.2 per cent of the minimum wage. With 93 per cent of jobs lost during the pandemic returning to the economy, the government clearly outlined its intention to return as many JobSeeker recipients to work as possible, and opted to strengthen their mutual obligations requirements to incentivise them to actively look for work.

Criterion 3 – Identify Options: Identify alternative approaches to the design of the policy, preferably with international comparisons where feasible. Engage in realistic costings of key alternative approaches.

Guiding question: Is there a description of the alternative policy options considered before the preferred one was adopted?

No. When asked to detail the evidence used to increase base rates of unemployment benefits by \$25 per week, the Deputy Secretary said the Department of Social Services (DSS) considered the state of the labour market, forecasts of economic growth using the RBA’s quarterly statements and a past history of unemployment payments in Australia. Although the DSS took several questions on notice during the Community Affairs Legislation Committee inquiry, they did not provide any costings of alternative approaches, and none of the measures appeared to be supported by relevant international comparisons.

Criterion 4 – Consider Mechanisms: Consider implementation choices along a full spectrum from incentives to coercion.

Guiding question: Is there a disclosure of the alternative ways considered for implementing the chosen policy?

No. Interestingly, when an expert panel was held in 2018 into the government’s employer intermediary, JobActive, it was widely recommended that the government abandon mutual obligations requirements and instead consider a different approach that crafts a specific ‘job plan’ tailored each JobSeeker recipient. It appears that the government ignored this advice, alongside several calls for a minimum permanent increase to unemployment benefits of \$100 per week.

¹³⁹ <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansard%2Fd603a9de-2c8c-4969-8f69-e9d1b686d0ae%2F0041;query=Id%3A%22chamber%2Fhansard%2Fd603a9de-2c8c-4969-8f69-e9d1b686d0ae%2F0044%22>

¹⁴⁰ <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansard%2Fd603a9de-2c8c-4969-8f69-e9d1b686d0ae%2F0053;query=Id%3A%22chamber%2Fhansard%2Fd603a9de-2c8c-4969-8f69-e9d1b686d0ae%2F0044%22>

¹⁴¹ Ibid.

¹⁴² https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bld=r6684

Criterion 5 – Brainstorm Alternatives: Consider the pros and cons of each option and mechanism. Subject all key alternatives to a rigorous cost-benefit analysis.

Guiding question: Is there a published analysis of the pros/cons and benefits/costs of the alternative options/mechanisms considered in 3 and 4?

No. The DSS told the Community Affairs Legislation Committee that they “undertook analysis on the expected impact”¹⁴³ of the measures in the Bill, however this analysis was not published. With hindsight, this process could have more readily drawn on Treasury advice to estimate the financial impact of alternative, higher increases to the baseline rates of unemployment benefits, especially given the unexpected surge in Delta infections and ongoing lockdowns in NSW, Victoria and ACT.

Criterion 6 – Design Pathway: Develop a complete policy design framework including principles, goals, delivery mechanisms, program or project management structure, the implementation process and phases, performance measures, ongoing evaluation mechanisms and reporting requirements, oversight and audit arrangements, and a review process ideally with a sunset clause.

Guiding question: Is there evidence that a comprehensive project management plan was designed for the policy’s rollout?

No. Despite the changes to and oversight of mutual obligations requirements, the Bill lacked any promise for a review into the proposed increase, which it seems was adopted following relentless pressure from stakeholders outside of government and was largely framed as a “take it or leave it approach”.

Criterion 7 – Consult Further: Undertake further consultation with key affected stakeholders of the policy initiative.

Guiding question: Was there further consultation with affected stakeholders after the preferred policy was announced?

No. The DSS claimed they consulted across a range of government departments, such as the Treasury and Department of Education, Skills and Employment, and Services Australia, however there was little mention of stakeholders consulted outside of government, even after the Bill was announced.

Criterion 8 – Publish Proposals: Produce a Green and then a White paper for public feedback and final consultation purposes and to explain complex issues and processes.

Guiding question: Was there a) a Green paper seeking public input on possible policy options and b) a White paper explaining the final policy decision?

No. There was no discussion paper, exposure draft or other document outlining options and seeking public input.

Criterion 9 – Introduce Legislation: Develop legislation and allow for comprehensive parliamentary debate especially in committee, and also intergovernmental discussion where necessary.

Guiding question: Was there legislation and adequate Parliamentary debate on the proposed policy initiative?

Yes. The Bill was read for a second time and debated in the House of Representatives almost three weeks after its initial reading. The Community Affairs Legislation Committee inquiry also concluded shortly after the first reading, providing MPs with ample data to support the two amendments to the Bill.

Criterion 10 – Communicate Decision: Design and implement a clear, simple, and inexpensive communication strategy based on information not propaganda, regarding the new policy initiative.

Guiding question: Is there an online official media release that explains the final policy in simple, clear and factual terms?

¹⁴³ <https://www.aph.gov.au/DocumentStore.ashx?id=38d0c942-d510-4ec7-9a48-50cad182c255>

Yes. A media release detailing the five key measures outlined in the Bill, as well as the strengthening of mutual obligations requirements, is available on the Prime Minister's website, with a link to the Department of Education, Skills and Employment providing further information.

Final Scores

	CRITERION	YES/NO
1	Establish Need (demonstrable, evidence-based need)	Yes
2	Set Objectives (public interest parameters)	Yes
3	Identify Options (consideration of alternatives)	No
4	Consider Mechanisms (implementation choices)	No
5	Brainstorm Alternatives (cost-benefit analysis)	No
6	Design Pathway (policy design framework)	No
7	Consult Further (further consultation after policy announcement)	No
8	Publish Proposals (produce Green then White paper, or equivalents)	No
9	Introduce Legislation (comprehensive parliamentary debate)	Yes
10	Communicate Decision (information not propaganda)	Yes
		4/10

Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021

Policy Background

The Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021 has been proposed as a means to address the imbalance in bargaining power between digital platforms and Australian news businesses.¹⁴⁴

The impact of Google and Facebook on Australian news media has been considerable, and it has grown in the context of ongoing deregulation and concerns about the extent to which choice and diversity in the Australian news market can be guaranteed.¹⁴⁵ Over the last decade or so, commercial media have suffered a significant decline in revenue from display and classified advertising which has directly impacted the publication of high-quality news journalism, particularly in regional Australia.¹⁴⁶

Critical events of 2020 – including the US presidential elections, the Black Summer bushfires, Black Lives Matter, and the COVID-19 pandemic – all contributed to a heightened demand for accurate and timely news and information.¹⁴⁷

Thus, in April 2020 the Australian government asked the Australian Competition and Consumer Commission (ACCC) to develop a mandatory bargaining code to address the “fundamental imbalance in bargaining power” between Australian news businesses and digital platform corporations.¹⁴⁸ On 19 May 2020, the ACCC released a concepts paper seeking views on each of the issues to be covered in a mandatory code.¹⁴⁹ This led to public submissions from which the ACCC developed their draft legislation, which was released on 31 July 2020.¹⁵⁰

The process for developing this code included extensive public consultation, with over 40 mainly media, academic and consumer rights groups contributing.¹⁵¹

The Chair of the ACCC said:

“The central point is that the code’s purpose is to address a clear and significant bargaining imbalance that exists between Google and Facebook on the one hand and the news media businesses. This is the essence of the code. It evens out the bargaining positions so that fair commercial deals can be made. Without the code as a backup, that power imbalance will remain. There will be not be commercial deals; instead the platforms will be free to continue to offer terms on a take-it-or-leave-it basis.”¹⁵²

The Bill was introduced to Parliament by the Treasurer on 9 December 2020,¹⁵³ with a second reading and debate on 17 February 2021. During the second reading Shadow Treasurer Jim Chalmers made clear that while Labor supported the Bill in general, specific details had been highly problematic. For example, the original government drafting

144 Explanatory Memorandum, Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020, p. 7

145 R Jolly, Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017, Bills digest, 8, 2017–18, Parliamentary Library, Canberra, 2017.

The Senate referred an inquiry into the state of media diversity, independence and reliability in Australia to the Senate Environment and Communications References Committee for report.

146 Australian Competition and Consumer Commission (ACCC), Digital Platforms Inquiry: final report, ACCC, Canberra, July 2019, p. 17-18.

147 See M Mason and N Gillezeau, ‘How newsrooms are adapting to report the COVID-19 crisis’, Australian Financial Review, 23 March 2020, p. 33.

148 J Frydenberg (Treasurer), Press Conference: Digital platforms, transcript, 8 December 2020

149 [acc.gov.au/focus-areas/digital-platforms/news-media-bargaining-code/concepts-paper](https://www.accc.gov.au/focus-areas/digital-platforms/news-media-bargaining-code/concepts-paper)

150 <https://www.accc.gov.au/focus-areas/digital-platforms/news-media-bargaining-code/draft-legislation>

151 <https://www.accc.gov.au/focus-areas/digital-platforms/news-media-bargaining-code/submissions-to-concepts-paper>

152 R Sims (Chair, Australian Competition and Consumer Commission), Evidence to Senate Standing Committee on Economics Legislation, Inquiry into the Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020, 22 January 2021, p. 50.

153 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansard%2F8d35ad3a-06a6-4b15-b4bc-d5f91eeb30c9%2F0021;page=3;query=BillId_Phrase%3A%22r6652%22%20Dataset%3Ahansard,hansards%20Title%3A%22second%20reading%22;rec=10

contained no reference to paying public broadcasters such as the ABC and SBS for their content, in line with private sector counterparts.¹⁵⁴ Centre Alliance was also supportive of the Bill.¹⁵⁵

The Bills is comprised of two Parts, both of which amend the Competition and Consumer Act 2010 (CCA). Part 1 of the Bill encompasses the main amendments that create the Code while Part 2 holds other amendments, principally extending provisions relating to penalties to the proposed code of conduct.

The Bill can be seen as part of a distinct shift in public conversations about the internet, and about the disruptions caused by highly digitalised business and platform companies. After decades of prioritising and maximising the potential for speech, participation, engagement, and commerce, the demand for governments to address the power of digital platform corporations.¹⁵⁶

Strong claims have been made about the purpose, content, and possible outcomes of the Bill. The policy debate has been highly polarising, with strong views expressed for and against the Bill.

Representatives from digital platform corporations at Senate hearings in January 2021 reiterated earlier public statements that the Bill presents significant risks for their business models, which may force them to cease providing some services in Australia.¹⁵⁷ Facebook went as far as to block Australians from accessing news content on its platform while the Bill was being debated in the House of representatives.¹⁵⁸ While digital platform corporations strongly opposed the Bill, it was supported by the Federal Opposition, the Australian Greens, and Australian news businesses such as News Corporation and Guardian Australia.¹⁵⁹

Alongside the broad opposition from Google and Facebook, a range of nuanced concerns were raised, including by small independent publishers who support the broad principles of the Bill, but are concerned it may have an unintended consequence of increasing media concentration. Concerns have also been raised by digital rights groups surrounding how the privacy of citizens can be protected from the accumulation of user data, which is at the heart of the platform of the digital platform corporations' business models.¹⁶⁰

While there is near widespread support for this Bill, regarding it, at the very least, as a "good first-step" in addressing the bargaining imbalance between news publishers and the platform companies, the future of Australian news media is uncertain.¹⁶¹ The ACCC's interim report into advertising technology warned:

"due to Google's presence across the ad tech supply chain, its strong position in the supply of certain services, and the opacity of the supply chain, Google is likely to have the ability and incentive to favour its own related business interests (self-preferencing)."¹⁶²

The Government has scheduled a review to assess the effectiveness of the Act.

Policy Process

Criterion 1 - Establish Need: Identify a demonstrable need for the policy, based on hard evidence and consultation with all the stakeholders involved, particularly interest groups who will be affected.

154 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansard%2F14059f01-aa4f-4143-a7dc-fa5f407d6e45%2F0154;page=3;query=BillId_Phrase%3A%22r6652%22%20Dataset%3Ahansard,hansards%20Title%3A%22second%20reading%22;rec=0

155 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansard%2F14059f01-aa4f-4143-a7dc-fa5f407d6e45%2F0162;page=3;query=BillId_Phrase%3A%22r6652%22%20Dataset%3Ahansard,hansards%20Title%3A%22second%20reading%22;rec=0

156 T. Flew, 'The platformed Internet: issues for internet law and policy', *Journal of Internet Law*, 22(11), May 2019, pp. 3–16.

157 Senate Standing Committee on Economics Legislation, *Inquiry into the Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020*, Official committee Hansard, Canberra, 22 January 2021, p. 2-4, 6-10, 13.

158 <https://www.abc.net.au/news/politics/2021-02-19/frydenberg-zuckerberg-meeting-news-media-facebook-ban/13171120>

159 C Reid (Group Executive Corporate Affairs, Policy and Government Relations, News Corporation), Evidence to the Senate Standing Committee on Economics Legislation, *Inquiry into the Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020*, Canberra, 22 January 2021, p. 27.

D Stinton (Managing Director, Guardian Australia), Evidence to the Senate Standing Committee on Economics Legislation, *Inquiry into the Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020*, Canberra, 22 January 2021, p. 28.

160 <https://www.theguardian.com/commentisfree/2018/mar/28/all-the-data-facebook-google-has-on-you-privacy>

161 Senate Standing Committee on Economics Legislation, *Inquiry into the Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020*, Official committee Hansard, Canberra, 22 January 2021, p. 26.

162 ACCC, *Digital Platforms Inquiry: interim report*, ACCC, Canberra, 2020, p. 15.

Guiding question: Is there a statement of why the policy was needed based on factual evidence and stakeholder input?

Yes. The terms of reference for the ACCC Digital Platforms highlight the need.¹⁶³

Criterion 2 - Set Objectives: Outline the public interest parameters of the proposed policy and clearly establish its objectives.

Guiding question: Is there a statement of the policy's objectives couched in terms of the public interest?

Yes. The government published media releases and outlined the objectives of the Bill in Senate hearings in January 2020.¹⁶⁴ These included the public need for a functioning 4th estate, supported by adequate and fair funding.

Criterion 3 – Identify Options: Identify alternative approaches to the design of the policy, preferably with international comparisons where feasible. Engage in realistic costings of key alternative approaches.

Guiding question: Is there a description of the alternative policy options considered before the preferred one was adopted?

No. The Government did not offer alternative options.

Criterion 4 – Consider Mechanisms: Consider implementation choices along a full spectrum from incentives to coercion.

Guiding question: Is there a disclosure of the alternative ways considered for implementing the chosen policy?

Yes. The government was willing to consider different implementation choices and made a number of amendments to narrow some applications of the new powers, removing sections that gave the ACCC oversight over Google and Facebook's algorithms to distribute ads.¹⁶⁵

Criterion 5 – Brainstorm Alternatives: Consider the pros and cons of each option and mechanism. Subject all key alternatives to a rigorous cost-benefit analysis.

Guiding question: Is there a published analysis of the pros/cons and benefits/costs of the alternative options/mechanisms considered in 3 and 4?

No. None could be identified.

Criterion 6 – Design Pathway: Develop a complete policy design framework including principles, goals, delivery mechanisms, program or project management structure, the implementation process and phases, performance measures, ongoing evaluation mechanisms and reporting requirements, oversight and audit arrangements, and a review process ideally with a sunset clause.

Guiding question: Is there evidence that a comprehensive project management plan was designed for the policy's rollout?

Yes. The legislations, its explanatory memorandum, and the Code include many elements of a complete policy design framework. There are details of the Code's principles, delivery mechanisms, implementation processes and future reviews.

Criterion 7 – Consult Further: Undertake further consultation with key affected stakeholders of the policy initiative.

Guiding question: Was there further consultation with affected stakeholders after the preferred policy was announced?

¹⁶³ Australian Competition and Consumer Commission (ACCC), Digital Platforms Inquiry: final report, ACCC, Canberra, July 2019

¹⁶⁴ R Sims (Chair, Australian Competition and Consumer Commission), Evidence to Senate Standing Committee on Economics Legislation, Inquiry into the Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020, 22 January 2021, p. 50.

¹⁶⁵ <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/parliament-passes-news-media-and-digital-platforms>
<https://www.afr.com/technology/how-the-news-media-code-is-a-guide-to-the-future-of-big-tech-20210226-p5768q>

Yes. The government consulted with stakeholders after the release of the Exposure Draft of the Bill along with the ACCC's concepts paper, interim report, and final report. In addition, stakeholders were able to raise concerns and make recommendations at Senate Committee hearings.

Criterion 8 – Publish Proposals: Produce a Green and then a White paper for public feedback and final consultation purposes and to explain complex issues and processes.

Guiding question: Was there a) a Green paper seeking public input on possible policy options and b) a White paper explaining the final policy decision?

Yes. The ACCC released its Concepts Paper in May 2020, and the government released the Exposure draft of the bill in July.¹⁶⁶

Criterion 9 – Introduce Legislation: Develop legislation and allow for comprehensive parliamentary debate especially in committee, and also intergovernmental discussion where necessary.

Guiding question: Was there legislation and adequate Parliamentary debate on the proposed policy initiative?

Yes. Legislation was introduced and there was Parliamentary debate. The Senate Inquiry and the ACCC Digital Platform Inquiry each took submissions from stakeholders and the public.

Criterion 10 – Communicate Decision: Design and implement a clear, simple, and inexpensive communication strategy based on information not propaganda, regarding the new policy initiative.

Guiding question: Is there an online official media release that explains the final policy in simple, clear and factual terms?

No. While there were short press releases through ministers' web pages, little public information regarding the likely impact of the code.

Final Scores

	CRITERION	YES/NO
1	Establish Need (Demonstrable, evidence-based need)	Yes
2	Set Objectives (Public interest parameters)	Yes
3	Identify Options (Consideration of alternatives)	No
4	Consider Mechanisms (Implementation choices)	Yes
5	Brainstorm Alternatives (Cost-benefit analysis)	No
6	Design Pathway (Policy design framework)	Yes
7	Consult Further (Further consultation after policy announcement)	Yes
8	Publish Proposals (Produce Green then White paper, or equivalents)	Yes
9	Introduce Legislation (Comprehensive parliamentary debate)	Yes
10	Communicate Decision (Information not propaganda)	No
		7/10

¹⁶⁶ <https://www.accc.gov.au/system/files/ACCC%20-%20Mandatory%20news%20media%20bargaining%20code%20-%20concepts%20paper%20-%202019%20May%202020.pdf>

<https://www.accc.gov.au/system/files/Exposure%20Draft%20Bill%20-%20TREASURY%20LAWS%20AMENDMENT%20%28NEWS%20MEDIA%20AND%20DIGITAL%20PLATFORMS%20MANDATORY%20BARGAINING%20CODE%29%20BILL%202020.pdf>

Social Services Legislation Amendment (Drug Testing Trial) Bill 2019

Policy Background

Drug Testing of income support payment recipients has been debated in many countries including the UK, US and Canada and had been trialled in multiple US States¹⁶⁷. In 2007, former Prime Minister John Howard announced that upon re-election, the Coalition would place income support recipients convicted of offences involving hard drugs on income management¹⁶⁸. In the following years, Coalition MP George Christiansen proposed the introduction of drug testing for recipients of income support, with provision of payments being contingent on the provision of negative test results. This proposal was not supported by the Coalition at the time¹⁶⁹.

The Coalition first announced its intention to introduce a trial of drug testing recipients of income support during the 2017-2018 Budget Speech. The trial was introduced to parliament as part of the Government's Social Services Legislation Amendment (Welfare Reform) Bill 2017.¹⁷⁰ The section of this bill relating to drug testing were strongly opposed by the ALP and the Greens and was removed from the Bill before it passed the senate¹⁷¹.

In 2018, the Coalition re-introduced this policy in the Social Services Legislation Amendment (Drug Testing Trial) Bill 2018. Unlike the 2017 Bill, this Bill specified the sites at which the trial would be conducted¹⁷². The Bill passed the House of Representatives but lapsed in the Senate at the end of the 45th Parliament¹⁷³.

The Social Services Legislation Amendment (Drug Testing Trial) Bill 2019 was introduced to Parliament on 11 September 2019. The Bill establishes a two-year trial of drug testing 5,000 new recipients of Newstart allowance and Youth Allowance (other) residing in Canterbury Bankstown in NSW, Logan in Queensland and Mandurah in Western Australia¹⁷⁴. The Bill stated two objectives:

- To maintain the integrity of, and public confidence in the social security system by ensuring that welfare payments are not used to support substance abuse.
- To help identify income support recipients with drug abuse issues and facilitate their referral to treatment when required¹⁷⁵.

In order to achieve its objectives, the Bill amends the *Social Security Act 1991*, *The Social Security (Administration) Act 1999* and the *Farm Household Support Act 2014* to establish the drug testing trial¹⁷⁶.

The trial involves the following key elements:

- New claimants of Newstart or Youth Allowance (other) payments in these three locations will be required to acknowledge they may be subject to random mandatory drug testing¹⁷⁷.
- Recipients randomly selected for drug testing will be required to present at an appointment of Services Australia and provide a urine, saliva or hair sample¹⁷⁸.

167 Bills Digest, p. 3,

https://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/7120148/upload_binary/7120148.pdf;fileType=application/pdf

168 Ibid., p. 7.

169 Ibid., p. 8.

170 Senate Community Affairs Legislation Committee Report, p. 1,

[https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024362/toc_pdf/SocialServicesLegislationAmendment\(DrugTestingTrial\)Bill2019\[Provisions\].pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024362/toc_pdf/SocialServicesLegislationAmendment(DrugTestingTrial)Bill2019[Provisions].pdf;fileType=application%2Fpdf)

171 Senate Hansard, 7 December 2017, p. 10154, https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansards/5d592247-329b-4d73-aa23-cc7010d35d45/toc_pdf/Senate_2017_12_07_5784_Official.pdf;fileType=application%2Fpdf

172 Senate Community Affairs Legislation Committee Report, p. 1,

[https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024362/toc_pdf/SocialServicesLegislationAmendment\(DrugTestingTrial\)Bill2019\[Provisions\].pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024362/toc_pdf/SocialServicesLegislationAmendment(DrugTestingTrial)Bill2019[Provisions].pdf;fileType=application%2Fpdf)

173 Bills Digest, p. 3,

https://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/7120148/upload_binary/7120148.pdf;fileType=application/pdf

174 Hansard, House of Representatives, 11 September 2019, p. 2458,

https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/55419124-25ea-455e-bf57-1d1fab05abeb/toc_pdf/House%20of%20Representatives_2019_09_11_7137_Official.pdf;fileType=application%2Fpdf

175 Explanatory Memorandum, p. 27, https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6395_ems_1871e79c-6e2c-4685-a704-d456be73e0c6/upload_pdf/716957.pdf;fileType=application%2Fpdf

176 Bills Digest, p. 3,

https://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/7120148/upload_binary/7120148.pdf;fileType=application/pdf

177 Explanatory Memorandum, p. 3, https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6395_ems_1871e79c-6e2c-4685-a704-d456be73e0c6/upload_pdf/716957.pdf;fileType=application%2Fpdf

178 Ibid., p. 25.

- Recipients who refuse to take the test will have their payments cancelled with a four-week waiting period upon re-applying¹⁷⁹
- Recipients who test positive to at least one test will be subject to income management for 24 months, in which 80% of their payments will be quarantined for spending on essentials only¹⁸⁰.
- Recipients who test positive will also be subject to re-testing. Upon testing positive a second time, recipients will be referred to a medical professional for assessment and recommended treatment if necessary¹⁸¹.

The Bill also establishes a \$10 million treatment fund to provide additional support for treatment in the three trial locations¹⁸².

The Bill was reviewed by the Senate Community Affairs Legislation Committee for inquiry and report. The Committee received 51 submissions from stakeholders including medical professionals, community service groups and drug and alcohol services¹⁸³. The Committee recommended that the Bill be passed, despite there being very little support for the Bill amongst stakeholder groups.

The National Drug and Alcohol Research Centre stated that there was “no evidence” the proposed measures would achieve any reductions in substance abuse and instead had the potential to increase harm, poverty and social marginalisation¹⁸⁴. The Royal Australian College of Psychiatrists (RACP) stated that drug testing argues the trial could cause harm, in particular due to a concern that participants may supplement usage of a detectable drug to an undetectable yet dangerous synthetic or prescription drug to avoid penalties¹⁸⁵. The Australian Medical Association (AMA) also expressed concerns, stating that the trial would increase demand on addiction services and may impact individuals actively seeking treatment¹⁸⁶. The City of Logan’s submission asked the Government to suspend Logan as a test site due to concerns about the trial from experts, a position the City has held since 2018¹⁸⁷.

The Parliamentary Joint Committee on Human Rights reviewed the 2018 Bill. The Committee noted that the Bills engaged and limited certain human rights, including the right to privacy, right to an adequate standard of living, and right to non-discrimination. The Committee stated that the engagement and limitation of such rights was permissible when pursuing a legitimate objective. The pursuit of objectives relating to treatment of harmful drug use were ruled as “legitimate”, however, the Committee did not comment on the legitimacy of the objective of “maintaining... public confidence in the social security system”. The Committee also raised concerns about whether the Bill would be able to achieve its objectives due to the lack of evidence informing the trial, as well as the possibility for the trial to cause additional hardship for participants¹⁸⁸.

The Bill was debated in the Lower House from the 15th-17th October 2019¹⁸⁹. On the 15th of October, ALP MP Linda Burney moved an amendment that the Bill not be read a second time, and that the government notes the “overwhelming” evidence the bill will not achieve its objectives and instead pursue evidence based policy.¹⁹⁰

Ms Burney established that the ALP would be opposing the “demeaning” bill due to the lack of evidence supporting drug testing and the selection of trial sites¹⁹¹. A range of additional objections were raised by ALP members, such as

179 Ibid., p. 28.

180 Bills Digest, p. 4,

https://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/7120148/upload_binary/7120148.pdf;fileType=application/pdf

181 Explanatory Memorandum, p. 4, https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6395_ems_1871e79c-6e2c-4685-a704-d456be73e0c6/upload_pdf/716957.pdf;fileType=application%2Fpdf

182 Bills Digest, p. 5.

183 Senate Community Affairs Legislation Committee Report, p. 5,

[https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024362/toc_pdf/SocialServicesLegislationAmendment\(DrugTestingTrial\)Bill2019\[Provisions\].pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024362/toc_pdf/SocialServicesLegislationAmendment(DrugTestingTrial)Bill2019[Provisions].pdf;fileType=application%2Fpdf)

184 National Drug and Alcohol Research Centre: Community Affairs Legislation Committee Submission, p. 1,

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/WelfareReform/Submissions

185 Senate Community Affairs Legislation Committee Report, p. 23,

[https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024362/toc_pdf/SocialServicesLegislationAmendment\(DrugTestingTrial\)Bill2019\[Provisions\].pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024362/toc_pdf/SocialServicesLegislationAmendment(DrugTestingTrial)Bill2019[Provisions].pdf;fileType=application%2Fpdf)

186 Ibid., pp. 24-25.

187 City of Logan: Community Affairs Legislation Committee Submission, p. 3,

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/DrugTestingTrial2019/Submissions

188 Bills Digest, pp. 14-15,

https://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/7120148/upload_binary/7120148.pdf;fileType=application/pdf

189 https://www.aph.gov.au/Parliamentary_Business/Bills_LEgislation/Bills_Search_Results/Result?bld=r6395

190 Hansard, House of Representatives, 15 October 2019, p. 4173,

https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/b2ed6923-2348-4216-a1ae-847eb3130d44/toc_pdf/House%20of%20Representatives_2019_10_15_7226_Official.pdf;fileType=application%2Fpdf

191 Ibid., 4174.

concerns that costs of the trial, including the price of individual tests were not released¹⁹² and that mandatory referrals to counselling services may take services away from individuals more in need of assistance¹⁹³.

The Greens also opposed the Bill. Member for Melbourne Adam Bandt argued the Government was “blaming” individuals instead of addressing the barriers to finding work caused by the low Newstart rate¹⁹⁴. Mr Bandt also raised concerns that quarantining or terminating individual’s payments would lead to an increase in criminal activity¹⁹⁵.

Centre Alliance MP Rebekah Sharkie and Independent MP Andrew Wilkie also rose to oppose the Bill. Both MPs cited a lack of expert support for the Bill as well as concerns relating to the low rate of Newstart being a potential barrier to employment¹⁹⁶.

On October 17th, Ms Burney’s amendment was defeated and the Bill was read to the house a second time. The Bill was then agreed to and sent to the Senate¹⁹⁷. The Bill remains before the senate as of 16 September 2021. Crossbencher Jacqui Lambie confirmed she would not be supporting the Bill in December 2019, due to concerns about a lack of mental health and addiction funding across the country.¹⁹⁸

Policy Process

Criterion 1 - Establish Need: Identify a demonstrable need for the policy, based on hard evidence and consultation with all the stakeholders involved, particularly interest groups who will be affected.

Guiding question: Is there a statement of why the policy was needed based on factual evidence and stakeholder input?

No. The Government states that the trial is needed to “test the effectiveness of decreasing substance abuse through random testing, in an effort to improve employment outcomes for trial participants¹⁹⁹”. However, submissions to previous senate inquiries have found that there is strong opposition to the trial amongst experts²⁰⁰ as well as the City of Logan, a proposed site of the trial. This indicates that the positions of many experts and stakeholders were not adequately considered while developing this policy.

Criterion 2 - Set Objectives: Outline the public interest parameters of the proposed policy and clearly establish its objectives.

Guiding question: Is there a statement of the policy’s objectives couched in terms of the public interest?

Yes. The Bill’s explanatory note states that the policy aims to reduce substance abuse, a “major barrier to social and economic participation”. The Bill also aims to “restore public confidence in the social security system” to ensure taxpayer funds are not contributing to drug abuse.

Criterion 3 – Identify Options: Identify alternative approaches to the design of the policy, preferably with international comparisons where feasible. Engage in realistic costings of key alternative approaches.

Guiding question: Is there a description of the alternative policy options considered before the preferred one was adopted?

No. No alternative approaches to the design of the policy are publicly available.

¹⁹² Ibid,

¹⁹³ Ibid., 4181.

¹⁹⁴ Hansard, House of Representatives, 16 October 2019, p. 4382.

¹⁹⁵ Ibid., p. 4384.

¹⁹⁶ Hansard, House of Representatives, 17 October 2019, pp. 4504-510.

¹⁹⁷ Ibid, pp. 4512-4515.

¹⁹⁸ <https://www.abc.net.au/triplej/programs/hack/drug-testing-welfare-recipients-fails-to-get-senate-support/11687840>

¹⁹⁹ Explanatory Memorandum, p. 3, https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6395_ems_1871e79c-6e2c-4685-a704-d456be73e0c6/upload_pdf/716957.pdf;fileType=application%2Fpdf

²⁰⁰ Senate Community Affairs Legislation Committee Report, p. 27,

[https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024362/toc_pdf/SocialServicesLegislationAmendment\(DrugTestingTrial\)Bill2019\[Provisions\].pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024362/toc_pdf/SocialServicesLegislationAmendment(DrugTestingTrial)Bill2019[Provisions].pdf;fileType=application%2Fpdf)

Criterion 4 – Consider Mechanisms: Consider implementation choices along a full spectrum from incentives to coercion.

Guiding question: Is there a disclosure of the alternative ways considered for implementing the chosen policy?

No. There is no disclosure of the alternative ways of implementing the policy.

Criterion 5 – Brainstorm Alternatives: Consider the pros and cons of each option and mechanism. Subject all key alternatives to a rigorous cost-benefit analysis.

Guiding question: Is there a published analysis of the pros/cons and benefits/costs of the alternative options/mechanisms considered in 3 and 4?

No. There is no published analysis of pros and cons or costs and benefits of alternative mechanisms.

Criterion 6 – Design Pathway: Develop a complete policy design framework including principles, goals, delivery mechanisms, program or project management structure, the implementation process and phases, performance measures, ongoing evaluation mechanisms and reporting requirements, oversight and audit arrangements, and a review process ideally with a sunset clause.

Guiding question: Is there evidence that a comprehensive project management plan was designed for the policy's rollout?

Yes. The Bill's Explanatory Memorandum explains the objectives of the program, as well as details relating to its delivery.

Criterion 7 – Consult Further: Undertake further consultation with key affected stakeholders of the policy initiative.

Guiding question: Was there further consultation with affected stakeholders after the preferred policy was announced?

Yes. Further Consultation with affected stakeholders occurred after the Bill was introduced to Parliament. The Senate Community Affairs Legislation Committee undertook two public hearings in which experts and advocates from various fields were able to share their views on the Bill²⁰¹.

Criterion 8 – Publish Proposals: Produce a Green and then a White paper for public feedback and final consultation purposes and to explain complex issues and processes.

Guiding question: Was there a) a Green paper seeking public input on possible policy options and b) a White paper explaining the final policy decision?

No. There is no official Green or White paper for this proposal. The Bill's review by the Senate Community Affairs Legislation Committee allowed for some public consultation. This process included a public hearing with representatives from many stakeholder groups. Stakeholder submissions were permitted, however were only accepted during a two-week window²⁰². There were also no hearings conducted in the areas affected by the trial.

Criterion 9 – Introduce Legislation: Develop legislation and allow for comprehensive parliamentary debate especially in committee, and also intergovernmental discussion where necessary.

Guiding question: Was there legislation and adequate Parliamentary debate on the proposed policy initiative?

Yes. Legislation was introduced to Parliament on 11 September 2019. Debate occurred across three sitting days. Both Major parties, two minor parties and one independent were able to share their views on the Bill.

201 Senate Community Affairs Legislation Committee Hearing (Melbourne), https://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/413be482-686e-4c67-ad27-9972a4858aa9/toc_pdf/Community%20Affairs%20Legislation%20Committee_2017_08_31_5454_Official.pdf;fileType=application%2Fpdf#search=%22committees/commsen/413be482-686e-4c67-ad27-9972a4858aa9/0000%22
202 https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/DrugTestingTrial2019

The Bill was also referred to the Senate Community Affairs Legislation Committee.

Criterion 10 – Communicate Decision: Design and implement a clear, simple, and inexpensive communication strategy based on information not propaganda, regarding the new policy initiative.

Guiding question: Is there an online official media release that explains the final policy in simple, clear and factual terms?

Yes. A media release from the Department of Social Services outlines the policy in clear terms. The policy also updates the public on the progress of the Bill through Parliament²⁰³.

Final Scores

	CRITERION	YES/NO
1	Establish Need (demonstrable, evidence-based need)	No
2	Set Objectives (public interest parameters)	Yes
3	Identify Options (consideration of alternatives)	No
4	Consider Mechanisms (implementation choices)	No
5	Brainstorm Alternatives (cost-benefit analysis)	No
6	Design Pathway (policy design framework)	Yes
7	Consult Further (further consultation after policy announcement)	Yes
8	Publish Proposals (produce Green then White paper, or equivalents)	No
9	Introduce Legislation (comprehensive parliamentary debate)	Yes
10	Communicate Decision (information not propaganda)	Yes
		5/10

²⁰³ <https://www.dss.gov.au/benefits-payments/drug-testing-trial>

Federal Circuit and Family Court of Australia Act 2021

Policy Background

The Federal Circuit and Family Court of Australia Act 2021 merged the Federal Circuit Court of Australia and the Family Court of Australia into the Federal Circuit and Family Court of Australia. This new court has two divisions; the first and second divisions are fundamentally based on the jurisdiction of the Family Court of Australia and the Federal Circuit Court of Australia respectively. This Bill outlines a judicial system for family law and child support cases in which the second division acts as a single point of entry for these cases while the first division handles appellate jurisdiction along with more complex cases.

The Hon. Kelly O'Dwyer MP introduced the FCFC Bill to the House of Representatives on 23 August 2018. The Minister stated that the bill would ensure that family law disputes are "resolved as quickly, inexpensively, and efficiently as possible in the best interests of Australian families, especially children".

The need to reform federal courts to achieve this has been discussed for some years and has been subject to a number of reviews. The Attorney-General, the Hon. Christian Porter, outlined that the government took into account the following reviews in developing the bill:

- the 2008 Semple Review, Future Governance Operations for the Federal Family Law Courts in Australia: Striking the Right Balance;
- a 2014 KPMG Review, Review of the Performance and Funding of the Federal Court of Australia, the Family Court of Australia and the Federal Circuit Court of Australia;
- a 2015 EY Report, High Level Financial Analysis of Court Reform Initiatives;
- the 2017 House of Representatives Standing Committee on Social Policy and Legal Affairs Report, A better family law system to support and protect those affected by family violence: Recommendations for an accessible, equitable and responsive family law system which better prioritises safety of those affected by family violence; and
- a 2018 PricewaterhouseCoopers [PwC] Report, Review of the efficiency of the operation of the federal courts.

There is near widespread acceptance amongst stakeholder groups and political parties that the family law system suffers from systemic failures. Delays can last for years putting an interminable financial and emotional strain on families. However, many stakeholders, such as the Law Council of Australia, the National Aboriginal and Torres Strait Islander Legal Service and Domestic Violence Committee of Queensland Law Society, felt that improving issues of expediency and efficiency could be done without the need for new legislation. These proposed changes included the move to a single point of entry, harmonisation of rules and reforms, and unification of procedures in the family law system.

According to many experts, what is more important is that the overwhelming majority of cases that came before the Family Court involved domestic violence, which requires specialist personnel in order to improve outcomes for users of the court system.

Since the merger was announced in 2018, warnings from lawyers, family violence advocates, academics, and former judges have not been incorporated into the design of the policy change. The Law Council's consistent and outspoken criticisms of the merger culminated in an open letter urging the government to reconsider. The letter was signed by more than 150 former judges, barristers, academics, and advocates.

The Federal Opposition argues that the lack of consultation with stakeholders before the bill was drafted resulted in "ill-considered reforms that will not meet the needs of Australian families". Labor senators noted that these laws may have unintended consequences on the Western Australian courts. Furthermore, the government must take responsibility for the delays experienced in the family law system. In addition to reasons outlined by the government, they are also due to delays in the replacement of judges, inadequate funding for legal aid and a lack of judicial resourcing. "Reforming the family law system is an important task. It should not be rushed, especially in the short time remaining before an election".

Despite the vociferous warnings of stakeholders, opposition from the ALP and Greens, the Bill did not incorporate the substantive recommendations of the ALRC review. It does, however, support Senator Pauline Hanson's efforts to abolish the Family court since 1996. The Senator's position, although most experts on the subject disagree, is that the Family Court is biased against fathers. In 2016, Senator Hanson used her first speech back in parliament to accuse the courts of driving dads to commit murder. The idea of a merger was circulating in parliament within months of her return. Angela Lynch, CEO of Women's Legal Services Australia, said:

“The abolition of the Family Court has been a primary objective of many groups in Australia that are anti-domestic violence, anti-women and basically misogynist groups... They’ve been handed this on a platter”.

In 2019 the government appointed Senator Hanson to an inquiry into family law. Hearings that were an opportunity to discuss potential policy improvements to the family law system were instead frequently spent debating fringe men’s right activists who had been invited to participate.

The FCFC Bill’s creation of a single-entry point and common rules to make it easier for families to navigate is supported by stakeholders however, the decrease in the specialisation of family law and domestic violence was met with admonition. To increase the safety of victims-survivors of family violence, the courts need to be more specialised in family law and family violence. This is exacerbated in groups that are disproportionately affected by the family law system such as Aboriginal and Torres Strait Islander people. The need to increase specialisation of the courts to improve outcomes for families is supported by the ALRC review along with many other inquiries. The FCFC Bill’s merger of the courts and its effective “abolition of the Family Court over time” has led family violence reform advocates such as Jess Hill, author of *See What You Made Me Do*, to believe that “if anything good comes from this merger it seems like it will be absolutely by chance”.

Policy Process

Criterion 1 - Establish Need: Identify a demonstrable need for the policy, based on hard evidence and consultation with all the stakeholders involved, particularly interest groups who will be affected.

Guiding question: Is there a statement of why the policy was needed based on factual evidence and stakeholder input?

No. The government presented evidence from reports by PwC and EY but ignored the recommendations of numerous legal scholars and family violence experts on the Bill.

Criterion 2 - Set Objectives: Outline the public interest parameters of the proposed policy and clearly establish its objectives.

Guiding question: Is there a statement of the policy’s objectives couched in terms of the public interest?

Yes. The government made a public interest argument for this policy. The argument was that families can and should be saved from delays that can last years, causing interminable financial and emotional strain.

Criterion 3 – Identify Options: Identify alternative approaches to the design of the policy, preferably with international comparisons where feasible. Engage in realistic costings of key alternative approaches.

Guiding question: Is there a description of the alternative policy options considered before the preferred one was adopted?

No. The government did not identify any alternative policy approaches. The Australian Law Reform Commission (ALRC) review into the family law system came up with 60 recommendations to improve the system, all of which were ignored.

Criterion 4 – Consider Mechanisms: Consider implementation choices along a full spectrum from incentives to coercion.

Guiding question: Is there a disclosure of the alternative ways considered for implementing the chosen policy?

No. The government did not identify alternative policy implementation approaches. This process was limited by the short time frame applied to the policymaking process.

Criterion 5 – Brainstorm Alternatives: Consider the pros and cons of each option and mechanism. Subject all key alternatives to a rigorous cost-benefit analysis.

Guiding question: Is there a published analysis of the pros/cons and benefits/costs of the alternative options/mechanisms considered in 3 and 4?

No. The government did not publish an analysis of the pros, cons, benefits and costs of any alternative policy options or mechanisms. The government did however commission a “High Level Financial Analysis of Court Reform Initiatives” of savings and implementation costs associated with the reforms outlined in the FCFC Bill from Ernst & Young (EY).

Criterion 6 – Design Pathway: Develop a complete policy design framework including principles, goals, delivery mechanisms, program or project management structure, the implementation process and phases, performance measures, ongoing evaluation mechanisms and reporting requirements, oversight and audit arrangements, and a review process ideally with a sunset clause.

Guiding question: Is there evidence that a comprehensive project management plan was designed for the policy’s rollout?

No. While the policies stemmed from a PwC report commissioned by the Government, there is no evidence of a policy design framework. This legislation was rushed through both Houses of Parliament.

Criterion 7 – Consult Further: Undertake further consultation with key affected stakeholders of the policy initiative.

Guiding question: Was there further consultation with affected stakeholders after the preferred policy was announced?

No. Despite broad consultation during the ILRC process, no significant consultation of stakeholders was undertaken following the drafting of legislation.

Criterion 8 – Publish Proposals: Produce a Green and then a White paper for public feedback and final consultation purposes and to explain complex issues and processes.

Guiding question: Was there a) a Green paper seeking public input on possible policy options and b) a White paper explaining the final policy decision?

Yes. The 2018 and 2019 Bills were subject to inquiries by the Senate Legal and Constitutional Affairs Legislation Committee. The government made some amendments to the bill in its second reading following criticisms

Criterion 9 – Introduce Legislation: Develop legislation and allow for comprehensive parliamentary debate especially in committee, and also intergovernmental discussion where necessary.

Guiding question: Was there legislation and adequate Parliamentary debate on the proposed policy initiative?

Yes. Legislation was developed and passed.

Criterion 10 – Communicate Decision: Design and implement a clear, simple, and inexpensive communication strategy based on information not propaganda, regarding the new policy initiative.

Guiding question: Is there an online official media release that explains the final policy in simple, clear and factual terms?

Yes. The Family Court and Federal Circuit Court of Australia released a statement on 23 February 2021 broadly outlining the Bill. They also released a more detailed Explanatory Memorandum of the FCFC Bill.

Final Scores

	CRITERION	YES/NO
1	Establish Need (demonstrable, evidence-based need)	No
2	Set Objectives (public interest parameters)	Yes
3	Identify Options (consideration of alternatives)	No
4	Consider Mechanisms (implementation choices)	No
5	Brainstorm Alternatives (cost-benefit analysis)	No

6	Design Pathway (policy design framework)	No
7	Consult Further (further consultation after policy announcement)	No
8	Publish Proposals (produce Green then White paper, or equivalents)	Yes
9	Introduce Legislation (comprehensive parliamentary debate)	Yes
10	Communicate Decision (information not propaganda)	Yes
		4/10

Higher Education Support Amendment (Freedom of Speech)

Policy Background

The central focus of the Higher Education Support Amendment (Freedom of Speech) Bill is to bolster protections for freedom of speech and academic freedom in Australia. Academic freedom is an integral component of undertaking research and scholarly work at Australia's universities and has been widely described as the right for individuals to "teach, research and publish on contentious issues; choose their own research colleagues; and speak on social issues without fear or favour in areas of their expertise... balanced by the responsible and disciplined exercise of scholarly expertise"²⁰⁴.

The federal government oversees the regulation of universities through the Tertiary Education Quality and Standards Agency (TEQSA), which demands each higher education provider's governing body to "develop and maintain and institutional environment [where] freedom of intellectual inquiry is upheld and protected"²⁰⁵ through its internal policies and procedures under the TEQSA Act's Higher Education Standards Framework. If universities funded under the HESA Act refuse to promote freedom of intellectual inquiry, the Education Minister can revoke their access to funding.

Academic freedom has attracted considerable public debate in recent decades and remains a widely contested ideal in political circles. There are two competing conceptions of academic freedom in Australia: the first is underpinned by concerns that "a narrow conception of academic freedom"²⁰⁶ limits institutional and academic autonomy and promotes "undue interference"²⁰⁷ in academic research. Here, institutional autonomy refers to the university's ability to set its teaching standards, research agenda, recruit staff and distribute financial resources²⁰⁸. Universities maintain that academic freedom and institutional autonomy are inherently linked. Despite this, institutional autonomy is largely constrained by funding arrangements for universities, as well as policies protecting rights that override academic freedom, such as anti-discrimination and anti-terrorism legislation²⁰⁹.

A second competing notion of academic freedom focusses on the role of university culture to constrain freedom of speech and cultivate academic bias on university campuses²¹⁰. Proponents of this view contend that Australian universities confine staff, students and the broader community to certain viewpoints and undermine academic freedom by refusing to promote intellectual diversity and a plurality of views. Yet a 2008 Senate Standing Committee on Education, Employment and Workplace Relations struggled to substantiate claims of widespread bias across Australia's universities²¹¹.

With this in mind, the Bill amends the Higher Education Support Act (HESA) 2003, serving a dual purpose: to name 'freedom of speech' and 'academic freedom' as replacements for 'free intellectual inquiry' and to incorporate a new definition of 'academic freedom'²¹². These changes to the HESA Act are part of the Morrison government's response to the Report of the Independent Review of Freedom of Speech in Australian Higher Education Providers, announced in November 2018 and undertaken by former Chief Justice of the High Court of Australia, the Honourable Robert French AC²¹³. The report was required to assess the current effectiveness of the Higher Education Standards Framework to "protect freedom of expression and intellectual inquiry"²¹⁴ and draw on international approaches to provide "realistic and practical"²¹⁵ alternatives to better promote these ideals.

The French Review disputed the notion there was a "freedom of speech crisis"²¹⁶ on Australian campuses, though it acknowledged the role of institutional rules, policies and codes that can be exercised to erode pillars of academic

204 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F7639148%22>

205 <https://www.legislation.gov.au/Series/C2011A00073>

206 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2F7649722%22>

207 Ibid.

208 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F7649711%22>

209 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2F7649722%22>

210 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F7649711%22>

211

https://www.aph.gov.au/~media/wopapub/senate/committee/eet_ctte/completed_inquiries/2008_10/academic_freedom/report/report_pdf.fashx

212 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2F6619_ems_040a43f2-4cb4-4030-8116-2ea3c51288a7%22

213 <https://www.dese.gov.au/download/4532/report-independent-review-freedom-speech-australian-higher-education-providers-march-2019/6744/document/pdf>

214 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F6331544%22>

215 Ibid.

216 <https://www.dese.gov.au/download/4532/report-independent-review-freedom-speech-australian-higher-education-providers-march-2019/6744/document/pdf>

freedom, namely freedom of speech. The report's core recommendation was to craft an overarching "Code of practice"²¹⁷ reflecting a series of principles to strengthen academic freedom within the sector, which could be adopted by universities on a voluntary basis. According to the French Review, the Model Code proposal, combined with amendments to the HESA Act 2003 and the Higher Education Standards will sufficiently enhance academic freedom and institutional autonomy across Australia's universities.

The French Review was published in March 2019 and has since galvanised little action from Australia's universities beyond their commitment to adopt a model code on academic freedom and freedom of speech – as part of their policy statements, codes of conduct and enterprise agreements - without the need for legislative changes. Interestingly, Professor Emeritus Sally Walker's independent review found that only 23 of 43 Australian universities had aligned themselves with this Model Code²¹⁸.

In light of this, when the Bill was first introduced to and read for a second time in the House of Representatives by former Education Minister Dan Tehan on October 28, 2020, he noted that the Bill's proposed amendments to the HESA act were necessary to "align the language of HESA with the language used in the model code"²¹⁹. A public consultation draft for these proposed amendments was released on January 9, 2021 and welcomed submissions until February 24²²⁰. In response to the consultation draft, the Group of Eight universities (Go8) indicated that university Chancellors were required to define academic freedom, and felt that a legislative definition would threaten institutional autonomy. The Innovative Research Universities (IRU) shared this view and expressed concerns that a legislated definition for academic freedom would evoke in "highly undesirable employment disputes" among academic staff. The Bill's proposed definition of academic freedom was partially altered in response to these concerns, and removes the clause "freedom of academic staff... to make lawful public comment on any issue".

The revised definition of academic freedom in the Bill includes six components, lending students and staff the right to teach, research, publish and discuss their findings, and to participate in student societies, associations and in academic bodies. It further allows higher education providers to offer the academic courses of their choosing and enshrines the rights of students and staff to share their opinions "in relation to the [university] in which they work or are enrolled".

The Bill's second reading debate in the House of Representatives on February 23 and 24 was met with some scepticism from and later opposed by Labor MPs. Accordingly, Labor MP Anne Aly proposed an amendment noting the government "fail[ed] to develop a long-term policy for the Australian post-secondary education system...ma[de] it...more expensive for...students to get a university education [and had cut] billions from universities and slash[ed] research funding"²²¹. The amendment was soundly defeated in the House²²².

A final reading was agreed to in the House of Representatives on February 24, and the Bill was also introduced to the Senate on the same day²²³. A number of Senators echoed concerns expressed by crossbench MPs in the House of Representatives, noting that the Bill's conception of academic freedom and freedom of speech will unlikely resolve differing political and world views on these ideals, or the so-called "division between the 'romance' of academic freedom and its reality"²²⁴. The emphasis on freedom of speech as a core element of academic freedom, alongside the potential issues related to academic freedom protections for staff, particularly "comment in a private capacity", will inevitably yield and shape ongoing public debate.

The Bill was debated in the Senate on February 25 and once again on March 15, where three Senators offered amendments to the legislation. Labor Senator Kim Carr proposed an amendment to the definition of academic freedom provided in the Bill. A core component of this definition allows "staff and students to express their opinions in relation to the higher education provider in which they work or are enrolled"²²⁵; Carr's amendment supplements the clause with "or in relation to the Commonwealth government"²²⁶. Upon proposing this amendment to the Senate, Carr contended that

217 Ibid.

218 <https://www.dese.gov.au/higher-education-reviews-and-consultations/independent-review-adoption-model-code-freedom-speech-and-academic-freedom>

219 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F282021b8-a1a6-4987-899b-77870844dc06%2F0009%22>

220 <https://www.dese.gov.au/higher-education-reviews-and-consultations/resources/stakeholder-consultation-proposed-free-speech-amendments-higher-education-support-act-2003-hesa>

221 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2Fcbdee0d1-d3ff-4d84-92ff-b49fcdad901b%2F0034%22>

222 Ibid.

223 https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6619

224 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2F7649722%22>

225 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2F6619_ems_040a43f2-4cb4-4030-8116-2ea3c51288a7%22

226 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansards%2Fbf746b14-341b-4cbd-a09a-5fa7e47d17b4%2F0194;query=Id%3A%22chamber%2Fhansards%2Fbf746b14-341b-4cbd-a09a-5fa7e47d17b4%2F0031%22>

the Morrison government should implement safeguards for university staff and students who wish to comment on government policy as this would align with their free speech agenda. The amendment was supported by the Greens but later narrowly defeated in the Senate.

Additionally, the Greens moved an amendment which would broaden the definition of academic freedom to include “staff engaged in academic activities”²²⁷, as well as academic staff and students. Greens Senator Mehreen Faruqi asserted that this amendment would provide academic freedom protections for research assistants, visiting lecturers and staff who “otherwise contribute to the activities of the institution”²²⁸. Although the Greens’ amendment attracted broad support from the Labor opposition and minority parties, the government felt it was unnecessary, citing the expectation that universities would adopt the model code espoused in the French review across all university policies to benefit all academic staff, defined as “those who are employed by the university to teach and/or carry out research and extends to those who provide, whether on an honorary basis or otherwise, teaching services and/or conduct research”²²⁹.

Policy Process

Criterion 1 - Establish Need: Identify a demonstrable need for the policy, based on hard evidence and consultation with all the stakeholders involved, particularly interest groups who will be affected.

Guiding question: Is there a statement of why the policy was needed based on factual evidence and stakeholder input?

Yes. The French Review alerted the government to the codes and policies adopted by certain universities that can threaten freedom of speech and staff and student academic freedom. As such, the Model Code outlined in the French Review conforms to three central tenets - institutional autonomy, academic freedom and freedom of speech – and was crafted following several months of consultation with Australia’s universities and education bodies²³⁰.

Criterion 2 - Set Objectives: Outline the public interest parameters of the proposed policy and clearly establish its objectives.

Guiding question: Is there a statement of the policy’s objectives couched in terms of the public interest?

Yes. Former Education Minister Dan Tehan’s second reading speech outlined the importance of protecting academic freedom and freedom of speech across Australia’s universities at a time when both appear to be “affected by pressures at home and abroad”²³¹.

Criterion 3 – Identify Options: Identify alternative approaches to the design of the policy, preferably with international comparisons where feasible. Engage in realistic costings of key alternative approaches.

Guiding question: Is there a description of the alternative policy options considered before the preferred one was adopted?

Yes. The French Review drew on domestic and international approaches to balance academic freedom, institutional autonomy and freedom of speech before making its final recommendation of a universal Model Code. The Walker Review examined the implementation of the Model Code by universities and advised the government on how definitions of academic freedom and freedom of speech could be aligned with this universal ‘code of practice’.²³²

Criterion 4 – Consider Mechanisms: Consider implementation choices along a full spectrum from incentives to coercion.

Guiding question: Is there a disclosure of the alternative ways considered for implementing the chosen policy?

²²⁷ https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Famend%2F6619_amend_daa7de37-0ad5-480a-8a3a-1d49ff73b904%22

²²⁸ <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansards%2Fb746b14-341b-4cbd-a09a-5fa7e47d17b4%2F0200;query=Id%3A%22chamber%2Fhansards%2Fb746b14-341b-4cbd-a09a-5fa7e47d17b4%2F0031%22>

²²⁹ Ibid.

²³⁰ <https://www.dese.gov.au/higher-education-reviews-and-consultations/consultations/freedom-speech-review>

²³¹ <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F282021b8-a1a6-4987-899b-77870844dc06%2F0009%22>

²³² <https://www.dese.gov.au/higher-education-reviews-and-consultations/independent-review-adoption-model-code-freedom-speech-and-academic-freedom>

Yes. The model code was debated as either voluntary or non-voluntary. It has been rolled out on a voluntary basis, with the government intending to review at a later date.

Criterion 5 – Brainstorm Alternatives: Consider the pros and cons of each option and mechanism. Subject all key alternatives to a rigorous cost-benefit analysis.

Guiding question: Is there a published analysis of the pros/cons and benefits/costs of the alternative options/mechanisms considered in 3 and 4?

No. This information was not available.

Criterion 6 – Design Pathway: Develop a complete policy design framework including principles, goals, delivery mechanisms, program or project management structure, the implementation process and phases, performance measures, ongoing evaluation mechanisms and reporting requirements, oversight and audit arrangements, and a review process ideally with a sunset clause.

Guiding question: Is there evidence that a comprehensive project management plan was designed for the policy's rollout?

Yes. Design and delivery framework was set out in the French Review and adopted by the government.

Criterion 7 – Consult Further: Undertake further consultation with key affected stakeholders of the policy initiative.

Guiding question: Was there further consultation with affected stakeholders after the preferred policy was announced?

Yes. Relevant stakeholders (principally universities) were consulted throughout the French Review, throughout the design and implementation of the Code, and in the lead up to the introduction of the Bill.

Criterion 8 – Publish Proposals: Produce a Green and then a White paper for public feedback and final consultation purposes and to explain complex issues and processes.

Guiding question: Was there a) a Green paper seeking public input on possible policy options and b) a White paper explaining the final policy decision?

No. Although a public consultation draft was available for stakeholder input in early 2020, there were no other Green or White papers released for feedback. Perhaps the government felt this was unnecessary given that the French and Walker reviews are available online, and the Bill itself is relatively short and is designed to work in combination with the Higher Education Standards and the Model Code proposal.

Criterion 9 – Introduce Legislation: Develop legislation and allow for comprehensive parliamentary debate especially in committee, and also intergovernmental discussion where necessary.

Guiding question: Was there legislation and adequate Parliamentary debate on the proposed policy initiative?

Yes. The Bill was read on three separate occasions in both the House of Representatives and the Senate, with ample opportunities for second and third reading debates, including a committee of the whole debate in the Senate.

Criterion 10 – Communicate Decision: Design and implement a clear, simple, and inexpensive communication strategy based on information not propaganda, regarding the new policy initiative.

Guiding question: Is there an online official media release that explains the final policy in simple, clear and factual terms?

Yes. A media release was published on former Education Minister Dan Tehan's website on October 28, 2020 providing details of the French report's release, alongside its key findings and the Bill's aims²³³. Another media release was

²³³ <https://ministers.dese.gov.au/tehan/ensuring-freedom-speech-and-freedom-academic-inquiry>

published on the website for the current Minister for Education and Youth, Alan Tudge on March 16 2021, summarising the amendments to the HESA Act 2003 outlined in the Bill and the benefits to universities and their students²³⁴.

Final Scores

	CRITERION	YES/NO
1	Establish Need (demonstrable, evidence-based need)	Yes
2	Set Objectives (public interest parameters)	Yes
3	Identify Options (consideration of alternatives)	Yes
4	Consider Mechanisms (implementation choices)	Yes
5	Brainstorm Alternatives (cost-benefit analysis)	No
6	Design Pathway (policy design framework)	Yes
7	Consult Further (further consultation after policy announcement)	Yes
8	Publish Proposals (produce Green then White paper, or equivalents)	No
9	Introduce Legislation (comprehensive parliamentary debate)	Yes
10	Communicate Decision (information not propaganda)	Yes
		7 /10

234 <https://ministers.dese.gov.au/tudge/protecting-freedom-speech-australian-universities>

Corporations Amendment (Corporate Insolvency Reforms) Act 2020

Policy Background

When compared to international examples, Australia's insolvency system has previously overwhelmingly focused on the rights of creditors, with the return of funds to creditors being prioritised over helping companies to recover and remain solvent²³⁵. A 2015 Productivity Commission inquiry recommended this imbalance be corrected by introducing further opportunities for economically viable companies to restructure, a policy the Commission states would promote economic growth by ensuring the process is not excessively financially damaging to any stakeholders²³⁶.

In the previous system, administrators would take full control of a company during the voluntary administration process. A survey by the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) found that the majority of business owners felt as if they had no input into the insolvency process, and that the administrators focused disproportionately on winding up the business rather than considering restructure²³⁷.

ASBFEO's 2020 inquiry report suggested that the restructuring process for small and medium businesses should be managed by the business owner, with approval from a registered liquidator. The Ombudsman estimated that this would lower the costs of the insolvency process while allowing businesses to restructure, retain employees and commercial relationships, and, if required, "close their businesses... with dignity"²³⁸. The Ombudsman also recommended additional reforms including modernising access to information regarding debt and insolvency and simplifying the liquidation process.

The COVID-19 pandemic caused widespread disruption to businesses, requiring the introduction of temporary insolvency relief measures, which were scheduled to cease on 31 December 2020²³⁹. Treasurer Josh Frydenberg announced the introduction of permanent insolvency reforms in September, stating that businesses affected by recession would need further flexibility in restructuring their affairs in order to survive²⁴⁰.

The *Corporations Amendment (Corporate Insolvency Reforms) Bill 2020* was introduced to Parliament by the Treasurer on 12 November 2020.²⁴¹ Mr Frydenberg described the reforms as being the most significant of their kind for 30 years, and told Parliament they would "ensure Australia emerges from the pandemic with a stronger, more resilient and more competitive economy".

The Bill contains four schedules relating to various objectives. This is done by amending various statutes, primarily the *Corporations Act 2001*.

Schedule 1 of the Bill creates a debt restructuring process for eligible small businesses. Under this process, the debtor remains in control of their business, creating a debt restructuring plan with the assistance of a small business restructuring practitioner. This plan is then voted on by creditors²⁴². This Schedule also includes safeguards to prevent illegal phoenix activity²⁴³, whereby a company is liquidated and replaced by a new company to avoid paying debts²⁴⁴.

Schedule 2 of the Bill provides temporary relief to eligible companies seeking to enter the new debt restructuring process. This relief prevents insolvent trading while the company attempts to secure an external administrator. Companies would be eligible for relief from 1 January-31 March 2021²⁴⁵.

235 Bills Digest, p. 5,

https://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/7695481/upload_binary/7695481.pdf;fileType=application/pdf

236 Productivity Commission Inquiry Report: Business Set Up, Transfer and Closure (2015), p. 353,

<https://www.pc.gov.au/inquiries/completed/business/report/business.pdf>

237 Australian Small Business and Family Enterprise Ombudsman Insolvency Inquiry Report (2020), p. 12,

https://docs.google.com/document/d/141VJbX_-HFHgajLJAK04czcPufVcMj7Y/edit#

238 Australian Small Business and Family Enterprise Ombudsman Insolvency Inquiry Report (2020), p. 25,

https://docs.google.com/document/d/141VJbX_-HFHgajLJAK04czcPufVcMj7Y/edit#

239 Bills Digest, p. 7.

240 Ibid., p. 8.

241 Hansard, House of Representatives, 12 November 2020, p. 9631,

https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/ec2026d9-e105-4ff5-98da-5142f8424283/toc_pdf/House%20of%20Representatives_2020_11_12_8317_Official.pdf;fileType=application%2Fpdf

242 Explanatory Memorandum, pp.13-16.

243 Ibid, p. 14.

244 Hansard, House of Representatives, 7 December 2020, p. 10729.

245 Explanatory Memorandum, p. 47.

Schedule 3 establishes a simplified liquidation process for companies who need to wind up their businesses. The process aims to modify the “one-size-fits-all” liquidation process to better suit the needs of smaller, less complicated liquidations. This is done by dis-applying certain steps of the liquidation process, including reporting and meeting requirements²⁴⁶. This Schedule also contains amendments relating to the registration of liquidators and trustees²⁴⁷.

Schedule 4 alters communication requirements relating to administration of companies to allow remote administration²⁴⁸.

A draft of the Bill was circulated for comment during the previous five days, however no submissions in response to this draft are available for public access²⁴⁹. The Bill was also not sent to Committee²⁵⁰. The Bill has been largely supported by industry leaders and the Australian Restructuring, Insolvency and Turnaround Association. A publicly unavailable stakeholder submission raises concerns that the reforms will be used to keep businesses with “bad” business models running²⁵¹.

The Bill was commented on by the Senate Standing Review Committee for the Scrutiny of Bills. The Committee made several comments relating to the establishment of strict liability offences for breaching various sections of the Bill. When certain terms of the Act are breached, civil penalties apply, with defendants being required to prove they have a reasonable excuse for the breaches. The Committee expressed concern that this reverse burden of proof violates the principle of the presumption of innocence²⁵². The Bill’s Explanatory Memorandum acknowledges the potential human rights implications of this element of the Bill, however stated that the creation of these offences is appropriate in order to deter misconduct²⁵³.

The Bill was debated in the House of Representatives on the 8th and 9th of December 2020²⁵⁴. Labor supported the Government’s proposed changes in principle, however raised certain concerns and criticisms. A major concern raised by the Opposition was that the changes only applied to incorporated businesses and were therefore not applicable to sole traders, partnerships and family businesses, groups which make up a significant cohort of the business community²⁵⁵. ALP MP Peta Murphy raised concerns that the new changes would negatively affect smaller creditors including sub-contractors working in the construction industry by lessening the control of creditors during the insolvency process²⁵⁶.

The Opposition also criticised the limited consultation conducted by the Government. Issues raised included the short period of five days in which the Government accepted submissions and a lack of clarity amongst stakeholders of the role of different parties in the restructuring process²⁵⁷.

Many Labor MPs raised concerns about the risk of unintended consequences caused by the “rushed” legislation²⁵⁸. ALP member for Whitlam and Shadow Assistant Treasurer Stephen Jones moved two amendments intended to address this risk, one requiring a review of the Act within the following year, and one requiring the changes to be sun-setted. The provision of Labor’s amendment relating to a review process was supported by the Government, however the sunset provisions were not²⁵⁹. Jones’ amendments were not agreed to²⁶⁰ and the Bill passed the House²⁶¹.

The Bill passed the Senate on the 10 December 2020 with no debate. It reached assent on 15 December 2020.²⁶²

246 Ibid., p. 63.

247 Ibid., p. 83.

248 Ibid., p. 87.

249 Bills Digest, p. 4,

https://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/7695481/upload_binary/7695481.pdf;fileType=application/pdf

250 Bills Digest, p. 4.

251 Ibid.

252 Scrutiny Digest, 2 December 2020, p. 3.

253 Explanatory memorandum, p. 98, https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6626_ems_d21b005e-bc0c-4d4c-a000-0ca07f2c32b6/upload_pdf/JC000422.pdf;fileType=application%2Fpdf

254 https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6626

255 Hansard, House of Representatives, 7 December 2020, p. 10735,

https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/416a6e6c-248f-4d28-98cb-daf087380038/toc_pdf/House%20of%20Representatives_2020_12_07_8403_Official.pdf;fileType=application%2Fpdf

256 Ibid.

257 Ibid., p. 10855.

258 Ibid., p. 10723.

259 Hansard, House of Representatives, 8 December 2020, p. 10906.

260 Ibid.

261 Ibid., p. 10908.

262 https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6626

Policy Process

Criterion 1 - Establish Need: Identify a demonstrable need for the policy, based on hard evidence and consultation with all the stakeholders involved, particularly interest groups who will be affected.

Guiding question: Is there a statement of why the policy was needed based on factual evidence and stakeholder input?

Yes. The 2015 Productivity Commission Report and the 2020 ASBFEO inquiry report both consult experts and stakeholders to establish the need for legislative changes to insolvency procedures.

Criterion 2 - Set Objectives: Outline the public interest parameters of the proposed policy and clearly establish its objectives.

Guiding question: Is there a statement of the policy's objectives couched in terms of the public interest?

Yes. Treasurer Josh Frydenberg's First Reading speech outlines the public interest parameters, mostly relating to the policy's ability to support small business manage economic hardship. Frydenberg states that "The changes will help more Australian small businesses to restructure and increase their chance to survive the economic impact of the coronavirus"²⁶³.

Criterion 3 – Identify Options: Identify alternative approaches to the design of the policy, preferably with international comparisons where feasible. Engage in realistic costings of key alternative approaches.

Guiding question: Is there a description of the alternative policy options considered before the preferred one was adopted?

Yes. The 2015 Productivity Commission Report explores a range of policy options. The Report explores international options including the US's "Chapter 11" process, which involves immediately freezing creditor's rights while a debtor retains control of their affairs.

Criterion 4 – Consider Mechanisms: Consider implementation choices along a full spectrum from incentives to coercion.

Guiding question: Is there a disclosure of the alternative ways considered for implementing the chosen policy?

Yes. The Productivity Commission Report considers the ways in which the role of voluntary administration could be altered. This includes a wholesale switch to the United States model, with businesses retaining full control of the restructuring process²⁶⁴ as well as the Commission's preferred strategy of reforming, rather than overhauling, the insolvency process. This involves measures such as facilitating earlier entry for businesses into the formal restructuring process²⁶⁵.

Criterion 5 – Brainstorm Alternatives: Consider the pros and cons of each option and mechanism. Subject all key alternatives to a rigorous cost-benefit analysis.

Guiding question: Is there a published analysis of the pros/cons and benefits/costs of the alternative options/mechanisms considered in 3 and 4?

Yes. The Productivity Commission Report evaluates the suitability of adopting the US Chapter 11 system in Australia. The estimated success rates of the plan are evaluated²⁶⁶, as are the potential costs for small businesses under this system²⁶⁷. The Report therefore proposes more specific, rather than system-wide change²⁶⁸, with elements of Chapter 11's framework being adopted in the final policy²⁶⁹.

²⁶³ Hansard, House of Representatives, 7 December 2020, p. 9631.

²⁶⁴ Productivity Commission Inquiry Report: Business Set Up, Transfer and Closure (2015), p. 23, <https://www.pc.gov.au/inquiries/completed/business/report/business.pdf>

²⁶⁵ Ibid., p. 24.

²⁶⁶ Ibid., p. 369.

²⁶⁷ Ibid., p. 372.

²⁶⁸ Ibid., p. 371.

²⁶⁹ Bills Digest, p. 7,

https://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/7695481/upload_binary/7695481.pdf;fileType=application/pdf

Criterion 6 – Design Pathway: Develop a complete policy design framework including principles, goals, delivery mechanisms, program or project management structure, the implementation process and phases, performance measures, ongoing evaluation mechanisms and reporting requirements, oversight and audit arrangements, and a review process ideally with a sunset clause.

Guiding question: Is there evidence that a comprehensive project management plan was designed for the policy's rollout?

No. The Bill's explanatory memorandum outlines the new policy in detail, including its objectives and the implementation and enforcement of new requirements²⁷⁰. However, Labor's amendment to require a review process and sunset clause was voted against in the House of Representatives²⁷¹. There is therefore a lack of clarity relating to the ways in which the Government's changes will be assessed and monitored.

Criterion 7 – Consult Further: Undertake further consultation with key affected stakeholders of the policy initiative.

Guiding question: Was there further consultation with affected stakeholders after the preferred policy was announced?

Yes. The Government did circulate a draft copy of the Bill before its introduction to parliament. However, the opportunity for stakeholder engagement was very limited. Submissions were open for five days and were not published²⁷². This is a line call 'yes'.

Criterion 8 – Publish Proposals: Produce a Green and then a White paper for public feedback and final consultation purposes and to explain complex issues and processes.

Guiding question: Was there a) a Green paper seeking public input on possible policy options and b) a White paper explaining the final policy decision?

Yes. A fact sheet released in September 2020 outlines the proposed changes in a clear and comprehensive manner²⁷³. This may be seen as the equivalent of a white paper.

Criterion 9 – Introduce Legislation: Develop legislation and allow for comprehensive parliamentary debate especially in committee, and also intergovernmental discussion where necessary.

Guiding question: Was there legislation and adequate Parliamentary debate on the proposed policy initiative?

Yes. Legislation was introduced to Parliament and adequate debate occurred in the House of Representatives.

Criterion 10 – Communicate Decision: Design and implement a clear, simple, and inexpensive communication strategy based on information not propaganda, regarding the new policy initiative.

Guiding question: Is there an online official media release that explains the final policy in simple, clear and factual terms?

Yes. ASIC has released a fact sheet on the new insolvency laws. This fact sheet is written in plain English and clearly states which businesses will be impacted by the changes²⁷⁴.

Final Scores

CRITERION		YES/NO
1	Establish Need (demonstrable, evidence-based need)	Yes

270 Explanatory Memorandum, https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6626_ems_d21b005e-bc0c-4d4c-a000-0ca07f2c32b6/upload_pdf/JC000422.pdf;fileType=application%2Fpdf

271 Hansard, House of Representatives, 8 December 2020, p. 10906.

272 Bills Digest, p. 4,

https://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/7695481/upload_binary/7695481.pdf;fileType=application/pdf

273 <https://apo.org.au/sites/default/files/resource-files/2020-10/apo-nid308732.pdf>

274 <https://asic.gov.au/about-asic/news-centre/news-items/insolvency-laws-for-small-business-are-changing/>

2	Set Objectives (public interest parameters)	Yes
3	Identify Options (consideration of alternatives)	Yes
4	Consider Mechanisms (implementation choices)	Yes
5	Brainstorm Alternatives (cost-benefit analysis)	Yes
6	Design Pathway (policy design framework)	No
7	Consult Further (further consultation after policy announcement)	Yes
8	Publish Proposals (produce Green then White paper, or equivalents)	Yes
9	Introduce Legislation (comprehensive parliamentary debate)	Yes
10	Communicate Decision (information not propaganda)	Yes
Final Score		9/10

New South Wales (NSW) case studies

Bushfires Legislation Amendment Act 2020

Policy background

The bushfire season of 12019-2020 was one of the worst environmental disasters ever experienced in modern Australia, in which 33 people lost their lives.²⁷⁵ NSW was the epicenter of the catastrophe, with 5.3 million hectares (6.7% of the State) burned, including over one third of the states' national parks,²⁷⁶ and around 6,400 homes destroyed.²⁷⁷

Bushfires Legislation Amendment Act 2020 amends the Rural Fires Act 1997, the Biodiversity Conservation Act 2016, the National Parks and Wildlife Act 1974 and other legislation. the Bill was introduced as a response to the Final Report of the independent NSW Bushfire Inquiry.

The independent NSW bushfire enquiry established that the size, duration and intensity of the 2019-2020 bushfire season was such that legislative changes were required in order to minimize and mitigate the risks. These include legislative changes, changes to reporting and transparency processes, and changes to implementation of elements of the Act. In all, the Final Report, published on the 31st of July 2020, made 76 recommendations.

Having agreed in principle to accept all 76 recommendations the NSW Government gave its first reading on the 10th of November 2020.

The Bill, and the second reading speeches and debate, focus specifically on vegetation clearance rights and administrative procedures for private landowners, with the Government proposing a 25 metre clearance strip at property boundaries. The Minister for Police and Emergency Services, David Elliott, led his second reading speech with the issue.

However, the Final Report had not recommended this. It recommended the government do further research on a range

²⁷⁵

https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1920/Quick_Guides/AustralianBushfires

²⁷⁶ <https://www.environment.nsw.gov.au/topics/parks-reserves-and-protected-areas/fire/park-recovery-and-rehabilitation/recovering-from-2019-20-fires/understanding-the-impact-of-the-2019-20-fires>

²⁷⁷ <https://twitter.com/AFACnews/status/1233262259612213248>

of hazard reduction techniques, including grazing, to analyse their costs and benefits, and that it support councils and agencies to do more comprehensive hazard reduction around towns, cities and infrastructure.²⁷⁸ Specifically, recommendation 28.4 states that government should “Review vegetation clearing policies to ensure that the processes are clear and easy to navigate for the community and that they enable appropriate bushfire risk management by individual landholders without undue cost or complexity.”

This seeming disparity between the report and the Bill contents led to the Opposition and several key stakeholders (such as the Nature Conservation Council of NSW) to severely criticise the Bill, seeing it as giving preference to landowners wanting to graze more cattle and build closer to their boundaries, rather than effective mitigation strategies.²⁷⁹

The Second reading debate on the 10th and 11th of November suggests that some core stakeholders, specifically the Fire Brigade Employees Union, Fire Services Joint Standing Committee and the Public Service Association, were not included in the development of the Bill,²⁸⁰ which Shadow Minister for Emergency Services Trish Doyle described as being “as negligent as it is dangerous”²⁸¹

The Opposition complained that “Not only did the Minister not consult with the Opposition, only briefing Labor’s shadow Minister for Emergency Services following the second reading speech, but he also did not bother to consult with and ask for feedback on the legislation from the Fire Brigade Employees Union and the Public Service Association.”²⁸²

Despite their vociferous objections to the development process and content of the Bill, and against the wishes of the responsible Shadow Minister, the Opposition proposed to amend rather than object to the Bill in the Legislative Assembly.

In the Legislative Council, the Opposition again bemoaned what they saw as a lack of transparency over the development of the Bill, and the proposal for “industry brigades” which were not stipulated in the Final Report.

Several amendments were adopted, including Opposition Amendment No.8 which included transparency related, and progress related monitoring clauses. Specifically, that there be ministerial progress reports in implementing all 76 recommendations of the Final Report, and that there be a review of the amendments in the Bill to determine whether the changes to the Act remained appropriate for achieving the objectives in the Final Report.²⁸³

The inclusion of a representative from the Aboriginal Land Council to the Bush Fire Coordinating Committee on the Bush Fire Coordinating Committee indicates greater stakeholder input into policymaking and decision making.²⁸⁴

Policy Process

Criterion 1 - Establish Need: Identify a demonstrable need for the policy, based on hard evidence and consultation with all the stakeholders involved, particularly interest groups who will be affected.

Guiding question: Is there a statement of why the policy was needed based on factual evidence and stakeholder input?

Yes. This score is a line call. There are strong statements made by the Hon. Scott Farlow as to why changes to legislation are needed in order to respond to increasing dangers from fire seasons.²⁸⁵ However, the legislation does not address these from an evidence basis. Specifically, relating to 25 metre land clearance at borders, which seems to have no standing in the independent report, or support from the RFS²⁸⁶ and the creation of seemingly privatized fire service under the “industry brigades” designation. No mention of industry brigades was made in the inquiry report.

278 <https://www.theguardian.com/australia-news/2020/oct/07/nsw-will-allow-land-to-be-cleared-up-to-25m-from-property-boundary-citing-bushfire-concerns>

279

280 <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-114142>

281 <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-114142>

282 The Hon. MARK BUTTIGIEG (22:39:18) <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-84140>

283 <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-84216>

284 <https://www.abc.net.au/news/2020-11-20/aboriginal-voices-added-to-top-nsw-bushfire-committee/12904318>

285 <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-84140>

286 <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-84140>

Criterion 2 - Set Objectives: Outline the public interest parameters of the proposed policy and clearly establish its objectives.

Guiding question: Is there a statement of the policy's objectives couched in terms of the public interest?

Yes. there are references to a “public safety first” approach relating to public land management.

There is no linking to evidence of the 25 metre boundary clearance legislation and any scientifically proven benefit to citizens.

Criterion 3 – Identify Options: Identify alternative approaches to the design of the policy, preferably with international comparisons where feasible. Engage in realistic costings of key alternative approaches.

Guiding question: Is there a description of the alternative policy options considered before the preferred one was adopted?

No. So far as we can find, no alternatives have been identified or costed.

Criterion 4 – Consider Mechanisms: Consider implementation choices along a full spectrum from incentives to coercion.

Guiding question: Is there a disclosure of the alternative ways considered for implementing the chosen policy?

No. So far as we can find, no alternative implementation choices have been identified or costed.

Criterion 5 – Brainstorm Alternatives: Consider the pros and cons of each option and mechanism. Subject all key alternatives to a rigorous cost-benefit analysis.

Guiding question: Is there a published analysis of the pros/cons and benefits/costs of the alternative options/mechanisms considered in 3 and 4?

No. So far as we can find, no alternative mechanisms have been identified or costed.

Criterion 6 – Design Pathway: Develop a complete policy design framework including principles, goals, delivery mechanisms, program or project management structure, the implementation process and phases, performance measures, ongoing evaluation mechanisms and reporting requirements, oversight and audit arrangements, and a review process ideally with a sunset clause.

Guiding question: Is there evidence that a comprehensive project management plan was designed for the policy's rollout?

No. Some ongoing evaluation measures have been adopted in the Bill including quarterly parliamentary progress reporting on progress made to implement all 76 recommendations of the Final Report of the Bushfire Enquiry (Section 1[26][27]). but a lack of monitoring and oversight over the land clearance provisions caused concern among some stakeholders²⁸⁷

Criterion 7 – Consult Further: Undertake further consultation with key affected stakeholders of the policy initiative.

Guiding question: Was there further consultation with affected stakeholders after the preferred policy was announced?

No. This score is a line call. While some further consultation did take place, many key stakeholders were not consulted, including the Fire Services Joint Standing Committee

²⁸⁷ Ms JODIE HARRISON (Charlestown) (22:43:24)

<https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-114142>

Criterion 8 – Publish Proposals: Produce a Green and then a White paper for public feedback and final consultation purposes and to explain complex issues and processes.

Guiding question: Was there a) a Green paper seeking public input on possible policy options and b) a White paper explaining the final policy decision?

No. No G/W paper or equivalent was produced for this legislation.

Criterion 9 – Introduce Legislation: Develop legislation and allow for comprehensive parliamentary debate especially in committee, and also intergovernmental discussion where necessary.

Guiding question: Was there legislation and adequate Parliamentary debate on the proposed policy initiative?

Yes. There was a legislative Bills process.

Criterion 10 – Communicate Decision: Design and implement a clear, simple, and inexpensive communication strategy based on information not propaganda, regarding the new policy initiative.

Guiding question: Is there an online official media release that explains the final policy in simple, clear and factual terms?

No. There was some media discussion of the outcomes of the Bill. No media release or public facing explainer could be identified.

Final Scores

	CRITERION	YES/NO
1	Establish Need (demonstrable, evidence-based need)	No
2	Set Objectives (public interest parameters)	No
3	Identify Options (consideration of alternatives)	No
4	Consider Mechanisms (implementation choices)	No
5	Brainstorm Alternatives (cost-benefit analysis)	No
6	Design Pathway (policy design framework)	No
7	Consult Further (further consultation after policy announcement)	Yes
8	Publish Proposals (produce Green then White paper, or equivalents)	No
9	Introduce Legislation (comprehensive parliamentary debate)	Yes
10	Communicate Decision (information not propaganda)	No
		3/10

Electricity Infrastructure Investment Act 2020

Policy Background

New South Wales is at present largely dependent on coal-fired power. Four coal-fired power stations which currently provide approximately three quarters of the state's energy are scheduled to close within the next 15 years, events which will substantially interrupt the state's power supply if alternate energy sources are not created²⁸⁸. The State had also previously experienced difficulties attracting investment in new energy projects due to an outdated and congested transmission system²⁸⁹.

The 2018 Transmission Infrastructure Strategy and 2019 NSW *Electricity Strategy* outlines the Government's intention to transition the state's electricity sector away from coal towards newer technologies including renewable energy while improving the reliability of the state's energy supply²⁹⁰. The release of the *Electricity Strategy* was followed by the 2020 NSW *Electricity Infrastructure Roadmap*. The *Roadmap* was created on commission by consultancy KMPG, NAB Aurora Energy Research and the NSW Office of the Chief Scientist and Engineer²⁹¹. The *Roadmap* details the Government's plan to deliver energy storage infrastructure, create "Renewable Energy Zones" and improve the state's firming capacity to ensure energy demands are met²⁹². The Government estimated that upon implementation, the state's energy plan would attract \$32b in private investment and support 6,300 construction jobs and 2,800 ongoing jobs in NSW. The creation of new infrastructure was also estimated to decrease household power bills by approximately \$130 annually²⁹³.

The *Electricity Infrastructure Investment Bill* creates legislative change in order to implement the *Roadmap*²⁹⁴. The Bill was introduced to the Legislative Assembly on 10 November 2020 by the Minister for Energy and the Environment Matt Kean. Mr Kean told the Assembly the Bill planned to "make New South Wales an energy and economic superstar" by modernising the state's infrastructure²⁹⁵.

The Bill contains the following objectives:

- To improve the reliability, affordability, security and sustainability of electricity supply
- To co-ordinate investment in energy infrastructure
- To encourage investment in energy infrastructure
- To foster local community support for such energy projects
- To support economic development and manufacturing.

The objectives will be achieved through the following mechanisms:

- The assessment and monitoring of an energy security target for the yearly supply of electricity²⁹⁶
- The establishment of "Renewable Energy Zones" (REZ) combining generation, storage and system strength services to replace the state's existing power stations²⁹⁷.
- The construction and operation of network infrastructure, both in REZ's and in other sections of the state as well as the establishment of a framework for cost recovery by network operators²⁹⁸.
- An "Electricity Infrastructure Investment safeguard" allowing long-term service operators to enter into derivative arrangements to guarantee investment certainty²⁹⁹.

²⁸⁸ New South Wales Electricity Infrastructure Roadmap (Detailed Report), November 2020, p. 5, <https://www.energy.nsw.gov.au/sites/default/files/2020-12/NSW%20Electricity%20Infrastructure%20Roadmap%20-%20Detailed%20Report.pdf>

²⁸⁹ New South Wales Electricity Strategy (Detailed Report), November 2019, p. 1, https://www.energy.nsw.gov.au/sites/default/files/2019-11/NSW%20Electricity%20Strategy%20-%20Final%20detailed%20strategy_0.pdf

²⁹⁰ New South Wales Electricity Strategy (Overview), November 2019, p.1, <https://www.energy.nsw.gov.au/sites/default/files/2019-11/Electricity%20Strategy%20Overview.pdf>

²⁹¹ New South Wales Electricity Infrastructure Roadmap (Overview), November 2020, p.2, https://www.energy.nsw.gov.au/sites/default/files/2020-11/NSW%20Electricity%20Infrastructure%20Roadmap%20-%20Overview_1.pdf

²⁹² Ibid., p. 12.

²⁹³ Ibid., p. 6.

²⁹⁴ Legislation Review Committee Legislation Review Digest no. 24/27, November 2020, p. 9, <https://www.parliament.nsw.gov.au/ladocs/digests/659/Legislation%20Review%20Digest%20No.%2024%20-%202017%20November%202020.pdf>

²⁹⁵ Hansard, Legislative Assembly, 10 November 2020, pp. 3443-34334,

²⁹⁶ Legislation Review Committee Legislation Review Digest no. 24/27, November 2020, p. 8, <https://www.parliament.nsw.gov.au/ladocs/digests/659/Legislation%20Review%20Digest%20No.%2024%20-%202017%20November%202020.pdf>

²⁹⁷ Hansard, Legislative Assembly, 10 November 2020, p. 3443,

²⁹⁸ Legislation Review Committee Legislation Review Digest no. 24/27, November 2020, p. 8, <https://www.parliament.nsw.gov.au/ladocs/digests/659/Legislation%20Review%20Digest%20No.%2024%20-%202017%20November%202020.pdf>

²⁹⁹ Hansard, Legislative Council, 19 November 2020, p. 4523.

- Facilitating contributions from network service providers³⁰⁰.

The initial Bill designated New England, Central-West Orana and South West as planned Renewable Energy Zones. The Bill also introduces an access scheme to these zones, in which access is controlled by the minister in order to ensure network capacity is not overloaded³⁰¹.

The Bill was debated in the Legislative Assembly on the 18th- 20th of November 2020. The Bill was conditionally supported by the Labor Party. Member for Newcastle Tim Crakanthorpe informed the Legislative Assembly of Labor's concerns regarding the Bill, including a failure to commit to the use of locally acquired goods and services during the development of energy projects. The Member also noted that the Government should mandate the employment of apprentices and trainees in energy development projects, as well as noting that the Hunter region should become a Renewable Energy Zone due to its current reliance on Coal fired power plants for energy production and employment³⁰². Member for Macquarie Fields Anoulack Chanthivong also called for greater transparency in the process of declaring REZ's³⁰³.

The Greens also welcomed the Bill as a "significant milestone" in the state's effort to address climate change³⁰⁴. The Member did raise concerns about the private funding of new renewable projects, stating that the Greens continued to support publicly owned energy production. The Member also stated that the Greens would be seeking a just transition to renewables for affected communities as well as First Nations people³⁰⁵.

Multiple amendments were moved during consideration of the Bill. This included an amendment from the member for Swansea Yasmin Cately proposing the establishment of a renewable sector board and the appointment of an electricity infrastructure jobs advocate to ensure local people are employed in new projects³⁰⁶. These amendments were passed^{307,308}, as were amendments from Paul Scully, member for Wollongong, who proposed a REZ be established in the Illawarra region³⁰⁹. Amendments moved by Yasmin Cately³¹⁰ and Coalition MP Michael Johnsen³¹¹ declaring the Hunter Valley and Central Coast as REZs were also agreed to.

Other key amendments passed during consideration included an amendment by Independent MP Alex Greenwich requiring requires a proportion of the fees paid by energy generators for access to REZ to be returned to the community³¹² and an amendment by the Greens committing \$50 million in funding to develop the green hydrogen sector³¹³.

An amendment moved by Independent MP Joe McGirr requiring community consultation and consideration of land use, planning and environmental to occur before projects are carried out was also passed³¹⁴.

The Bill passed with amendment by the Assembly on the 17th of December³¹⁵ and introduced to the Legislative Council the following day³¹⁶. The Bill was reviewed by the Legislation Review Committee

The Bill was strongly opposed by One Nation state leader Mark Latham, who voted against the declaration of the Bill as urgent³¹⁷ and argued strongly against the addition of three new REZ the previous day³¹⁸. Mr Latham also raised concerns about the reliability of renewable energy and battery storage³¹⁹. Mr Latham moved several amendments, all

³⁰⁰ Legislation Review Committee Legislation Review Digest no. 24/27, November 2020, p. 8, <https://www.parliament.nsw.gov.au/ladocs/digests/659/Legislation%20Review%20Digest%20No.%2024%20-%2017%20November%202020.pdf>

³⁰¹ Hansard, Legislative Assembly, 17 October 2020, p. 4733.

³⁰² Ibid., p. 4735.

³⁰³ Ibid., p. 4742.

³⁰⁴ Ibid., p. 4740.

³⁰⁵ Ibid., p. 4741.

³⁰⁶ Ibid., p. 4799-4802.

³⁰⁷ Ibid., p. 4817.

³⁰⁸ Ibid., p. 4806.

³⁰⁹ Ibid., p. 4809.

³¹⁰ Ibid., p. 4810.

³¹¹ Ibid., p. 4809.

³¹² Ibid., p. 4812.

³¹³ Ibid., p. 4813.

³¹⁴ Ibid., p. 4815.

³¹⁵ Ibid., p. 4819.

³¹⁶ Hansard, Legislative Council, 18 November 2020, p. 2958.

³¹⁷ Ibid., p. 2960.

³¹⁸ Hansard, Legislative Council, 19 November 2020, p. 4453.

³¹⁹ Ibid., p. 4542.

of which were defeated. This included an amendment to change the title of the Bill to commit to “technology neutrality” and “reliable energy supply”³²⁰ as well as an amendment intended to limit central co-ordination of the state’s energy system in favour of free market competition³²¹.

The Bill was also opposed by the Shooter’s and Fishers and Farmer’s party who instead called for greater investment in “reliable” coal-fired power³²².

Two amendments by the Greens were passed in the Legislative Council. These amendments related to the promotion of consultation and negotiation with first Nations peoples, as well as the promotion of income opportunities for local first Nations communities³²³.

The Bill passed parliament on 27 November 2020 and accented on 3 December 2020³²⁴.

Policy process

Criterion 1 - Establish Need: Identify a demonstrable need for the policy, based on hard evidence and consultation with all the stakeholders involved, particularly interest groups who will be affected.

Guiding question: Is there a statement of why the policy was needed based on factual evidence and stakeholder input?

Yes. The Electricity Infrastructure Roadmap (2019) details modelling undertaken by multiple consultancies and government agencies indicating that renewable energy infrastructure is necessary and beneficial to the state³²⁵. There was a low level of stakeholder consultation with unions³²⁶ and regional communities³²⁷.

Criterion 2 - Set Objectives: Outline the public interest parameters of the proposed policy and clearly establish its objectives.

Guiding question: Is there a statement of the policy’s objectives couched in terms of the public interest?

Yes. The public interest parameters of this policy were outlined by the Minister for Energy and Environment in his Second Reading Speech. The Minister told the Legislative Assembly that the Energy Infrastructure Roadmap would support thousands of construction and ongoing jobs in NSW and reduce carbon emissions by an estimated 90 million tonnes by 2030³²⁸. The policy is also intended to reduce household and business energy costs and improve the reliability of the energy system³²⁹.

Criterion 3 – Identify Options: Identify alternative approaches to the design of the policy, preferably with international comparisons where feasible. Engage in realistic costings of key alternative approaches.

Guiding question: Is there a description of the alternative policy options considered before the preferred one was adopted?

Yes. Modelling detailed in the 2020 Roadmap measures the outcomes of three scenarios, including two business-as-usual approaches³³⁰. The NSW electricity strategy also outlines options for addressing energy supply constraints caused by the upcoming closure of power stations³³¹.

Criterion 4 – Consider Mechanisms: Consider implementation choices along a full spectrum from incentives to coercion.

³²⁰ Hansard, Legislative Council, 20 November 2020, p. 4570.

³²¹ Ibid., p. 4565.

³²² Hansard, Legislative Council, 19 November 2020, p. 4536.

³²³ Schedule of Amendments, pp.1-2, <https://www.parliament.nsw.gov.au/bill/files/3818/Schedule%20of%20Amendments%20-%20Electricity%20Infrastructure%20Investment%20Bill%202020.pdf>

³²⁴ <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3818>

³²⁵ NSW Electricity Infrastructure Roadmap 2019 (Detailed Report) <https://www.energy.nsw.gov.au/sites/default/files/2020-12/NSW%20Electricity%20Infrastructure%20Roadmap%20-%20Detailed%20Report.pdf>

³²⁶ Hansard, Legislative Assembly, 17 October 2020, p. 4738.

³²⁷ NSW Electricity Infrastructure Roadmap 2019 (Detailed report), p. 8, <https://www.energy.nsw.gov.au/sites/default/files/2020-12/NSW%20Electricity%20Infrastructure%20Roadmap%20-%20Detailed%20Report.pdf>

³²⁸ Hansard, Legislative Assembly, 10 November 2020, p. 3443.

³²⁹ Ibid.

³³⁰ NSW Electricity Infrastructure Roadmap 2020, pp. 43-57. <https://www.energy.nsw.gov.au/sites/default/files/2020-12/NSW%20Electricity%20Infrastructure%20Roadmap%20-%20Detailed%20Report.pdf>

³³¹ NSW Electricity Strategy 2019, p. 33, https://www.energy.nsw.gov.au/sites/default/files/2019-11/NSW%20Electricity%20Strategy%20-%20Final%20detailed%20strategy_0.pdf

Guiding question: Is there a disclosure of the alternative ways considered for implementing the chosen policy?

Yes. Alternate mechanisms were considered during the parliamentary process. During debate and committee amendments were raised and debated. These included the option of developing the green hydrogen industry, as proposed by the Greens³³².

Criterion 5 – Brainstorm Alternatives: Consider the pros and cons of each option and mechanism. Subject all key alternatives to a rigorous cost-benefit analysis.

Guiding question: Is there a published analysis of the pros/cons and benefits/costs of the alternative options/mechanisms considered in 3 and 4?

No. The Pros and cons of the policy options (see criteria 3) are outlined in the *Roadmap* and the *Electricity Strategy*. However, the options considered (see criteria 4) were only briefly debated with no published pros and cons or cost-benefit analysis.

Criterion 6 – Design Pathway: Develop a complete policy design framework including principles, goals, delivery mechanisms, program or project management structure, the implementation process and phases, performance measures, ongoing evaluation mechanisms and reporting requirements, oversight and audit arrangements, and a review process ideally with a sunset clause.

Guiding question: Is there evidence that a comprehensive project management plan was designed for the policy's rollout?

Yes. The *Electricity Infrastructure Roadmap* and the *Electricity Infrastructure Investment Bill* create a project management plan. The Roadmap outlines the key principles, objectives and delivery mechanism of the state's energy policy. The Bill also outlines the key roles, reporting requirements, and the formula for energy security targets.

Criterion 7 – Consult Further: Undertake further consultation with key affected stakeholders of the policy initiative.

Guiding question: Was there further consultation with affected stakeholders after the preferred policy was announced?

No. Once the Bill was introduced into parliament no opportunity for stakeholders to make submissions or attend public hearings. The Bill was declared urgent in the senate and passed parliament 17 days after its introduction³³³.

Criterion 8 – Publish Proposals: Produce a Green and then a White paper for public feedback and final consultation purposes and to explain complex issues and processes.

Guiding question: Was there a) a Green paper seeking public input on possible policy options and b) a White paper explaining the final policy decision?

Yes. The Roadmap can be considered White Paper as it comprehensively explains the proposed policy.

Criterion 9 – Introduce Legislation: Develop legislation and allow for comprehensive parliamentary debate especially in committee, and also intergovernmental discussion where necessary.

Guiding question: Was there legislation and adequate Parliamentary debate on the proposed policy initiative?

Yes. There were multiple days of parliamentary debate in the Legislative Assembly and Legislative Council. Representatives from many parties and independents were able to engage in debate during the legislative process. Many amendments from different sides of the political spectrum were also considered and passed.³³⁴

³³² Hansard, Legislative Assembly, 17 October 2020, p. 4813.

³³³ <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3818>

³³⁴ <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3818>

Criterion 10 – Communicate Decision: Design and implement a clear, simple, and inexpensive communication strategy based on information not propaganda, regarding the new policy initiative.

Guiding question: Is there an online official media release that explains the final policy in simple, clear and factual terms?

Yes. While there is no official press release specifically detailing the passage of the Bill, the Energy NSW website details the Electricity Infrastructure roadmap in a clear and concise manner. It also details the passage of the *Electricity Infrastructure Investment Act*³³⁵.

Final Scores

	CRITERION	YES/NO
1	Establish Need (demonstrable, evidence-based need)	Yes
2	Set Objectives (public interest parameters)	Yes
3	Identify Options (consideration of alternatives)	Yes
4	Consider Mechanisms (implementation choices)	Yes
5	Brainstorm Alternatives (cost-benefit analysis)	No
6	Design Pathway (policy design framework)	Yes
7	Consult Further (further consultation after policy announcement)	No
8	Publish Proposals (produce Green then White paper, or equivalents)	Yes
9	Introduce Legislation (comprehensive parliamentary debate)	Yes
10	Communicate Decision (information not propaganda)	Yes
	Final Score	8/10

³³⁵ <https://www.energy.nsw.gov.au/government-and-regulation/electricity-infrastructure-roadmap#-what-is-the-electricity-infrastructure-roadmap->

Stronger Communities Legislation Amendment (Domestic Violence)

Policy Background

A policy objective for the New South Wales (NSW) government is to reduce DV re-offences, where “approximately 15% of perpetrators charged with domestic violence assault reoffend within 12 months”³³⁶. As such, the government has invested over \$390 million as part of their *Domestic and Family Violence Blueprint for Reform 2016-2021: Safer Lives for Men, Women and Children*, which provides a framework for early intervention among vulnerable communities, deliver adequate support services and hold perpetrators accountable³³⁷.

With these aims in mind, the Stronger Communities Legislation Amendment (Domestic Violence) repeals the Crimes Legislation Amendment Act 2018, and amends the Criminal Procedure Act 1986 to overhaul the punishing trial process for victim-survivors. The Bill was introduced to the Legislative Assembly by Attorney General and Minister for the Prevention of Domestic Violence Mark Speakman on October 22, 2020, and declared urgent on November 10, 2020³³⁸. Crucially, the Bill amends the Crimes (Domestic and Personal Violence) Act 2007 to recognise animal abuse in the context of domestic violence by amending the definition of ‘intimidation’ to include explicit or threatened harm to animals³³⁹. This provision is underpinned by evidence suggesting that abuse of animals is a tactic used by perpetrators to intimidate and exert control over their victims, particularly where they have a close relationship with their pets and are unable to escape safely³⁴⁰.

Moreover, the Bill extends apprehended domestic violence orders (ADVOs) for a further two years for defendants over 18 after they leave prison to provide ongoing protection to victim-survivors and animals³⁴¹. The NSW legal sector had long advocated for the extension of ADVOs after the NSW Domestic Violence Death Review Team made this same recommendation to the government in its 2015-2017 report³⁴². This amendment is central to the NSW government’s aims to reduce reoffending risks, and ensures that an ADVO remains in place throughout the perpetrator’s entire prison sentence. Accordingly, when the perpetrator transitions back into the community, the ADVO will remain in place to protect victims and their loved ones from DV re-offences³⁴³.

A core focus of the Bill is to reduce the stress and trauma experienced by victim-survivors while testifying in court, ensuring that they are supported during criminal proceedings while they provide evidence. The Bill lends DV complainants and victim-survivors the “prima facie right”³⁴⁴ to give evidence in a closed court and remotely via audio and video links.

Another critical reform safeguards victim-survivors from being personally cross-examined or re-examined by self-represented defendants to avoid adding undue stress to court proceedings. In this case, self-represented defendants will be replaced with a third party during questioning, typically another person appointed by the court³⁴⁵.

The suite of reforms to support domestic violence victims outlined in the Bill attracted broad support from the Labor opposition and minor parties.

Upon consulting with the Women’s Legal Service NSW after the Bill was announced, Labor MPs echoed their view that the Bill should allow witnesses of domestic abuse to provide remote evidence, as well as victim-survivors themselves³⁴⁶. Another concern raised by the Labor opposition was that many courts lack the resources, funding and training programs for officers to afford DV complainants the opportunity to share evidence using alternative arrangements, such as audio-visual links³⁴⁷. They also alluded to the lack of “statutory review provisions for monitoring access [and] data collection”³⁴⁸, where the government lacks knowledge around how frequently audio-visual arrangements are requested

336 <https://www.parliament.nsw.gov.au/researchpapers/Documents/Key%20Issues%20for%20the%2057th%20Parliament.pdf>

337 Ibid.

338 <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3815>

339 <https://www.dcj.nsw.gov.au/news-and-media/media-releases/domestic-violence-reforms-pass-parliament>

340 <https://lsj.com.au/articles/strengthening-protections-for-people-experiencing-sexual-and-domestic-violence/>

341 <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-113810>

342 <https://www.smh.com.au/national/nsw/why-don-t-they-leave-domestic-violence-court-reforms-proposed-to-dispel-myths-20201020-p566ts.html>

343 Ibid.

344 <https://www.smh.com.au/national/nsw/why-don-t-they-leave-domestic-violence-court-reforms-proposed-to-dispel-myths-20201020-p566ts.html>

345 <https://lsj.com.au/articles/strengthening-protections-for-people-experiencing-sexual-and-domestic-violence/>

346 <https://www.smh.com.au/national/nsw/why-don-t-they-leave-domestic-violence-court-reforms-proposed-to-dispel-myths-20201020-p566ts.html>

347 <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-113953>

348 <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-113990>

and granted. Irrespective of available resources and funding, the opposition maintained that providing evidence via audio-visual link should be standard practice for survivors of domestic abuse and extended to victims of sexual assault, who were excluded from the Bill³⁴⁹.

The Bill was subsequently introduced to the Legislative Council on November 10, 2020 by Minister for Education and Early Childhood Learning Sarah Mitchell³⁵⁰.

The Legislative Assembly agreed to support the amendments to the Bill passed in the Legislative Council on November 18, 2020. Following its passage through both Houses on November 18, the Bill received Royal Assent shortly thereafter on November 25³⁵¹. Although the Bill's reforms took full effect in September 2021, the community services sector will inevitably call for their review to ensure the ongoing issues faced by victim-survivors of DV are fully addressed³⁵².

Policy Process

Criterion 1 - Establish Need: Identify a demonstrable need for the policy, based on hard evidence and consultation with all the stakeholders involved, particularly interest groups who will be affected.

Guiding question: Is there a statement of why the policy was needed based on factual evidence and stakeholder input?

Yes. The First Reading sets out the need to improve outcomes for survivors of domestic violence.

Criterion 2 - Set Objectives: Outline the public interest parameters of the proposed policy and clearly establish its objectives.

Guiding question: Is there a statement of the policy's objectives couched in terms of the public interest?

Yes. The Attorney General and Minister for the Prevention of Domestic Violence Mark Speakman outlined the benefits of the proposed measures in the Bill for victim-survivors in his second reading speech and media release, notably reduced stress and trauma experienced by victim-survivors while testifying in court.

Criterion 3 – Identify Options: Identify alternative approaches to the design of the policy, preferably with international comparisons where feasible. Engage in realistic costings of key alternative approaches.

Guiding question: Is there a description of the alternative policy options considered before the preferred one was adopted?

Yes. The Bill draws on several government briefing papers, such as the: *Domestic and Family Violence Briefing Paper No 5/2015*³⁵³, *Key issues for the 57th Parliament*³⁵⁴ and *Criminalising coercive control in the context of domestic and family violence: key sources for international comparisons with the UK and Ireland*³⁵⁵.

Criterion 4 – Consider Mechanisms: Consider implementation choices along a full spectrum from incentives to coercion.

Guiding question: Is there a disclosure of the alternative ways considered for implementing the chosen policy?

No. It is unclear from the legislative documents whether other mechanisms were considered.

Criterion 5 – Brainstorm Alternatives: Consider the pros and cons of each option and mechanism. Subject all key alternatives to a rigorous cost-benefit analysis.

Guiding question: Is there a published analysis of the pros/cons and benefits/costs of the alternative options/mechanisms considered in 3 and 4?

³⁴⁹ Ibid.

³⁵⁰ [https://www.parliament.nsw.gov.au/hansard/Pages/hansard-by-bill.aspx?bill=Stronger%20Communities%20Legislation%20Amendment%20\(Domestic%20Violence\)%20Bill%202020](https://www.parliament.nsw.gov.au/hansard/Pages/hansard-by-bill.aspx?bill=Stronger%20Communities%20Legislation%20Amendment%20(Domestic%20Violence)%20Bill%202020)

³⁵¹ <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3815>

³⁵² <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1323879322-113810'>

³⁵³ <https://www.parliament.nsw.gov.au/researchpapers/Documents/domestic-and-family-violence/Domestic%20and%20Family%20Violence%20Briefing%20Paper.pdf>

³⁵⁴ <https://www.parliament.nsw.gov.au/researchpapers/Documents/Key%20Issues%20for%20the%2057th%20Parliament.pdf>

³⁵⁵ <https://www.parliament.nsw.gov.au/researchpapers/Documents/Criminalising%20coercive%20control.pdf>

No. There is no publicly available consideration of the benefits and costs of the chosen policy or any alternative policies.

Criterion 6 – Design Pathway: Develop a complete policy design framework including principles, goals, delivery mechanisms, program or project management structure, the implementation process and phases, performance measures, ongoing evaluation mechanisms and reporting requirements, oversight and audit arrangements, and a review process ideally with a sunset clause.

Guiding question: Is there evidence that a comprehensive project management plan was designed for the policy's rollout?

Yes. Despite the Labor opposition's claims that this Bill "does not go all the way"³⁵⁶ to overhaul existing protections for domestic violence victim-survivors and their loved ones, Attorney General and Minister for the Prevention of Domestic Violence Mark Speakman noted in his second reading speech that the Bill's amendments formed part of the government's "regular legislative review and monitoring program". When the Bill was debated in the Legislative Council, the government also claimed they will continue to "review the use of [audio-visual] technology across all courts infrastructure"³⁵⁷ once the Bill had passed.

Criterion 7 – Consult Further: Undertake further consultation with key affected stakeholders of the policy initiative.

Guiding question: Was there further consultation with affected stakeholders after the preferred policy was announced?

Yes. Stakeholders such as the Women's Legal Service NSW, Women's Safety NSW, Domestic Violence NSW and Rape and Domestic Violence Services Australia were all consulted to provide feedback on the protection of victim-survivors and witnesses of DV incidences. The Bill drew universal support from the community services sector and MPs, though most stakeholders hinted at the "long way to go"³⁵⁸ and progress needed to ensure survivors receive quality support services and are protected from DV re-offences. The Attorney General and his staff also consulted with the Greens to support some of the proposed amendments during the second reading debates that addressed stakeholder concerns³⁵⁹.

Criterion 8 – Publish Proposals: Produce a Green and then a White paper for public feedback and final consultation purposes and to explain complex issues and processes.

Guiding question: Was there a) a Green paper seeking public input on possible policy options and b) a White paper explaining the final policy decision?

Yes. Although neither a Green nor White paper consultation process was conducted, there was a Legislation Review Digest made publicly available after the Bill passed, which summarised the proposed measures and outlined potential pitfalls in the legislation.

Criterion 9 – Introduce Legislation: Develop legislation and allow for comprehensive parliamentary debate especially in committee, and also intergovernmental discussion where necessary.

Guiding question: Was there legislation and adequate Parliamentary debate on the proposed policy initiative?

Yes. The Bill was comprehensively debated in both Houses and provided MPs with ample time to propose and pass any amendments, as the government, Animal Justice Party and Greens did when it was debated in the Legislative Council.

Criterion 10 – Communicate Decision: Design and implement a clear, simple, and inexpensive communication strategy based on information not propaganda, regarding the new policy initiative.

Guiding question: Is there an online official media release that explains the final policy in simple, clear and factual terms?

³⁵⁶ <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-113990>

³⁵⁷ <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-84081>

³⁵⁸ <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-113990>

³⁵⁹ <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-84081>

Yes. A media release was published online via the New South Wales government's Communities and Justice Department website on November 19, outlining the measures in the Bill designed to support victim-survivors in court and protections against animal abuse³⁶⁰.

Final Scores

	CRITERION	YES/NO
1	Establish Need (demonstrable, evidence-based need)	Yes
2	Set Objectives (public interest parameters)	Yes
3	Identify Options (consideration of alternatives)	Yes
4	Consider Mechanisms (implementation choices)	No
5	Brainstorm Alternatives (cost-benefit analysis)	No
6	Design Pathway (policy design framework)	Yes
7	Consult Further (further consultation after policy announcement)	Yes
8	Publish Proposals (produce Green then White paper, or equivalents)	Yes
9	Introduce Legislation (comprehensive parliamentary debate)	Yes
10	Communicate Decision (information not propaganda)	Yes
	Final Score	8/10

360 <https://www.dcj.nsw.gov.au/news-and-media/media-releases/domestic-violence-reforms-pass-parliament>

COVID-19 Recovery Act 2021

Policy Background

The policy environment in 2021 is still heavily influenced by the effects of the COVID-19 pandemic. Implications for a broad range of areas of legislation are still being worked through, and may continue to be so for several years to come.

Throughout 2020 the Coalition Government in NSW implemented a broad range of temporary legislative amendments to accommodate the reality of life under the threat or reality of community transmission of COVID-19. These changes varied as widely as enabling tax relief for small business,³⁶¹ to altering the Biodiversity Conservation Act 2016 No 63 in order to allow audio links to be used in official mandatory questioning in conservation related matters.³⁶² Most of these pieces of legislation were due to lapse at the end of March 2021.

These pieces of legislation included:³⁶³

- State Revenue Legislation Amendment (COVID-19 Housing Response) Act 2020 No 19 commenced 11 August 2020)
- COVID-19 Legislation Amendment (Emergency Measures—Miscellaneous) Act 2020 commenced 14 May 2020)
- COVID-19 Legislation Amendment (Emergency Measures—Treasurer) Act 2020 (commenced 14 May 2020)
- COVID-19 Legislation Amendment (Emergency Measures—Attorney General) Act 2020 (commenced 14 May 2020)
- COVID-19 Legislation Amendment (Emergency Measures) Act 2020 (commenced 25 March 2020)
- Treasury Legislation Amendment (COVID-19) Act 2020 (commenced 25 March 2020)

As such, the COVID-19 Recovery Bill 2021 continued many of the measures already implemented in these bills, rather than generating new legislation. The bill extends for either 6 or 12 months, the provisions contained within these previous pieces of legislation.

The Bill amends the following Acts and regulations:

- (a) Annual Holidays Act 1944,
- (b) Annual Holidays Regulation 2016,
- (c) Associations Incorporation Act 2009,
- (d) Associations Incorporation Regulation 2016,
- (e) Biodiversity Conservation Act 2016,
- (f) Biodiversity Conservation Regulation 2017,
- (g) Community Land Management Act 1989,
- (h) Community Land Management Regulation 2018,
- (i) Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010,
- (j) Crown Land Management Act 2016,
- (k) Crown Land Management Regulation 2018,
- (l) Environmental Planning and Assessment Act 1979,
- (m) Environmental Planning and Assessment Regulation 2000,
- (n) Fisheries Management Act 1994,
- (o) Home Building Act 1989,
- (p) Industrial Relations Act 1996,
- (q) Long Service Leave Act 1955,
- (r) Long Service Leave Regulation 2016,
- (s) Mental Health Act 2007,
- (t) Mental Health Regulation 2019,
- (u) Mining Act 1992,
- (v) Protection of the Environment Operations Act 1997,

361 TREASURY LEGISLATION AMENDMENT (COVID-19) BILL 2020,
<https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1323879322-110319'/HANSARD-1323879322-110320>

362 COVID-19 Legislation Amendment (Emergency Measures—Miscellaneous) Act 2020 No 5
<https://legislation.nsw.gov.au/view/pdf/asmade/act-2020-5>

363 <https://legislation.nsw.gov.au/information/covid19-legislation>

(w) Protection of the Environment Operations (General) Regulation 2009,
 (x) Residential Tenancies Act 2010,
 (y) Retail Leases Act 1994,
 (z) Retirement Villages Act 1999,
 (aa) Retirement Villages Regulation 2017,
 (ab) Strata Schemes Management Act 2015,
 (ac) Strata Schemes Management Regulation 2016,
 (ad) Waste Avoidance and Resource Recovery Act 2001,
 (ae) Water Management Act 2000,
 (af) Water Management (General) Regulation 2018.³⁶⁴

The Bill was introduced and first read to the Legislative Assembly on 17th March 2021 by the Treasurer Dominic Perrottet MP.³⁶⁵

Second and third readings were held on the 23rd of March 2021.

In his second reading speech, the Treasurer, Dominic Perrottet MP, set out the reasons underpinning the introduction of this Bill, including the need to 'extend temporary support for those who need it' in response to the ongoing challenges presented by the COVID-19 pandemic. The Treasurer referred to previous legislation introduced to address these challenges, and the need for 'existing protections [to be] coupled with new conditions to ensure that protection does not become a disincentive to recovery'.³⁶⁶

Accordingly, the Treasurer highlighted proposals in the Bill to 'temporarily extend existing emergency measures by up to 12 months', in order to 'help with continued management of the pandemic as well as our longer-term economic recovery'.³⁶⁷ Those extended emergency measures include amendments to the Associations Incorporation Act 2009, Strata Schemes Management Act 2015, Biodiversity Conservation Act 2016, Crown Land Management Act 2016, Mental Health Act 2007, and others, to extend provisions for conducting meetings, medical examinations, and mandatory questioning by audio or video link.

Other amendments in the Bill extend emergency provisions for only six months, with a possibility of further extension by regulation – for example, certain other sections of the Long Service Leave Act 1955 and Annual Holidays Act 1944, as well as the Industrial Relations Act 1996 and Retirement Villages Act 1999.

The Bill also includes provisions designed to 'support the transition back to normal commercial and residential tenancy laws' following the repeal of previous emergency measures. These include certain preserved protections for commercial tenants under the Retail Leases Act 1994, as well as new amendments to the Residential Tenancies Act 2010, outlined below.

Both Labor and the Greens supported the Bill, and Shadow Treasurer, Walt Secord commended his counterpart for having reached out the week previous in order to keep Labor abreast of their intentions to extend the emergency COVID-19 legislation.³⁶⁸

The Legislative Council held all three readings on the 23rd of March 2021, indicating a swift passage through the upper chamber.

Since many of the debates surrounding the legislation amendments were made over the previous year at their first implementation, relatively little debate was held in either house and four amendments relating to the residential tenant's security from eviction were proposed, of which two were agreed to.

The Legislative Review Committee noted disapprovingly of the use of Henry VIII clauses;³⁶⁹ That is, where regulations can amend Acts of parliament. "For example, numerous amendments to existing Acts delay the repeal date or extend

364 COVID-19 Recovery Bill 2021 [NSW] Explanatory note - <https://www.parliament.nsw.gov.au/bill/files/3841/XN%20COVID-19%20Recovery%20Bill%202021.pdf>

365 <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3841>

366 COVID-19 RECOVERY BILL 2021, Second Reading Speech, <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1323879322-115971'>

367 *ibid*

368 Legislative Council Hansard – 23 March 2021, COVID-19 RECOVERY BILL 2021, Second Reading Speech

369 Legislation Review Committee, LEGISLATION REVIEW DIGEST, NO. 28/57 – 23 March 2021

<https://www.parliament.nsw.gov.au/ladocs/digests/663/Digest%20No.%2028%20-%2023%20March%202021.pdf>

the 'prescribed period' for the operation of certain provisions for six months, or until a 'later day... prescribed by the regulations'. This is the case for the amendments made to the Industrial Relations Act 1996 and the Retirement Villages Act 1999, among others. The Committee notes that these provisions allow for regulations to amend Acts in respect of the repeal date, or period of operation, of certain emergency provisions."³⁷⁰

Policy Process

Criterion 1 - Establish Need: Identify a demonstrable need for the policy, based on hard evidence and consultation with all the stakeholders involved, particularly interest groups who will be affected.

Guiding question: Is there a statement of why the policy was needed based on factual evidence and stakeholder input?

Yes. The effect of the COVID-19 pandemic on the normal functioning of many areas of law and regulation previously amended were still being felt.

Criterion 2 - Set Objectives: Outline the public interest parameters of the proposed policy and clearly establish its objectives.

Guiding question: Is there a statement of the policy's objectives couched in terms of the public interest?

Yes. In his First Reading, the Treasurer Dominic Perrottet, made clear the objectives of avoiding a "rigid regulatory environment"³⁷¹

Criterion 3 – Identify Options: Identify alternative approaches to the design of the policy, preferably with international comparisons where feasible. Engage in realistic costings of key alternative approaches.

Guiding question: Is there a description of the alternative policy options considered before the preferred one was adopted?

No. This score is a line call. In some instances these options were considered in the first round of emergency legislation in 2020. In other instances, there were not necessarily options to be considered. For example, the bill amends the Mental Health Act 2007 to extend to 31 March 2022 the ability to allow examinations of patients under section 27 of that Act to be conducted via audiovisual link to determine whether the person is a mentally ill or mentally disordered person who requires detention. This provision applies only where the examination could be carried out with sufficient skill or care to enable an opinion about the patient to be formed.³⁷²

Criterion 4 – Consider Mechanisms: Consider implementation choices along a full spectrum from incentives to coercion.

Guiding question: Is there a disclosure of the alternative ways considered for implementing the chosen policy?

No. As above, in some circumstances the debates over options had been held previously.

Criterion 5 – Brainstorm Alternatives: Consider the pros and cons of each option and mechanism. Subject all key alternatives to a rigorous cost-benefit analysis.

Guiding question: Is there a published analysis of the pros/cons and benefits/costs of the alternative options/mechanisms considered in 3 and 4?

No. As above.

Criterion 6 – Design Pathway: Develop a complete policy design framework including principles, goals, delivery mechanisms, program or project management structure, the implementation process and phases, performance measures, ongoing evaluation mechanisms and reporting requirements, oversight and audit arrangements, and a review process ideally with a sunset clause.

³⁷⁰ Ibid

³⁷¹ <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1323879322-115971'>

³⁷² <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1323879322-115971'>

Guiding question: Is there evidence that a comprehensive project management plan was designed for the policy's rollout?

Yes. The Legislative Review Committee reviewed pathways

Criterion 7 – Consult Further: Undertake further consultation with key affected stakeholders of the policy initiative.

Guiding question: Was there further consultation with affected stakeholders after the preferred policy was announced?

Yes. In the preceding debate over the Treasury Legislation Amendment (COVID-19) Bill 2020, The Treasurer mentioned several times that constant communication with businesses as circumstances changed. All this requires us to take extraordinary steps to take the strain and provide a safety net for those who need it, to keep listening, adapting, and responding to urgent needs as they arise."

Criterion 8 – Publish Proposals: Produce a Green and then a White paper for public feedback and final consultation purposes and to explain complex issues and processes.

Guiding question: Was there a) a Green paper seeking public input on possible policy options and b) a White paper explaining the final policy decision?

No.

Criterion 9 – Introduce Legislation: Develop legislation and allow for comprehensive parliamentary debate especially in committee, and also intergovernmental discussion where necessary.

Guiding question: Was there legislation and adequate Parliamentary debate on the proposed policy initiative?

Yes. This bill was enacted.

Criterion 10 – Communicate Decision: Design and implement a clear, simple, and inexpensive communication strategy based on information not propaganda, regarding the new policy initiative.

Guiding question: Is there an online official media release that explains the final policy in simple, clear and factual terms?

Yes. Several web pages of the NSW government provide examples of how the legislation will impact every day activities such as planning law, retail shopping, the substitution of emailed government forms rather than mail-in forms.³⁷³

Final Scores

	CRITERION	YES/NO
1	Establish Need (demonstrable, evidence-based need)	Yes
2	Set Objectives (public interest parameters)	Yes
3	Identify Options (consideration of alternatives)	No
4	Consider Mechanisms (implementation choices)	No
5	Brainstorm Alternatives (cost-benefit analysis)	No
6	Design Pathway (policy design framework)	Yes
7	Consult Further (further consultation after policy announcement)	Yes
8	Publish Proposals (produce Green then White paper, or equivalents)	No

³⁷³ <https://www.planning.nsw.gov.au/Policy-and-Legislation/COVID19-response>

EVIDENCE BASED POLICY ANALYSIS

9	Introduce Legislation (comprehensive parliamentary debate)	Yes
10	Communicate Decision (information not propaganda)	Yes
Final Score		6/10

NB: This score could be considered unfair to the bill process since it was based on existing legislation, and emergency legislation in particular. It might have been more fairly judged using the 2020 amended Wiltshire criteria.

Victoria case studies

Constitution Amendment: Fracking Ban Bill

Policy Background

A cornerstone of the Victorian Government's "environmental protection framework"³⁷⁴ is a long-standing ban on unconventional gas extraction.

Previous governments were first alerted to the dangers of fracking in Victoria when the Ballieu-Napthine governments introduced a moratorium on fracking and issuing new onshore coal seam gas exploration licences in 2012³⁷⁵. Shortly after the Andrews government was elected in 2014, the government committed to extending the moratorium across all new onshore gas exploration approvals – including conventional gas exploration – and conducted groundwater studies to better identify and respond to environmental concerns³⁷⁶. By November 2014, legislation was enacted to ban the use of toxic BTEX (benzene, toluene, ethylbenzene and xylene) chemicals in unconventional gas exploration activities³⁷⁷.

The Andrews government placed a permanent ban on onshore fracking and conventional and unconventional gas production on March 16 2017 following the passage of the Resources Legislation Amendment (Fracking Ban) Act³⁷⁸. The state governments in South Australia and Tasmania subsequently adopted a similar legislative approach to Victoria and have since instituted statewide fracking bans³⁷⁹. Western Australia and the Northern Territory have implemented partial fracking bans across "98% and 51% of the state and territory respectively"³⁸⁰. By contrast, Queensland and New South Wales have distanced themselves from moratoria on fracking.

The Resources Legislation Amendment (Fracking Ban) Act was announced in response to the 2015 parliamentary inquiry into onshore unconventional gas, which received 1862 submissions, held several public consultation hearings and invoked widespread community support for stricter regulations on fracking and onshore unconventional gas to protect the agricultural and farming sectors³⁸¹.

Upon implementing its permanent fracking ban, the government simultaneously introduced the Victorian Gas Program, designed to undertake a three-year scientific, evidence-based review to assess the risks posed by future discovery of onshore conventional gas and offshore gas across the state. The results from the program identified between 128 and 830 petajoules of onshore gas reserves across Victoria, amounting to a 0.1 to 0.3 per cent increase in the state's greenhouse gas emissions – equivalent to up to 329,000 tonnes – if extracted³⁸². The study concluded that resuming onshore conventional gas extraction would "not compromise the state's...agricultural sector"³⁸³ or jeopardise Victoria's net-zero 2050 emissions target. In response, the government announced in March 2020 their decision to lift the ban on onshore gas exploration at the end of June 2021³⁸⁴.

During the 2018 state election campaign, the Andrews government made an election promise to entrench existing legislative bans on fracking in the Victorian constitution, making it more difficult for future governments to alter this policy by reducing the current penalty for breaching the current bans or limiting the areas to which they apply³⁸⁵.

The Constitution Amendment (Fracking Ban) Bill was first introduced in the Legislative Assembly on March 17 2020 by the Treasurer, Minister for Economic Development and Minister for Industrial Relations, Tim Pallas³⁸⁶. The Bill amends the Constitution Act 1975 to "constrain the power of the Parliament"³⁸⁷ to repeal or alter provisions that prohibit hydraulic fracking, and the exploration for and mining of coal seam gas. Much like the 2017 Resources Legislation Amendment Act, it further amends the Petroleum Act 1998 and Mineral Resources (Sustainable Development) Act 1990, lending the

374 https://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2021/Legislative_Assembly_2021-02-19.pdf

375 https://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2021/Legislative_Assembly_2021-02-19.pdf

376 https://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2021/Legislative_Assembly_2021-02-17.pdf

377 Ibid.

378 Ibid.

379 <https://www.allens.com.au/insights-news/insights/hubs/emerging-with-strength-key-considerations-for-oil-and-gas-industry/New-Victoria-reforms-enhancing-the-security-of-gas-supply/>

380 Ibid.

381 https://www.parliament.vic.gov.au/images/stories/committees/SCEP/GAS/Report/EPC_58-03_Text_WEB.pdf

382 <https://www.ashurst.com/en/news-and-insights/legal-updates/victorias-new-proposed-reforms/>

383 <https://theconversation.com/victoria-quietly-lifted-its-gas-exploration-pause-but-banned-fracking-for-good-its-bad-news-for-the-climate-133923>

384 <https://www.premier.vic.gov.au/enshrining-victorias-ban-fracking-forever>

385 <https://www.premier.vic.gov.au/enshrining-victorias-ban-fracking-forever>

386 <https://www.legislation.vic.gov.au/bills/constitution-amendment-fracking-ban-bill-2020>

387 http://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2020/Legislative_Assembly_2020-03-18.pdf

fracking ban “added protection”³⁸⁸. The Bill also prohibits the holder of a mining or exploration licence from carrying out fracking and forbids the government from accepting applications to conduct unconventional gas extraction processes or issuing licences³⁸⁹. Any future amendments to the policy would require a three-fifths majority³⁹⁰ of 77 members from the Legislative Assembly and the Legislative Council to amend it, “effectively [binding] future democratically elected governments”³⁹¹ to the policy.

The second and third readings for the Bill were moved on March 18 2020 and February 19 2021 respectively, before it was passed by a special majority after its third reading in the Legislative Assembly. MPs and Senators from the Andrews Labor government maintained that the core “strength of a constitutionally enshrined protection” against fracking provides certainty for regional communities affected by its adverse environmental, agricultural and health impacts. Research undertaken by the Productivity Commission suggests that bans and moratoria are welcome instruments to ease “community uncertainty” associated with harmful unconventional gas exploration operations, though regulatory measures “on a project-by-project basis” are considered equally helpful.

In response to concerns that enshrining the fracking ban in the constitution will render it “inflexible” to respond to future circumstances, Labor MPs noted that the Bill will not entrench all provisions from the 2017 Resources Legislation Amendment (Fracking Ban) Act, and will instead be limited to provisions related to the ban on hydraulic fracking and coal seam gas activities.

Shortly after its introduction to the Legislative Council on February 19 2021³⁹², the Bill was met with scepticism from the Victorian Liberal Party and later condemnation from Liberal Democratic Senators.

Journalist Annika Smethurst expressed surprise upon witnessing the Liberal Party’s decision to “put up little fight”³⁹³ against the Bill that could supposedly lend the Andrews government the authority to “govern from the grave”³⁹⁴. Smethurst’s criticism of the Bill alludes to its legal and democratic merits – while neither the Liberal Party nor the Liberal Democrats were opposed to the fracking ban itself, they instead questioned the precedent the Bill would set for future governments wishing to extend their legislative powers, and whether it was necessary to enshrine the existing policy in the constitution.

As well as it being highly unusual to incorporate a specific mining method into a constitution, an underlying concern is that the Bill is “unlikely to be legally effective”³⁹⁵ as the Victorian constitution itself is an ordinary act and more malleable than its federal counterpart. Interestingly, previous state Labor governments have similarly embedded their policies into the constitution; in 2003, the Bracks government passed a bill that entrenched public ownership of water authorities³⁹⁶. Critically, most other states have resisted the temptation to intertwine their policy positions within their respective constitutions, instead reserving constitutional changes for more “drastic...reforms”³⁹⁷.

In light of these criticisms, Liberal Democrats Senator Rod Limbrick proposed an amendment to the Bill that would allow for a balanced committee inquiry into its potential “legal and democratic consequences”³⁹⁸ and would examine the legal advice the government received when they drafted the Bill. The committee would have been required to report on the Bill by August 2 2021³⁹⁹. The amendment was soundly defeated in the Legislative Council, receiving almost twice as many ‘No’ votes⁴⁰⁰. Following its passage by a special majority after its third reading in both Houses, the Bill received Royal Assent on March 16 2021⁴⁰¹.

Policy Process

388 https://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2021/Legislative_Assembly_2021-02-17.pdf

389 http://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2020/Legislative_Assembly_2020-03-18.pdf

390 https://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2021/Legislative_Assembly_2021-02-19.pdf

391 <https://www.theage.com.au/politics/victoria/constitutional-meddling-means-andrews-could-govern-from-the-grave-20210304-p577uc.html>

392 <https://www.legislation.vic.gov.au/bills/constitution-amendment-fracking-ban-bill-2020>

393 <https://www.theage.com.au/politics/victoria/constitutional-meddling-means-andrews-could-govern-from-the-grave-20210304-p577uc.html>

394 Ibid.

395 <https://theconversation.com/victoria-quietly-lifted-its-gas-exploration-pause-but-banned-fracking-for-good-its-bad-news-for-the-climate-133923>

396 <https://www.theage.com.au/national/victoria/victoria-s-constitution-should-not-be-used-to-prop-up-fracking-ban-20200417-p54ko8.html>

397 <https://www.theage.com.au/politics/victoria/constitutional-meddling-means-andrews-could-govern-from-the-grave-20210304-p577uc.html>

398 <https://www.legislation.vic.gov.au/sites/default/files/2021-03/Limbrick%20reasoned%20amendment%20to%20the%20Constitution%20Amendment%20%28Fracking%20Ban%29%20Bill%202020.docx>

399 Ibid.

400 https://www.parliament.vic.gov.au/images/stories/daily-hansard/Council_2021/Legislative_Council_2021-03-04.pdf

401 <https://www.legislation.vic.gov.au/bills/constitution-amendment-fracking-ban-bill-2020>

Criterion 1 - Establish Need: Identify a demonstrable need for the policy, based on hard evidence and consultation with all the stakeholders involved, particularly interest groups who will be affected.

Guiding question: Is there a statement of why the policy was needed based on factual evidence and stakeholder input?

No. This decision was a line call. Arguably, the case for a constitutional ban on fracking can be seen as responding to the established need set out in Victoria's net-zero energy targets, as well as the prosperity of Victoria's agricultural, farming and water industries. However, the justification for this to ban to enter the constitution rather than remain as a piece of legislation is not seen as sufficiently established.

Criterion 2 - Set Objectives: Outline the public interest parameters of the proposed policy and clearly establish its objectives.

Guiding question: Is there a statement of the policy's objectives couched in terms of the public interest?

Yes. Labor MPs and Senators contended that the Bill would "safeguard the agricultural sector"⁴⁰², which annually contributes over \$12 billion to the state's economy and employs over 190,000 people⁴⁰³. Victoria produces 28 percent of national food and fibre exports, which would otherwise be threatened by unconventional gas production and exploration⁴⁰⁴. The constitutional amendment to entrench the state's existing fracking ban was announced in tandem with a decision to lift the ban on conventional gas exploration, which would create an additional 6,400 jobs for the agricultural sector.

Criterion 3 – Identify Options: Identify alternative approaches to the design of the policy, preferably with international comparisons where feasible. Engage in realistic costings of key alternative approaches.

Guiding question: Is there a description of the alternative policy options considered before the preferred one was adopted?

No. It is worth noting that no other government worldwide has enshrined fracking and coal seam gas bans in their constitution, making for limited comparisons with other countries⁴⁰⁵.

Criterion 4 – Consider Mechanisms: Consider implementation choices along a full spectrum from incentives to coercion.

Guiding question: Is there a disclosure of the alternative ways considered for implementing the chosen policy?

No. None of the advice the solicitor-general provided to the government was introduced during parliamentary debate.

Criterion 5 – Brainstorm Alternatives: Consider the pros and cons of each option and mechanism. Subject all key alternatives to a rigorous cost-benefit analysis.

Guiding question: Is there a published analysis of the pros/cons and benefits/costs of the alternative options/mechanisms considered in 3 and 4?

No. None of the advice the solicitor-general provided to the government was introduced during parliamentary debate, including alternative policy approaches. However, the Victorian Gas Program published the economic benefits and potential environmental costs posed by the decision to lift the ban on conventional gas production, which was included in the government's Resources Legislation Amendment (Fracking Ban) Act 2017, but removed from the provisions outlined in the Constitution Amendment (Fracking Ban Bill).

Criterion 6 – Design Pathway: Develop a complete policy design framework including principles, goals, delivery mechanisms, program or project management structure, the implementation process and phases, performance measures, ongoing evaluation mechanisms and reporting requirements, oversight and audit arrangements, and a review process ideally with a sunset clause.

⁴⁰² https://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2021/Legislative_Assembly_2021-02-17.pdf

⁴⁰³ Ibid.

⁴⁰⁴ Ibid.

⁴⁰⁵ https://www.nationalresourcesreview.com.au/news_article/victoria-first-in-the-world-to-include-fracking-ban-in-constitution/

Guiding question: Is there evidence that a comprehensive project management plan was designed for the policy's rollout?

No. The government could have benefitted from seeking legal advice on drafting the constitutional amendment from several other constitutional experts beyond the solicitor-general, as Liberal Democratic Senator Mr Limbrick suggested in his third reading speech and proposed amendment to the Bill⁴⁰⁶. Consulting a broader range of constitutional experts could have bolstered the policy's credibility from a legal perspective and offered valuable insight into its political repercussions for future governments.

Criterion 7 – Consult Further: Undertake further consultation with key affected stakeholders of the policy initiative.

Guiding question: Was there further consultation with affected stakeholders after the preferred policy was announced?

No. The Bill entrenches some of the provisions outlined in the Resources Legislation Amendment (Fracking Ban) Act 2017, which was based on a parliamentary inquiry that received a record number of submissions outlining the dangers posed by hydraulic fracking and onshore unconventional gas extraction projects. However, the constitutional amendment process did not allow for further consultation.

Criterion 8 – Publish Proposals: Produce a Green and then a White paper for public feedback and final consultation purposes and to explain complex issues and processes.

Guiding question: Was there a) a Green paper seeking public input on possible policy options and b) a White paper explaining the final policy decision?

No. Although there have been several inquiries into the production and extraction of conventional and unconventional gas in Victoria prior to the introduction of the Bill – such as the Victorian Gas Program's three-year study - there were no Green, White or inquiry papers released specific to the constitution amendment.

Criterion 9 – Introduce Legislation: Develop legislation and allow for comprehensive parliamentary debate especially in committee, and also intergovernmental discussion where necessary.

Guiding question: Was there legislation and adequate Parliamentary debate on the proposed policy initiative?

Yes. The Bill was supported by a sizeable majority in both Houses following extensive debate on its provisions and proposed amendment by Senator Limbrick in the Legislative Council.

Criterion 10 – Communicate Decision: Design and implement a clear, simple, and inexpensive communication strategy based on information not propaganda, regarding the new policy initiative.

Guiding question: Is there an online official media release that explains the final policy in simple, clear and factual terms?

Yes. A press release is available on the Victorian Premier's (Daniel Andrews) website, canvassing the government's reasoning for the existing fracking ban and its election promise to enshrine it into the constitution⁴⁰⁷. The media release also outlines the reasoning which underpinned related policy decisions, such as the decision to lift the ban on onshore conventional gas production by the end of June 2021⁴⁰⁸.

Final Scores

	CRITERION	YES/NO
1	Establish Need (demonstrable, evidence-based need)	No
2	Set Objectives (public interest parameters)	Yes
3	Identify Options (consideration of alternatives)	No
4	Consider Mechanisms (implementation choices)	No

⁴⁰⁶ https://www.parliament.vic.gov.au/images/stories/daily-hansard/Council_2021/Legislative_Council_2021-03-04.pdf

⁴⁰⁷ <https://www.premier.vic.gov.au/enshrining-victorias-ban-fracking-forever>

⁴⁰⁸ Ibid.

EVIDENCE BASED POLICY ANALYSIS

5	Brainstorm Alternatives (cost-benefit analysis)	No
6	Design Pathway (policy design framework)	No
7	Consult Further (further consultation after policy announcement)	No
8	Publish Proposals (produce Green then White paper, or equivalents)	No
9	Introduce Legislation (comprehensive parliamentary debate)	Yes
10	Communicate Decision (information not propaganda)	Yes
Final Score		3/10

Justice Legislation Amendment (Drug Court and Other Matters) Act 2020

Policy Background

The Justice Legislation Amendment (Drug Court and Other Matters) Act 2020 amends the County Court Act 1958 to establish a Drug Court Division of the County Court.⁴⁰⁹ In addition, it amends the Limitation of Actions Act 1958 in relation to previously barred courses of action relating to child abuse and the Victorian Civil and Administrative Tribunal Act 1998 to insert confidentiality protections relating to proceedings under the Voluntary Assisted Dying Act 2017 along with consequential and related amendments to other acts.⁴¹⁰

Drug courts, including the Drug Court Division of the County Court of Victoria, are a pragmatic response to a realisation emerging in the 1980s that sentencing offenders with substance use problems to prison was a largely ineffective means of effecting long-term behavioural change.⁴¹¹ In particular, the use of punitive sanctions, including imprisonment, was viewed as contributing to a “revolving door effect”, with the prison sentence failing to rehabilitate a portion of substance-using offenders who resumed both their offending behaviour, and substance use, upon release.⁴¹² Building on principles of therapeutic jurisprudence, drug courts recognise that offending behaviour may be caused by a range of social, economic, physical and psychological factors. They are based on the belief that courts have the capacity to be actively involved in the treatment and rehabilitation of offenders and can serve as a forum to coordinate services to treat individuals, addressing their offending behaviour and substance use problems.⁴¹³

Drug courts have also been considered a more constructive and cost-effective alternative to imprisonment and a method of stemming the flow of drug and alcohol-related offences in courts. Evidence of their success has been accumulating over time, for example, a 2009 evaluation of the New South Wales (NSW) Magistrates Early Referral into Treatment (MERIT) drug diversion program, which provides defendants with illicit drug problems three months of pre-sentencing treatment, reduced recidivism amongst participants completing the program by 12 percentage points when compared to a control group.⁴¹⁴

This evidence has increased the attractiveness of drug courts and thousands of court programs have been implemented or trialled around the world, including courts or pilot programs in every Australian jurisdiction such as the Drug Court Division of the Magistrates’ Court of Victoria established in May 2002.⁴¹⁵ The Drug Court Division of the County Court of Victoria is a continuation and expansion of aims of Victoria’s first drug court and its positive effect on the community.⁴¹⁶

While drug courts are a major component of this Bill, they are not the only one. The amendment to the Limitations of Action Act 1958 will allow a court to set aside past judgements and settlements relating to child abuse cases between 1 July 2015 and 1 July 2018; limitation periods were abolished during this period in respect to child abuse actions.⁴¹⁷ The Bill will also amend the Victorian Civil and Administrative Tribunal Act 1988 to insert confidentiality protections relating to proceeding under the Voluntary Assisted Dying Act 2017. Other highly personal proceedings, such as those under the Medical Treatment Planning and Decisions Act 2016, contain confidentiality provisions; thus, this amendment will make the Voluntary Assisted Dying Act consistent with other proceedings.⁴¹⁸

Policy Process

Criterion 1 - Establish Need: Identify a demonstrable need for the policy, based on hard evidence and consultation with all the stakeholders involved, particularly interest groups who will be affected.

Guiding question: *Is there a statement of why the policy was needed based on factual evidence and stakeholder input?*

409 Justice Legislation Amendment (Drug Court and Other Matters) Bill 2020 (Vic), p. 1-2. <https://www.legislation.vic.gov.au/bills/justice-legislation-amendment-drug-court-and-other-matters-bill-2020#:~:text=591189bs1.pdf,PDF%20416.12%20KB>

410 Ibid.

411 David Wexler and Bruce Winick quoted in Bruce Winick, ‘Therapeutic Jurisprudence and Problem-Solving Courts’ (2002) 30(3) Fordham Urban Law Journal 1056, p. 1056.

412 Ibid.

413 Friedberg, A. 2001. “Problem-Oriented Courts: Innovative Solutions to Intracable Problems?” *Journal of Judicial Administration* no.11: 8-27.

414 Lulham, R. (2009). The Magistrate Early Referral Into Treatment Program: Impact of Program Participation on Re-offending by Defendants with a Drug Use Problem. *Crime and Justice*. 131. p. 1.

415 Blag, H. 2008. “Problem-Oriented Courts”. *Law Reform Commission of Western Australia*. Project 96, p. 20.

416 Victoria, *Parliamentary Debates*, Legislative Assembly, 17 June 2020, p. 1797.

417 Explanatory Memorandum, *Justice Legislation Amendment (Drug Court and Other Matters) Bill 2020* (Vic), p. 18.

418 Victoria, *Parliamentary Debates*, Legislative Assembly, 17 June 2020, p. 1788

Yes. The Drug Court model was described by the Attorney General as being necessary to reduce recidivism and reduce drug dependency cycles.⁴¹⁹

Criterion 2 - Set Objectives: Outline the public interest parameters of the proposed policy and clearly establish its objectives.

Guiding question: Is there a statement of the policy's objectives couched in terms of the public interest?

Yes. The public interest was made that, if we can have people not going into the justice system, then we can use that money to prevent others from going in.⁴²⁰

Criterion 3 – Identify Options: Identify alternative approaches to the design of the policy, preferably with international comparisons where feasible. Engage in realistic costings of key alternative approaches.

Guiding question: Is there a description of the alternative policy options considered before the preferred one was adopted?

Yes. Several members of Parliament outlined alternative policy options, including revisions to the requirements to be on the parole board to have more influence from people who understand the changes in our culture, that were discussed in both the Legislative Assembly and the Legislative Council.⁴²¹

Criterion 4 – Consider Mechanisms: Consider implementation choices along a full spectrum from incentives to coercion.

Guiding question: Is there a disclosure of the alternative ways considered for implementing the chosen policy?

Yes. The bill was informed by Evaluations in 2005 and 2014 of the Magistrates' Court Drug Court which considered various mechanisms.

Criterion 5 – Brainstorm Alternatives: Consider the pros and cons of each option and mechanism. Subject all key alternatives to a rigorous cost-benefit analysis.

Guiding question: Is there a published analysis of the pros/cons and benefits/costs of the alternative options/mechanisms considered in 3 and 4?

No. The Victorian government discussed the pros, cons, benefits, and costs of the New South Wales Drug Court and the Drug Court division of the Victorian Magistrate's Court in the Legislative Council but there is not a published analysis of these options.⁴²²

Criterion 6 – Design Pathway: Develop a complete policy design framework including principles, goals, delivery mechanisms, program or project management structure, the implementation process and phases, performance measures, ongoing evaluation mechanisms and reporting requirements, oversight and audit arrangements, and a review process ideally with a sunset clause.

Guiding question: Is there evidence that a comprehensive project management plan was designed for the policy's rollout?

No. There does not appear to be a complete policy design framework or comprehensive project management plan.

Criterion 7 – Consult Further: Undertake further consultation with key affected stakeholders of the policy initiative.

Guiding question: Was there further consultation with affected stakeholders after the preferred policy was announced?

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https://hansard.parliament.vic.gov.au/search/?LDMS=Y&IW_DATABASE=*&IW_FIELD_ADVANCE_PHRASE=be+now+read+a+second+time&IW_FIELD_IN_SpeechTitle=Justice+Legislation+Amendment+Drug+Court+and+Other+Matters+Bill+2020&IW_FIELD_IN_HOUSENAME=ASSEMBLY&IW_FIELD_IN_ACTIVITYTYPE=Second+reading&IW_FIELD_IN_SittingYear=2020&IW_FIELD_IN_SittingMonth=March&IW_FIELD_IN_SittingDay=19

420 Victoria, *Parliamentary Debates*, Legislative Assembly, 17 June 2020, p. 1789.

421 Victoria, *Parliamentary Debates*, Legislative Assembly, 17 June 2020, p. 1791.

422 Victoria, *Parliamentary Debates*, Legislative Council, 26 November 2020, p. 4297.

No. There do not appear to be plans for further consultation.

Criterion 8 – Publish Proposals: Produce a Green and then a White paper for public feedback and final consultation purposes and to explain complex issues and processes.

Guiding question: Was there a) a Green paper seeking public input on possible policy options and b) a White paper explaining the final policy decision?

No. There was no Green/White paper or equivalent process.

Criterion 9 – Introduce Legislation: Develop legislation and allow for comprehensive parliamentary debate especially in committee, and also intergovernmental discussion where necessary.

Guiding question: Was there legislation and adequate Parliamentary debate on the proposed policy initiative?

Yes. Victoria already had a Drug Court in the Magistrates Court which enabled members of Parliament to compare the Bill with the existing system and effectively debate the topic.⁴²³

Criterion 10 – Communicate Decision: Design and implement a clear, simple, and inexpensive communication strategy based on information not propaganda, regarding the new policy initiative.

Guiding question: Is there an online official media release that explains the final policy in simple, clear and factual terms?

No. The Drug and Alcohol Treatment Court section of the County Court Victoria website does some of this, but there does not appear to be a comprehensive explanation of the Bill's policies in simple terms.⁴²⁴

Final Scores

	CRITERION	YES/NO
1	Establish Need (demonstrable, evidence-based need)	Yes
2	Set Objectives (public interest parameters)	Yes
3	Identify Options (consideration of alternatives)	Yes
4	Consider Mechanisms (implementation choices)	Yes
5	Brainstorm Alternatives (cost-benefit analysis)	No
6	Design Pathway (policy design framework)	No
7	Consult Further (further consultation after policy announcement)	No
8	Publish Proposals (produce Green then White paper, or equivalents)	No
9	Introduce Legislation (comprehensive parliamentary debate)	Yes
10	Communicate Decision (information not propaganda)	No
	Final Score	5/10

⁴²³ <https://www.countycourt.vic.gov.au/going-court/criminal-division/drug-and-alcohol-treatment-court>

⁴²⁴ <https://www.countycourt.vic.gov.au/going-court/criminal-division/drug-and-alcohol-treatment-court>

Change or Suppression (Conversion) Practices Prohibition Act 2021

Policy Background

Conversion practices emerged in Australia in the early 1970s when mainstream medical practice was no longer classifying homosexuality as a mental illness and began to consider clinical practices attempting to change an individual's sexual orientation as unethical.⁴²⁵

In May 2018 the Hon. Jill Hennessy, then Health Minister, referred the matter of gay conversion therapy to the Health Complaints Commissioner (HCC) for inquiry. The HCC completed the inquiry in November 2018 which defined conversion therapy/practices as:

*"any practice or treatment that seeks to change, suppress or eliminate an individual's sexual orientation or gender identity, including efforts to reduce or eliminate sexual and/or romantic attractions or feelings toward individuals of the same gender, or efforts to change gender expressions."*⁴²⁶

Contemporary forms of conversion therapy/practices can include psychotherapy or psychology, counselling, support groups, behaviour-change programs, exorcisms, and prayer-based approaches.⁴²⁷

The HCC report outlines the long-term distress and psychological harm experienced by people who have undergone these practices, including an increased incidence of suicide.⁴²⁸ It made several recommendations including the establishment of sources of funding for counselling and support services for survivors by appropriately trained providers and legislation that denounces and prohibits conversion practices in Victoria.⁴²⁹

Prior the HCC report, the Human Rights Law Centre, La Trobe University and Gay & Lesbian Health Victoria published Preventing Harm, Promoting Justice: Responding to LGBT Conversion Therapy in Victoria (HLRC report) in October 2018.⁴³⁰ Similar to the HCC report, the HLRC report sets out the severity of the harm inflicted on individuals through conversion practices. The HLRC Report contained the first academic research on the nature and extent of conversion practices in Australia.⁴³¹ Its findings included that an estimated 10% of LGBT Australians are vulnerable to harmful conversion practices.⁴³² It made recommendations the Victorian government, health associations, and the Federal government promoting a multi-faceted strategy involving a legislative ban to prohibit conversion practices.⁴³³

Following recommendations from the HCC Inquiry into Conversion therapy and the HLRC report, the Victorian government committed to banning conversion practices in Victoria along with funding further research and providing funding support for conversion therapy survivors.⁴³⁴ The Change or Suppression (Conversion) Practices Prohibition Bill makes clear that an individual's sexual orientation or gender identity is not a disorder, disease, illness, or shortcoming. The Bill seeks to counter harmful messages that sit at core of LGBT conversion therapy practices by ensuring "that all people, regardless of sexual orientation or gender identity, feel welcome and valued in Victoria and are able to live authentically and with pride".⁴³⁵ It introduces by both criminal new criminal offences relating to change or suppression practices and establishing a civil response scheme with the Victorian Equal Opportunity and Equal Rights Commission for dealing with instances of LGBT change or suppression practices.⁴³⁶

The Bill was passed into law following a 12-hour debate in the legislative council in February 2021. The Coalition did not oppose the Bill but moved several amendments that failed, including one to pause its progress for further consultation.⁴³⁷

425 Drescher, Jack. "Out of DSM: Depathologizing homosexuality." *Behavioral sciences* 5, no. 4 (2015): 565-575.

426 <https://hcc.vic.gov.au/news/inquiry-conversion-therapy>

427 Health Complaints Commissioner (2019) *Health Complaints Commissioner welcomes new laws to denounce and prohibit LGBTI conversion practices following HCC inquiry*, media release, 3 February.

428 Victorian Government (2019) *Discussion Paper: Legislative options to implement a ban of conversion practices*, Melbourne, Victorian Government, p. 1.

429 Health Complaints Commissioner (2019) *Health Complaints Commissioner welcomes new laws to denounce and prohibit LGBTI conversion practices following HCC inquiry*, media release, 3 February.

430 T. W. Jones et al. (2018) *Preventing harm, promoting justice: Responding to LGBT conversion therapy in Australia*, Melbourne, La Trobe University & Human Rights Law Centre.

431 T. W. Jones et al. (2018) *Preventing harm, promoting justice: Responding to LGBT conversion therapy in Australia*, Melbourne, La Trobe University & Human Rights Law Centre, p.3.

432 Ibid, p. 3.

433 Ibid, p. 67.

434 Andrews, D., Premier of Victoria (2019) *Labor Government to make conversion 'therapy' against the law*, media release, 3 February.

435 Ibid, p. 3

436 Change or Suppression (Conversion) Practices Prohibition Bill 2020, p. 1-2.

437 <https://www.theguardian.com/australia-news/2021/feb/05/victoria-bans-gay-conversion-practices-after-12-hour-debate>

Advocacy groups including the LGBTQIA+ committee of the Uniting Church, the Brave Network, and Rainbow Catholics have celebrated the assent of the Bill as the “world’s most significant achievement in legislation curtailing the diabolical influence of conversion movement”.⁴³⁸ Labor’s Harriet Shing, the first openly lesbian member of the Victorian parliament, said the Bill helped to “recognise the pain and the trauma and the hurt of the victims and the trauma and the hurt of victims and survivors”.⁴³⁹

Policy Process

Criterion 1 - Establish Need: Identify a demonstrable need for the policy, based on hard evidence and consultation with all the stakeholders involved, particularly interest groups who will be affected.

Guiding question: Is there a statement of why the policy was needed based on factual evidence and stakeholder input?

Yes. The Victorian Government’s commitment to ban conversion practices follows recommendations from the Health Complaints Commissioner Inquiry into Conversion Therapy (HCC Report).⁴⁴⁰

Criterion 2 - Set Objectives: Outline the public interest parameters of the proposed policy and clearly establish its objectives.

Guiding question: Is there a statement of the policy’s objectives couched in terms of the public interest?

Yes. The Victorian Government released a Discussion Paper on legislative options to implement a ban of conversion practices which outlines objectives based on recommendations from the Health Complaints Commissioner’s Report on the Inquiry into Conversion Therapy.⁴⁴¹

Criterion 3 – Identify Options: Identify alternative approaches to the design of the policy, preferably with international comparisons where feasible. Engage in realistic costings of key alternative approaches.

Guiding question: Is there a description of the alternative policy options considered before the preferred one was adopted?

Yes. The Victorian Government considered several models used by countries such as the USA, Malta, and Ireland along with other schemes from Victoria that may provide legislative protection from harm.⁴⁴²

Criterion 4 – Consider Mechanisms: Consider implementation choices along a full spectrum from incentives to coercion.

Guiding question: Is there a disclosure of the alternative ways considered for implementing the chosen policy?

Yes. The Victorian Government considered mechanisms used internationally, including in Ireland, Colorado, Malta, and Nova Scotia. The government considered using Victorian criminal in several ways as it already has regulatory schemes aimed at specific professions and some could be adapted or offer models to be used in the ban of conversion practices.⁴⁴³

Criterion 5 – Brainstorm Alternatives: Consider the pros and cons of each option and mechanism. Subject all key alternatives to a rigorous cost-benefit analysis.

Guiding question: Is there a published analysis of the pros/cons and benefits/costs of the alternative options/mechanisms considered in 3 and 4?

No. There is not a published cost-benefit analysis comparing all options considered in criteria 3 and 4, and there is no detailed consideration of the pros and cons of each option.

⁴³⁸ <https://www.theguardian.com/world/2021/feb/18/presbyterian-church-head-says-victorian-ban-on-gay-conversion-practices-should-be-ignored>

⁴³⁹ <https://www.theage.com.au/politics/victoria/gay-conversion-therapy-banned-in-victoria-after-marathon-debate-20210204-p56zls.html>

⁴⁴⁰ <https://www2.health.vic.gov.au/about/publications/researchandreports/report-on-inquiry-into-conversion-therapy-executive-summary>

⁴⁴¹ Discussion Paper: Legislative options to implement a ban of conversion practices

⁴⁴² Ibid, p. 4-6.

⁴⁴³ Ibid, p. 5.

Criterion 6 – Design Pathway: Develop a complete policy design framework including principles, goals, delivery mechanisms, program or project management structure, the implementation process and phases, performance measures, ongoing evaluation mechanisms and reporting requirements, oversight and audit arrangements, and a review process ideally with a sunset clause.

Guiding question: Is there evidence that a comprehensive project management plan was designed for the policy's rollout?

Yes. The legislation, its explanatory memorandum, and its rules include many of the elements of a complete policy design framework. There are details on the schemes principles, delivery mechanisms, implementation process, and future reviews.

Criterion 7 – Consult Further: Undertake further consultation with key affected stakeholders of the policy initiative.

Guiding question: Was there further consultation with affected stakeholders after the preferred policy was announced?

Yes. This result is a line-call. The government utilised a consultation approach which involved seeking online response and written submission through the Engage Victoria website in response to the discussion paper. In addition, the government conducted face-to-face consultations with key stakeholders to ensure they had the opportunity to address questions raised in the discussion paper. However, the government did not publish the full discussion paper, outlining the justification for the legislation. This means that the basis on which the legislation was consulted over was not necessarily fully understood by those consulted.

Criterion 8 – Publish Proposals: Produce a Green and then a White paper for public feedback and final consultation purposes and to explain complex issues and processes.

Guiding question: Was there a) a Green paper seeking public input on possible policy options and b) a White paper explaining the final policy decision?

No. Only the executive summary of the Discussion Paper was released.

Criterion 9 – Introduce Legislation: Develop legislation and allow for comprehensive parliamentary debate especially in committee, and also intergovernmental discussion where necessary.

Guiding question: Was there legislation and adequate Parliamentary debate on the proposed policy initiative?

Yes. The Bill was debated in Victorian Parliament. It builds on existing legislation by amending definitions of sexual orientation and gender identity in the Equal Opportunity Act 2010 and making consequential amendments to the Family Violence Protection Act 2008 and Personal Safety Intervention Orders Act 2010.⁴⁴⁴

Criterion 10 – Communicate Decision: Design and implement a clear, simple, and inexpensive communication strategy based on information not propaganda, regarding the new policy initiative.

Guiding question: Is there an online official media release that explains the final policy in simple, clear and factual terms?

Yes. The Victorian Government published a "Fact Sheet" web page explaining what the policy does and why it was passed into law.⁴⁴⁵

Final Scores

	CRITERION	YES/NO
1	Establish Need (demonstrable, evidence-based need)	Yes
2	Set Objectives	Yes

⁴⁴⁴ Explanatory Memorandum: Change or Suppression (Conversion) Practices Prohibition Bill 2020, p. 2.

⁴⁴⁵ https://www.vic.gov.au/lgbtq-change-and-suppression-practices-fact-sheet?_ga=2.249466311.1304319222.1630543031-919674036.1630543031

See also: https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/5716/1232/3170/FACT_SHEET_Change_or_Suppression_Conversion_Practices_Prohibition_Bill_2020.pdf

	(public interest parameters)	
3	Identify Options (consideration of alternatives)	Yes
4	Consider Mechanisms (implementation choices)	Yes
5	Brainstorm Alternatives (cost-benefit analysis)	No
6	Design Pathway (policy design framework)	Yes
7	Consult Further (further consultation after policy announcement)	Yes
8	Publish Proposals (produce Green then White paper, or equivalents)	No
9	Introduce Legislation (comprehensive parliamentary debate)	Yes
10	Communicate Decision (information not propaganda)	Yes
	Final Score	8/10

Summary Offences Amendment (Decriminalisation of Public Drunkenness) Act 2021

Policy Background

The death in custody of Yorta Yorta woman Tanya Day on the 5 December 2017, after being arrested on a V/Line train for public drunkenness, sparked renewed and widespread calls for the crime to be abolished.⁴⁴⁶

Public anger was particularly pronounced due to the long-known discriminatory effect of such laws on indigenous communities. The decriminalisation of public drunkenness was first recommended by the Royal Commission into Aboriginal Deaths in Custody in 1991⁴⁴⁷, and have been followed by numerous reports during the past 30 years including the Drugs and Crime Prevention Committee's Inquiry into Public Drunkenness in 2001 and the Victorian Parliament's Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody in 2005.

At the time of Ms Day's death, only Queensland and Victoria had maintained public drunkenness as a criminal offence.⁴⁴⁸ Accusations of systemic racism

In mid-2019, the coroner into Ms Day's death, Caitlin English, included within the scope of her inquiry, whether systemic racism had contributed to Ms Day's death, a first for the Victorian coronial system. This was a key campaigning point for the Day family, who argued that the Aboriginality of Ms Day played a significant role in the treatment she received from the V/Line conductor and the police officers.⁴⁴⁹

Prior to the commencement of the inquest, Ms English also "foreshadowed her intention" to make a recommendation to decriminalise public drunkenness, based on her knowledge of the case.⁴⁵⁰

On 22 August 2019, the Victorian Government announced it would "decriminalise public drunkenness and replace it with a health-based response, in order to provide vulnerable Victorians with appropriate help and support".⁴⁵¹

It appointed an Expert Reference Group (ERG) to examine how best to establish a health-based response – delivering more social services and prevention strategies, improved first response and ensuring people are transported to a safe place. The ERG consisted of Aboriginal health and legal groups, as well as a former Assistant Victorian Police Commissioner. Victoria Police were also part of the ERG's Executive Oversight Committee.⁴⁵²

The ERG published their report 'Seeing the Clear Light of Day: Expert Reference Group on Decriminalising Public Drunkenness' in August 2020. It found that "criminalisation of public drunkenness discriminates against vulnerable people, and in particular Aboriginal and/or Torres Strait Islander people, Sudanese and South Sudanese communities, people experiencing homelessness, substance abuse and people experiencing mental health"⁴⁵³.

The report made 86 recommendations to Government on the decriminalisation of public drunkenness and the establishment of an alternative public health model to respond to public drunkenness. The ERG's 'primary concern' was that people found intoxicated in public are not 'entangled in the justice system'.⁴⁵⁴ The report went on to propose that a phased introduction of a health-based model be introduced to the decriminalisation process, in order to take account of the complex systemic changes that would be needed for policy success.

The bill was first introduced by state Attorney-General Hennessy to the Legislative Assembly on 8 December 2020⁴⁵⁵. The bill proposed changes to the public drunkenness offences in the Summary Offences Act 1966 and related powers

446 <https://www.hrlc.org.au/news/2021/02/02/long-overdue-laws-to-decriminalise-public-drunkenness-before-vic-parliament>

447 <https://www.hrlc.org.au/news/2021/2/19/public-drunkenness-to-be-decriminalised-following-historic-vote>

448 Although WA maintains a similar criminal offence of "drinking in a public place"

449 <https://www.theguardian.com/australia-news/2019/apr/30/family-of-aboriginal-woman-who-died-in-custody-want-coroner-to-consider-systemic-racism>

450 Finding into death with inquest, Tanya Louise Day, 9 April 2020, COR20176424 – para 71

451 <https://www.premier.vic.gov.au/new-health-based-response-public-drunkenness>

452 <https://www.parliament.vic.gov.au/publications/research-papers/download/36-research-papers/13982-summary-offences-amendment-decriminalisation-of-public-drunkenness-bill-2020>

453 'Seeing the Clear Light of Day: Expert Reference Group on Decriminalising Public Drunkenness'

454 <https://www.parliament.vic.gov.au/publications/research-papers/download/36-research-papers/13982-summary-offences-amendment-decriminalisation-of-public-drunkenness-bill-2020>

455 https://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2020/Legislative_Assembly_2020-12-08.pdf

of arrest are repealed under the bill, as well making consequential amendments to the Liquor Control Reform Act 1998 and the Bail Act 1977.⁴⁵⁶ Under the legislation, being drunk in a public place will be treated as a medical issue, not a criminal offence.

During the Parliamentary debate on the 2 February 2020, then Opposition Leader Michael O'Brien voted against the laws and said the government had "put the cart before the horse". He argued that the infrastructure for dealing with public drunkenness as a health issue were not in place and that this had raised concerns among the Victorian Police.

The Bill passed its Second Reading on 19 Feb 2021, with opposition amendments defeated.

The policy will not come into effect on November 7, 2022, with the idea being that this will give responding services enough time to transition their practices.

This reflects the ERG view that "In light of the complexity involved in the development of the Proposed Health Model, we recommend that a phased implementation take place over a two-year transition period. This will enable the model to be trialled and statewide service infrastructure put in place before full decriminalisation takes effect."⁴⁵⁷

In the Victorian Budget 2020/21, the Victorian Government has allocated \$16 million in order to assist with this transition.

Policy Process

Criterion 1 - Establish Need: Identify a demonstrable need for the policy, based on hard evidence and consultation with all the stakeholders involved, particularly interest groups who will be affected.

Guiding question: Is there a statement of why the policy was needed based on factual evidence and stakeholder input?

Yes. Numerous reports since 1991 have detailed the need for such a policy

Criterion 2 - Set Objectives: Outline the public interest parameters of the proposed policy and clearly establish its objectives.

Guiding question: Is there a statement of the policy's objectives couched in terms of the public interest?

Yes. The public interest in the reduction of deaths in custody, and the specific benefits to marginalised groups, is made explicit in the Bill contents.

Criterion 3 – Identify Options: Identify alternative approaches to the design of the policy, preferably with international comparisons where feasible. Engage in realistic costings of key alternative approaches.

Guiding question: Is there a description of the alternative policy options considered before the preferred one was adopted?

No. The bill is framed around the key themes of the ERG report, but differing options are not explicitly discussed by the government.

Criterion 4 – Consider Mechanisms: Consider implementation choices along a full spectrum from incentives to coercion.

Guiding question: Is there a disclosure of the alternative ways considered for implementing the chosen policy?

No (although this question may not be appropriate for criminal law matters).

⁴⁵⁶ Ms HENNESSY (Altona—Attorney-General). Parliamentary Debates (Hansard), Legislative Assembly, Fifty-Ninth Parliament First Session, Wednesday, 9 December 2020

⁴⁵⁷ ERG, 'Seeing the Clear Light of Day: Expert Reference Group on Decriminalising Public Drunkenness'

Criterion 5 – Brainstorm Alternatives: Consider the pros and cons of each option and mechanism. Subject all key alternatives to a rigorous cost-benefit analysis.

Guiding question: Is there a published analysis of the pros/cons and benefits/costs of the alternative options/mechanisms considered in 3 and 4?

Yes. This score is a line call. The deep wealth of evidence over the past 30 years has identified decriminalisation as the most appropriate model for improving justice and health outcomes. However, this legislation did not review these options again.

Criterion 6 – Design Pathway: Develop a complete policy design framework including principles, goals, delivery mechanisms, program or project management structure, the implementation process and phases, performance measures, ongoing evaluation mechanisms and reporting requirements, oversight and audit arrangements, and a review process ideally with a sunset clause.

Guiding question: Is there evidence that a comprehensive project management plan was designed for the policy's rollout?

Yes. Implicit in the trial process, although not publicly available as far as our research found.

Criterion 7 – Consult Further: Undertake further consultation with key affected stakeholders of the policy initiative.

Guiding question: Was there further consultation with affected stakeholders after the preferred policy was announced?

Yes. Significant consultation with law enforcement, medical and Aboriginal representatives was held through the ERG process.

Criterion 8 – Publish Proposals: Produce a Green and then a White paper for public feedback and final consultation purposes and to explain complex issues and processes.

Guiding question: Was there a) a Green paper seeking public input on possible policy options and b) a White paper explaining the final policy decision?

Yes. The Expert Reference Group's report can be seen as equivalent.

Criterion 9 – Introduce Legislation: Develop legislation and allow for comprehensive parliamentary debate especially in committee, and also intergovernmental discussion where necessary.

Guiding question: Was there legislation and adequate Parliamentary debate on the proposed policy initiative?

Yes. Legislation was introduced and discussed at great length in the Assembly and Council.

Criterion 10 – Communicate Decision: Design and implement a clear, simple, and inexpensive communication strategy based on information not propaganda, regarding the new policy initiative.

Guiding question: Is there an online official media release that explains the final policy in simple, clear and factual terms?

Yes. Official communications as to the change in law were made available on the Vic government website.

Final Scores

	CRITERION	YES/NO
1	Establish Need (demonstrable, evidence-based need)	Yes
2	Set Objectives (public interest parameters)	Yes
3	Identify Options	No

EVIDENCE BASED POLICY ANALYSIS

	(consideration of alternatives)	
4	Consider Mechanisms (implementation choices)	No
5	Brainstorm Alternatives (cost-benefit analysis)	Yes
6	Design Pathway (policy design framework)	Yes
7	Consult Further (further consultation after policy announcement)	Yes
8	Publish Proposals (produce Green then White paper, or equivalents)	Yes
9	Introduce Legislation (comprehensive parliamentary debate)	Yes
10	Communicate Decision (information not propaganda)	Yes
	Final Score	8/10

Queensland case studies

Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020

Policy Background

The issue of wage theft, referring to the underpayment of wages or non-payment of entitlements to a worker by an employer⁴⁵⁸ has attracted increased national media attention over the past decade due to several high-profile underpayment scandals involving prominent, nationally operating brands including Woolworths and Myer.⁴⁵⁹ These scandals were accompanied by a series of academic and government reports which found that wage theft was both “normalised” and “endemic” across certain sectors.⁴⁶⁰

The Wage Theft Bill was introduced following an enquiry by the Queensland Parliamentary Education, Employment and Small Business Committee into wage theft in Queensland. The Inquiry received evidence from 100 witnesses and 360 respondents to an online survey. 49 written responses were also received. The Committee’s report, named “*A fair day’s pay for a fair day’s work? Exposing the true cost of wage theft in Queensland*” estimated that 437,000 Queensland workers were not receiving their full wages. Losses in income, superannuation and resulting reductions in income tax and consumer activity were estimated to cost the Queensland economy \$2.5b each year.⁴⁶¹ Wage theft was also identified as contributing to low wage growth⁴⁶² and damaging the competitiveness of firms paying their workers their full wages and entitlements.⁴⁶³

The Committee published 17 recommendations, six of which were for the Government to action, including two recommendations, numbers 8 and 15, which required legislative amendment.⁴⁶⁴

The Criminal Code and Other Legislation (Wage Theft) Amendment Bill was introduced by Minister for Education and Industrial Relations, Grace Grace on the 15th of July 2020⁴⁶⁵. Minister Grace told Parliament that while employees can be imprisoned for stealing from their employers, no such punishment was available for employers when the inverse occurs and proposed that the Bill would “rectify” this difference.⁴⁶⁶

The Bill aims to implement recommendations 8 and 15 of the Committee Report. Recommendation 8 called on the Government to implement low cost, simple and efficient wage-recovery mechanisms. Recommendation 15 recommended the Government legislate to make deliberate wage theft a crime⁴⁶⁷.

The Bill sought to implement Recommendation 8 of the Report by amending the Industrial Magistrate’s court’s jurisdiction in order to establish a small claims wage recovery process for claims under \$20,000.⁴⁶⁸ The bill states that the Court may refer parties to conciliation before claims are heard in Court, a process which may be rejected by any party.⁴⁶⁹

The Bill amends the definition of “stealing” in the states’ Criminal Code to apply to the deliberate withholding of employee’s pay or entitlements by an employer. The maximum penalty for this offence was established as being 10 years, equal to the penalty for theft by employees against employers. The Bill also raises the maximum penalty for fraud by employers against employees to 14 years, in line with the penalty for fraud committed by employees against their employers.⁴⁷⁰

458 Education, Employment and Small Business Committee Report, page 7
<https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2018/5618T1921.pdf>,

459 Ibid., page 4.

460 Ibid., page 5.

461 Ibid., ix.

462 Ibid., pg. 64.

463 Ibid., pg. 62.

464 Wage Theft Bill Explanatory Notes, page 1. <https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T1168.pdf>

465 56th Parliament Bills Register, <https://www.parliament.qld.gov.au/Work-of-the-Assembly/Bills-and-Legislation/Bills-previous-Parliaments/56th-Parliament>

466 Hansard, 15 July 2020, page 1629. https://documents.parliament.qld.gov.au/events/han/2020/2020_07_15_WEEKLY.pdf#page=29

467 Explanatory notes, pages 1-2. <https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T1168.pdf>

468 Ibid., page 2.

469 Ibid., page 6.

470 Ibid., page 6.

The Wage Theft Bill was examined by the Education, Employment and Small Business Committee, who conducted a public hearing and received stakeholder submissions⁴⁷¹. The Committee recommended the Bill be passed in a report tabled on the 18th of August 2020⁴⁷². The Committee also recommended that conciliation between parties become mandatory in order to grant effected parties the opportunity to discuss issues of wage theft without needing to attend court hearings⁴⁷³. This recommendation was promoted by numerous legal groups and unions. The Queensland Law Society expressed concern with the opt-out method of conciliation, stating that this method would allow employers to “drag out” the process, undermining the bill’s stated aims of “quick and effective” wage recovery.⁴⁷⁴ The department responded to these concerns in the Committee hearing by stating that opt-out conciliation best aligned with the Queensland Fair Work Act, while allowing participants with no interest in conciliation to avoid the process⁴⁷⁵. The opt-out conciliation process was retained after “careful consideration” by the Government.⁴⁷⁶

The Committee report also contained concerns held by various stakeholders relating to the enforcement of the Bill’s amendments. This included concerns that vulnerable individuals would not feel comfortable contacting police should they become victims of wage theft⁴⁷⁷.

The Bill was debated in Parliament on the 9th of September 2020. The Bill was not opposed by the LNP, however, Liberal MP Jarred Bleijie stated that the LNP would closely monitor the impacts of the new laws⁴⁷⁸. Several Liberal MPs raised concerns that the new law represented unconstitutional intervention into Federal laws, and asked the Government to confirm whether the Bill was constitutively valid⁴⁷⁹. Additional reservations raised by LNP members related to concerns that criminalising wage theft would prevent businesses who had unintentionally underplayed workers from reporting this underpayment.⁴⁸⁰

The Greens strongly supported the Bill, stating that it was a first step towards shifting “[the] power imbalance” existing within workplaces.⁴⁸¹

The Bill was passed after its third reading on the 9th of September. An amendment moved by Minister Grace, which permitted employees to authorise information sharing between employers and registered industrial organisations was also passed.⁴⁸² The Bill received assent on 14/09/2020⁴⁸³

Policy Process

Criterion 1 - Establish Need: Identify a demonstrable need for the policy, based on hard evidence and consultation with all the stakeholders involved, particularly interest groups who will be affected.

Guiding question: Is there a statement of why the policy was needed based on factual evidence and stakeholder input?

Yes. The Education, Employment and Small Business Committee’s report outlines the prevalence and impacts of wage theft and received evidence from over 100 witnesses⁴⁸⁴. The Bill’s Explanatory note cites key findings from this report in establishing the need for legislative reform. Further consultation with targeted stakeholders also occurred when drafting the Bill.⁴⁸⁵

Criterion 2 - Set Objectives: Outline the public interest parameters of the proposed policy and clearly establish its objectives.

471 Education, Employment and Small Business Committee Inquiry Overview. <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=183&id=3241>

472 Education, Employment and Small Business Committee Report no. 35, v. <https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T1397.pdf>

473 Ibid., p. 25

474 Ibid., p. 22.

475 Ibid., p. 23.

476 Hansard, 9 September 2020, p. 2272. https://documents.parliament.qld.gov.au/events/han/2020/2020_09_09_WEEKLY.PDF

477 Education, Employment and Small Business Committee Report no. 35, p. 17. <https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T1397.pdf>

478 Hansard, 9 September 2020, p. 2279. https://documents.parliament.qld.gov.au/events/han/2020/2020_09_09_WEEKLY.PDF

479 Ibid., p. 2289.

480 Ibid., p. 2282.

481 Ibid., p. 2292.

482 Ibid., p. 2293.

483 56th Parliament Bills Register, <https://www.parliament.qld.gov.au/Work-of-the-Assembly/Bills-and-Legislation/Bills-previous-Parliaments/56th-Parliament>

484 Education, Employment and Small Business Committee Report no. 9, v.

485 Explanatory notes, page 2. <https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T1168.pdf>

Guiding question: Is there a statement of the policy's objectives couched in terms of the public interest?

Yes. The Bill is established as being in the best interests of workers and law-abiding businesses. The impacts of wage theft on workers and their families were mentioned numerous times in Parliament. Minister Grace stated "this bill is for all Queensland workers who have fallen victim to wage theft" when introducing the bill⁴⁸⁶. The Bill's Explanatory note also states that combatting wage theft is necessary due to the impacts of systematic wage theft on business competition⁴⁸⁷.

Criterion 3 – Identify Options: Identify alternative approaches to the design of the policy, preferably with international comparisons where feasible. Engage in realistic costings of key alternative approaches.

Guiding question: Is there a description of the alternative policy options considered before the preferred one was adopted?

Yes. The Education, Employment and Small Business Committee examined different enforcement models.

Criterion 4 – Consider Mechanisms: Consider implementation choices along a full spectrum from incentives to coercion.

Guiding question: Is there a disclosure of the alternative ways considered for implementing the chosen policy?

Yes. Alternate methods of implementing the Education, Employment and Small Business Committee's 2018 Report's recommendations for legislative reform are discussed in the Bill's Explanatory note. The note discusses multiple options for wage recovery, including the inclusion of the Queensland Industrial Commission and Industrial Court in the process⁴⁸⁸. The option of establishing a mandatory, rather than opt-in conciliation process for wage recovery is also discussed in Parliamentary proceedings⁴⁸⁹.

Criterion 5 – Brainstorm Alternatives: Consider the pros and cons of each option and mechanism. Subject all key alternatives to a rigorous cost-benefit analysis.

Guiding question: Is there a published analysis of the pros/cons and benefits/costs of the alternative options/mechanisms considered in 3 and 4?

No. The Explanatory note lists legislative options relating to the wage recovery process previously investigated by the Court, and briefly details the reasons why these options are not viable⁴⁹⁰. However, it did not examine further options.

Criterion 6 – Design Pathway: Develop a complete policy design framework including principles, goals, delivery mechanisms, program or project management structure, the implementation process and phases, performance measures, ongoing evaluation mechanisms and reporting requirements, oversight and audit arrangements, and a review process ideally with a sunset clause.

Guiding question: Is there evidence that a comprehensive project management plan was designed for the policy's rollout?

No. The policy design framework is not complete. The Bill's explanatory note outlines the goals, mechanisms and principles of the policy. It states that the efficiency of the Industrial Magistrate's course in hearing civil claims will be monitored⁴⁹¹. Director General of the office of Industrial Relations Tony James has stated that Queensland Police's capability to manage wage theft cases would also be monitored⁴⁹². However, there are no published comprehensive specific performance measures, evaluation mechanisms or review process.

Criterion 7 – Consult Further: Undertake further consultation with key affected stakeholders of the policy initiative.

⁴⁸⁶ Hansard, 15 July 2020, page 1628. https://documents.parliament.qld.gov.au/events/han/2020/2020_07_15_WEEKLY.pdf#page=29

⁴⁸⁷ Explanatory notes, page 1. <https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T1168.pdf>

⁴⁸⁸ Ibid., page 2.

⁴⁸⁹ Hansard, 9 September 2020, p. 2272. https://documents.parliament.qld.gov.au/events/han/2020/2020_09_09_WEEKLY.PDF

⁴⁹⁰ Explanatory notes, page 2. <https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T1168.pdf>

⁴⁹¹ Ibid.

⁴⁹² Public Hearing, 27 July 2020, page 7. <https://documents.parliament.qld.gov.au/committees/EESBC/2020/CCOLAB2020/trns-10Aug2020-ccolab.pdf>

Guiding question: Was there further consultation with affected stakeholders after the preferred policy was announced?

Yes. The Bill was referred to the Education, Employment and Small Business Committee after its first reading, who invited submissions from stakeholder representatives including legal groups, unions and Industry groups. A public hearing was also held with representatives from unions, industry groups and the legal community.⁴⁹³

Criterion 8 – Publish Proposals: Produce a Green and then a White paper for public feedback and final consultation purposes and to explain complex issues and processes.

Guiding question: Was there a) a Green paper seeking public input on possible policy options and b) a White paper explaining the final policy decision?

Yes. There is no official Green or White paper for this proposal. However, the Bill was reviewed by the Committee of Education, Employment and Small Business in a process involving a public briefing by representatives from the Office of Industrial Relations and the Department of Justice, a public hearing, and the tabling of a report examining the Bill and putting forward recommendations⁴⁹⁴.

Criterion 9 – Introduce Legislation: Develop legislation and allow for comprehensive parliamentary debate especially in committee, and also intergovernmental discussion where necessary.

Guiding question: Was there legislation and adequate Parliamentary debate on the proposed policy initiative?

Yes. Legislation was introduced in July and was referred to the Education, Employment and Small Business Committee for review. The Bill was read a second and third time in September. Debate occurred in Parliament before the third reading of the Bill.⁴⁹⁵

Criterion 10 – Communicate Decision: Design and implement a clear, simple, and inexpensive communication strategy based on information not propaganda, regarding the new policy initiative.

Guiding question: Is there an online official media release that explains the final policy in simple, clear and factual terms?

Yes. The Queensland Government released a statement notifying the public of the passage of the Bill⁴⁹⁶. The statement includes a link to the website of the Office of Industrial Relations which provides additional information, and provides a fact sheet and “Frequently Asked Questions” page rights and requirements for both employers and employees detailing the changes.⁴⁹⁷ Queensland Police also details the new laws on its website.⁴⁹⁸

Final Scores

	CRITERION	YES/NO
1	Establish Need (demonstrable, evidence-based need)	Yes
2	Set Objectives (public interest parameters)	Yes
3	Identify Options (consideration of alternatives)	Yes
4	Consider Mechanisms (implementation choices)	Yes
5	Brainstorm Alternatives (cost-benefit analysis)	No

⁴⁹³ Education, Employment and Small Business Committee Inquiry overview, <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=183&id=3241>

⁴⁹⁴ Ibid.

⁴⁹⁵ Hansard, 9 September 2020, p. 2272-2295. https://documents.parliament.qld.gov.au/events/han/2020/2020_09_09_WEEKLY.PDF

⁴⁹⁶ <https://statements.qld.gov.au/statements/90702>

⁴⁹⁷ <https://www.oir.qld.gov.au/industrial-relations/wage-theft>

⁴⁹⁸ <https://www.police.qld.gov.au/units/victims-of-crime/wage-theft>

6	Design Pathway (policy design framework)	No
7	Consult Further (further consultation after policy announcement)	Yes
8	Publish Proposals (produce Green then White paper, or equivalents)	Yes
9	Introduce Legislation (comprehensive parliamentary debate)	Yes
10	Communicate Decision (information not propaganda)	Yes
	Final Score	8/10

Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020 (Qld) (Amendment Act)

Policy Background

The Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020 (Qld) (Amendment Act), is a response to two high profile reviews of how the criminal justice system responds to the child sexual abuse, and one research paper relating to the importation, production and use of child sex dolls.

As part of the output of the Royal Commission into Institutional Responses to Child Sexual Abuse, a *Criminal Justice* report was published in August 2017. This report contained 85 wide ranging recommendations, with the objective of reforming the criminal justice systems of Australia to create more just outcomes for victims of institutional child sexual abuse.⁴⁹⁹

This report was designed to provide guidance as to:

- what institutions and governments should do to better protect children against sexual abuse and related matters in institutional contexts in the future;
- what institutions and governments should do to achieve best practice in encouraging the reporting of, and responding to reports or information about, allegations, incidents or risks of child sexual abuse and related matters in institutional contexts;
- what should be done to eliminate or reduce impediments that currently exist for responding appropriately to child sexual abuse and related matters in institutional contexts, including addressing failures in, and impediments to, reporting.

In 2015, the Queensland Organised Crime Commission of Inquiry (The Commission), produced a series of recommendations after inquiring into the legal classifications of child exploitation material (CEM) for the purposes of sentencing.⁵⁰⁰

This report provided 16 recommendations to bring up to date, criminal justice practices pertaining to the growing gap between the reality of crimes taking place involving CEM, and legislation designed prior to the advent of widespread CEM.

The Bill also incorporates findings by the Australian Institute of Criminology, surrounding the Implications of Child Sex Dolls.⁵⁰¹ This report highlighted the growth in import of such items, including import to Queensland. The bill also references the Qld Sentencing Advisory Council's Report.

As such *The Act* has made significant amendments to the Queensland Criminal Code and other pieces of relevant legislation. The bill had broad-ranging legislative impacts, requiring the amendment of the:

- Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004,
- Children's Court Act 1992,
- Corrective Services Act 2006,
- Criminal Code, the Criminal Law (Sexual Offences) Act 1978,
- Disability Services Act 2006, the Evidence Act 1977,
- Justices Act 1886,
- Oaths Act 1867,
- Penalties and Sentences Act 1992,
- Police Powers and Responsibilities Act 2000,
- Transport Operations (Passenger Transport) Act 1994,
- Working with Children (Risk Management and Screening) Act 2000
- Youth Justice Act 1992⁵⁰²

499 Royal Commission into Institutional Responses to Child Sexual Abuse, 2017, *Criminal Justice*,

500 Queensland Sentencing Advisory Council, 2017, Classification of child exploitation material for sentencing purposes

501 Brown R & Shelling J 2019. Exploring the implications of child sex dolls. Trends & issues in crime and criminal justice no. 570. Canberra: Australian Institute of Criminology. <https://www.aic.gov.au/publications/tandi/tandi570>

502 Hon. D'Ath, Attorney-General and Minister for Justice, Explanatory Speech to Parliament, 27 Nov 2019

The Bill was introduced to parliament on the 27th November 2019 by minister for Justice and Attorney General Yvette D'Ath. It received support from the LNP opposition, despite regrets from James Lister that the Bill would impact traditional Catholic practices.⁵⁰³

The second reading resulted in a fairly universal acceptance of the need for the bill to be passed. One notable exception came from Hon. Andrew (Mirani—PHON). Mr Andrew raised concerns that The Bill was the start of a slippery slope from which freedoms surrounding confidentiality for professions such as legal, religious and press, could be eroded.

The cross-party Legal Affairs and Community Safety Committee reviewed the proposed legislation and recommended The Bill be passed. This committee took further stakeholder submissions into account (26 submissions), nearly all of which were in favour of the bill passing without further significant amendments, although definitions and terminology “for example replacing “relationship with a child” with “sustained abuse of a child””.⁵⁰⁴

Criticisms from the LNP tended to relate to the ability of the Palaszczuk Labor government to implement to the bill, rather than the bill itself.⁵⁰⁵

A 1 hour public briefing was held on Tuesday 10 December 2019 with core policy personnel, inc. Ms Leanne Robertson, Assistant Director-General, Strategic Policy and Legal Services. A webpage on the Queensland Government Website contains details of the new legal requirements to report suspected child sexual offences in plain English.⁵⁰⁶

Despite the fairly broad reaching changes to across several areas of law, the media response to *The Act* was to focus on the effect it would have on compelling priests to report child sex offences heard in confession.⁵⁰⁷⁵⁰⁸

Policy process

Criterion 1 - Establish Need: Identify a demonstrable need for the policy, based on hard evidence and consultation with all the stakeholders involved, particularly interest groups who will be affected.

Guiding question: Is there a statement of why the policy was needed based on factual evidence and stakeholder input?

Yes. The Royal Commission and the Queensland Organised Crime Commission of Inquiry, after extensive public consultation and expert advice, both identified areas where the existing legal framework produced sub-optimal results for the victims of child sexual abuse.

Criterion 2 - Set Objectives: Outline the public interest parameters of the proposed policy and clearly establish its objectives.

Guiding question: Is there a statement of the policy's objectives couched in terms of the public interest?

Yes. The objectives for the bill were clearly stated in the commissions and report used to justify the legislation. Due to the distressing nature of the crimes being addressed, specific objectives were not spelled out, but assumed as universally accepted.

Criterion 3 – Identify Options: Identify alternative approaches to the design of the policy, preferably with international comparisons where feasible. Engage in realistic costings of key alternative approaches.

Guiding question: Is there a description of the alternative policy options considered before the preferred one was adopted?

Yes. Options were considered in the Commission, with the QLD government broadly accepting the recommendations and alternatives put forward by stakeholders at the committee stage.

⁵⁰³ James Lister MEMBER FOR SOUTHERN DOWNS, speech to parliament, 13 August 2020

⁵⁰⁴ Legal Affairs and Community Safety Committee, 2020, Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019. Report No.59, 56th Parliament

⁵⁰⁵ Jim McDonald, MEMBER FOR LOCKYER, speech to parliament, 8th September 2020

⁵⁰⁶ <https://www.qld.gov.au/law/crime-and-police/types-of-crime/sexual-offences-against-children/failure-to-protect>

⁵⁰⁷ <https://www.brisbanetimes.com.au/politics/queensland/priests-in-queensland-compelled-to-report-abuse-20190822-p52jo9.html>

⁵⁰⁸ <https://www.theguardian.com/australia-news/2020/jan/16/queensland-archbishop-opposes-planned-law-to-compel-priests-to-report-child-sexual-abuse>

Criterion 4 – Consider Mechanisms: Consider implementation choices along a full spectrum from incentives to coercion.

Guiding question: Is there a disclosure of the alternative ways considered for implementing the chosen policy?

No. Although this is partly due to delegation of policy development to the Royal Commission and Queensland Organised Crime Commission of Inquiry

Criterion 5 – Brainstorm Alternatives: Consider the pros and cons of each option and mechanism. Subject all key alternatives to a rigorous cost-benefit analysis.

Guiding question: Is there a published analysis of the pros/cons and benefits/costs of the alternative options/mechanisms considered in 3 and 4?

No. Although this is partly due to delegation of policy development to the Royal Commission and Queensland Organised Crime Commission of Inquiry

Criterion 6 – Design Pathway: Develop a complete policy design framework including principles, goals, delivery mechanisms, program or project management structure, the implementation process and phases, performance measures, ongoing evaluation mechanisms and reporting requirements, oversight and audit arrangements, and a review process ideally with a sunset clause.

Guiding question: Is there evidence that a comprehensive project management plan was designed for the policy's rollout?

No. No specific pathway was outlined for the design, implementation, or review of the changes found in the Bill.

Criterion 7 – Consult Further: Undertake further consultation with key affected stakeholders of the policy initiative.

Guiding question: Was there further consultation with affected stakeholders after the preferred policy was announced?

Yes. Through the cross-party Legal Affairs and Community Safety Committee

Criterion 8 – Publish Proposals: Produce a Green and then a White paper for public feedback and final consultation purposes and to explain complex issues and processes.

Guiding question: Was there a) a Green paper seeking public input on possible policy options and b) a White paper explaining the final policy decision?

Yes. The Legal Affairs and Community Safety Committee reviewed and recommended the bill be passed. This committee took further stakeholder submissions into account (26 submissions)

Criterion 9 – Introduce Legislation: Develop legislation and allow for comprehensive parliamentary debate especially in committee, and also intergovernmental discussion where necessary.

Guiding question: Was there legislation and adequate Parliamentary debate on the proposed policy initiative?

Yes. Several parliamentary debates were held during the drafting of this Bill.

Criterion 10 – Communicate Decision: Design and implement and clear, simple, and inexpensive communication strategy based on information not propaganda, regarding the new policy initiative.

Guiding question: Is there an online official media release that explains the final policy in simple, clear and factual terms?

Yes. A 1 hour public briefing was held on Tuesday 10 December 2019 with core policy personnel, inc. Ms Leanne Robertson, Assistant Director-General, Strategic Policy and Legal Services. A webpage on the Queensland Government Website contains details of the new legal requirements to report suspected child sexual offences in plain English.⁵⁰⁹

⁵⁰⁹ <https://www.qld.gov.au/law/crime-and-police/types-of-crime/sexual-offences-against-children/failure-to-protect>

Final Scores

	CRITERION	YES/NO
1	Establish Need (demonstrable, evidence-based need)	Yes
2	Set Objectives (public interest parameters)	Yes
3	Identify Options (consideration of alternatives)	Yes
4	Consider Mechanisms (implementation choices)	No
5	Brainstorm Alternatives (cost-benefit analysis)	No
6	Design Pathway (policy design framework)	No
7	Consult Further (further consultation after policy announcement)	Yes
8	Publish Proposals (produce Green then White paper, or equivalents)	Yes
9	Introduce Legislation (comprehensive parliamentary debate)	Yes
10	Communicate Decision (information not propaganda)	Yes
	Final Score	7 /10

Forest Wind Farm Development Act 2020

Policy Background

The Forest Wind Farm Development Bill provides a tenure pathway for the development of a large-scale Wind Farm, known as “Forest Wind”, in three state forests in the Wide Bay-Burnett Region of South-East Queensland⁵¹⁰.

A development application for the major Forest Wind project was submitted to the Queensland Government in 2019 by Forest Wind Holdings Pty Ltd, a joint venture between renewable energy company CleanSight and Siemens Financial Services⁵¹¹. Forest Wind Holdings have sought to construct a wind farm with up to 226 wind turbines and additional infrastructure including battery storage capabilities⁵¹². The proposed wind farm is estimated to employ 440 people in the construction phase and create approximately 50 ongoing jobs during its operation⁵¹³. The project is also expected to produce enough energy to power approximately 500,000 households⁵¹⁴. Forest Wind Will be funded by private capital investment with an estimated cost of \$2 billion dollars⁵¹⁵.

The Forest Wind site is located in the Toolara, Tuan and Neeirdie State forests. The forests are currently held by HQ Plantations Pty Ltd, a logging company with a 99 year licence to operate plantations in this area⁵¹⁶. As of May 2020, the Queensland Forestry Act 1959, state forests were to be permanently reserved for the production of timber and related products⁵¹⁷.

The Forest Wind Development Bill also includes amendments to the *Planning Act 2016* to facilitate the administration of the Springfield Structure Plan. The Springfield Structure Plan was approved in 1997 and aims to create a flexible set of planning controls to facilitate the creation of an urban structure in Springfield, located within Ipswich City Council⁵¹⁸. Decisions made in the Queensland Planning and Environment Court and Court of Appeal in 2017 and 2018 respectively found that the Spring Field City Group Pty Ltd, the principle developer of the Springfield area, no longer had sufficient input into the delivery of infrastructure in the area. The Planning Act amendments in the Bill are intended to these issues⁵¹⁹.

The Forest Wind Farm Development Bill was introduced to Parliament on the 20th of May, 2020, by the Minister for Tourism, State Development and Innovation, Kate Jones⁵²⁰. The Bill’s policy objectives are distinct and unrelated⁵²¹.

The Bill’s primary objective is to provide tenure within the aforementioned State Forests in order for the Forest Wind Project to occur⁵²². The Bill modifies sections of the *Forestry Act 1959* and *Land Act 1994* and exempts the Forest Wind development from certain provisions of these Acts to enable the development and operation of the wind farm. This provides a legislative framework for the Forest Wind development to coexist with HQ Plantation’s plantation licence⁵²³.

The Bill does not guarantee the approval of the Forest Wind project. Minister Jones notified Parliament that the usual safeguards and minimum standards for a large-scale project of this nature must be met by Forest Wind Holdings before approval is given⁵²⁴. Commercial factors such as energy market supply and demand gaps may also prevent the

510 State Development, Tourism, Innovation and Manufacturing Committee Report No. 1, p. 4
<https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T1004.pdf>

511 Forest Wind: About Us, <https://www.forestwind.com.au/about-us>

512 State Development, Tourism, Innovation and Manufacturing Committee Report No. 1, p. 5.
<https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T1004.pdf>

513 Ibid.

514 Forest Wind Project Overview, <https://www.forestwind.com.au/project-overview>

515 Explanatory notes, p. 1. <https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T783.pdf>

516 Explanatory notes, p. 1. <https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T783.pdf>

517 Hansard, 20 May 2020, p. 973.

518 Ipswich Planning Scheme: Springfield Structure Plan

https://www.ipswichplanning.com.au/___data/assets/pdf_file/0013/2065/ips_part_14_springfield_structure_plan.pdf

519 Explanatory note, p. 2, <https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T783.pdf>

520 56th Parliament Bill’s Register, <https://www.parliament.qld.gov.au/Work-of-the-Assembly/Bills-and-Legislation/Bills-previous-Parliaments/56th-Parliament>

521 State Development, Tourism, Innovation and Manufacturing Committee Report No. 1, p. 1
<https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T1004.pdf>

522 State Development, Tourism, Innovation and Manufacturing Committee Report No. 1, p. 1.
<https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T1004.pdf>

523 Explanatory Note, p. 1, <https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T783.pdf>

524 Hansard, 12 August 2020, p. 1972. https://documents.parliament.qld.gov.au/events/han/2020/2020_08_12_WEEKLY.PDF

project from proceeding⁵²⁵. In addition, the Bill specifies that tenure for projects would only be granted if impact on HQ Plantations' operations was minimal⁵²⁶.

The Bill's second objective is to ensure correct administration of the Springfield Structure Plan. This is done by amending the *Planning Act 2016* to "ensure that Springfield Structure Program processes are preserved and operated as intended⁵²⁷. The amendments allow third parties to make or amend development plans given they seek the views of Springfield City Group (SSG) while doing so. The Bill also alters the process of disputing development decisions to limit participation in dispute resolution to parties who have a particular interest in the subject lands. Additionally, the Bill states that "all relevant layers of planning documents under the SSP [must] be in place prior to development"⁵²⁸.

The Bill examined by the State Development, Tourism, Innovation and Manufacturing Committee. The Committee's report supported the passage of the Bill in a report tabled on July 3, 2020. The Report also recommended minor adjustments to the Planning Act Amendments⁵²⁹.

The Committee heard from a small number of stakeholders and community members who held reservations relating to health and environmental impacts of wind farms. Other community members expressed discontent with the consultation process, as no community consultation occurred prior to the approval Forest Wind Holding's development application⁵³⁰. The Committee recommended the parties responsible for the development took note of these complaints when engaging in further consultation⁵³¹.

The Committee also heard from stakeholders interested in the Planning Act Amendments, noting that the distinct policy objectives of the Bill would be confusing for members of the public⁵³². While the majority of stakeholders expressed their support for the proposed amendments, concerns were raised by Cherish Enterprises Pty Ltd, a local landholder operating in competition with the SSG who expressed the view that the could allow the SSG to obstruct Cherish's operations⁵³³.

The Bill was read for a second time on 11 August 2020⁵³⁴ and a third time the following day⁵³⁵. Minister Jones introduced minor amendments relating to the SSP based on recommendation 2 of the Committee report⁵³⁶. The Minister stated that the Bill would facilitate important employment opportunities for the Wide Bay-Burnett Region and would align with the Government's renewable energy targets⁵³⁷. The Planning Act Amendments were also described by the Minister as allowing for "greater certainty" in the development of Springfield⁵³⁸.

The Bill was not opposed by the LNP⁵³⁹, however certain concerns were brought forward by Opposition members during Parliamentary Debate. Member for Gympie Anthony Perret noted the unrelated nature of the Bill's two policy objectives, arguing that this was evidence of the "haphazard and chaotic" operation of the Government⁵⁴⁰. Mr. Perret also raised concerns relating to the process of community consultation for the Forest Wind project, which he called "tokenistic". Perret referenced admissions made during the Committee hearings that the Government had been in contact with Forest Wind Holdings for three years before local communities were made aware of the planned project⁵⁴¹. Mr Perret also criticised a lack of clarity from the Government relating to the location of wind farm's transmission line corridor, stating that landowners were unaware if their properties would be impacted by this project⁵⁴².

525 Explanatory Note, p. 3, <https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T783.pdf>

526 Explanatory Note, p. 2-3, <https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T783.pdf>

527 Hansard, 12 August 2020, p. 1960 https://documents.parliament.qld.gov.au/events/han/2020/2020_08_12_WEEKLY.PDF

528 Explanatory Note, p. 3, <https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T783.pdf>

529 <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=215&id=3978>

530 State Development, Tourism, Innovation and Manufacturing Committee Report No. 1, p. 14-19.

<https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T1004.pdf>

531 Ibid., p. 19.

532 Public Hearing, 15 June 2020, <https://documents.parliament.qld.gov.au/committees/SDTIMC/2020/ForestWindFarmDB20/trns-ph-15Jun2020.pdf>

533 State Development, Tourism, Innovation and Manufacturing Committee Report No. 1, p.26.

<https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T1004.pdf>

534 Hansard, 11 August 2020, pp. 1899-1905, https://documents.parliament.qld.gov.au/events/han/2020/2020_08_11_WEEKLY.PDF

535 Hansard, 12 August 2020, pp. 1957-1977, https://documents.parliament.qld.gov.au/events/han/2020/2020_08_12_WEEKLY.PDF

536 Hansard, 11 August 2020, pp.1899, https://documents.parliament.qld.gov.au/events/han/2020/2020_08_11_WEEKLY.PDF

537 Ibid., p. 1899.

538 Ibid., p. 1900

539 Hansard, 12 August 2020, p. 1958. https://documents.parliament.qld.gov.au/events/han/2020/2020_08_12_WEEKLY.PDF

540 Ibid., p. 1961.

541 Ibid., p. 1962.

542 Ibid.

The Greens welcomed the Government's support for renewable energy however criticised the fact that the Bill facilitates private ownership of energy production. Michael Berkman, Greens member for Maiwar told Parliament that revenue from the wind farm would "go towards private corporate profit rather than the public good"⁵⁴³. Berkman also shared concerns raised by the LNP relating to the community consultation process⁵⁴⁴.

Minister Jones responded to criticisms relating to the community consultation process by stating that the COVID pandemic had limited the possibility of face-to-face engagement with the local community, and by informing Parliament that further in-person consultation had been scheduled for the following months. The Minister also stated that the community was not informed of the project during initial talks with FWH as the Government did not wish to raise the community's expectations prematurely before the feasibility of the project had been determined. Finally, the Minister stated that concerns related to the location of transmission lines were outside the scope of the Bill and would be determined after further negotiations with landholders⁵⁴⁵.

All parties expressed support for the Planning Act amendments. Very little of the Parliamentary debate addressed this section of the Bill.⁵⁴⁶

The Bill was passed with amendment on 12 August and reached assent on 28 August⁵⁴⁷.

Policy Process

Criterion 1 - Establish Need: Identify a demonstrable need for the policy, based on hard evidence and consultation with all the stakeholders involved, particularly interest groups who will be affected.

Guiding question: Is there a statement of why the policy was needed based on factual evidence and stakeholder input?

Yes. The Bill's explanatory note outlines the legislative amendments are necessary Forest Wind Project could not go ahead with the current legal restrictions on use of state forests. Consultation with the community had taken place before the Bill was drafted, although certain sections of the community expressed the view that this consultation was insufficient⁵⁴⁸.

Amendments to the Planning Act are based on findings from previous court proceedings which found that the SCG's input into infrastructure development in Springfield was insufficient⁵⁴⁹. The State Development, Tourism, Innovation and Manufacturing Committee's review of the Bill states that the Committee is "unclear whether consultation was undertaken" relating to proposed amendments to the Planning Act⁵⁵⁰.

Criterion 2 - Set Objectives: Outline the public interest parameters of the proposed policy and clearly establish its objectives.

Guiding question: Is there a statement of the policy's objectives couched in terms of the public interest?

Yes. This is a line call decision. Providing tenure for the Forest Wind project is presented as being in the public interest. The Government put forward various economic benefits of the policy, including the provision of jobs and skill development to residents of the Wide Bay-Burnett Area⁵⁵¹. The Forest Wind Project is also described as providing "enough clean energy to supply one in four homes across Queensland"⁵⁵²

⁵⁴³ Ibid., p. 1964

⁵⁴⁴ Ibid., p. 1965.

⁵⁴⁵ Ibid., p. 1972.

⁵⁴⁶ Ibid., pp. 1957-1976.

⁵⁴⁷ 56th Parliament Bill's Register, <https://www.parliament.qld.gov.au/Work-of-the-Assembly/Bills-and-Legislation/Bills-previous-Parliaments/56th-Parliament>

⁵⁴⁸ State Development, Tourism, Innovation and Manufacturing Committee Report No. 1, p. 18.

<https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T1004.pdf>

⁵⁴⁹ Explanatory Note, p. 2, <https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T783.pdf>

⁵⁵⁰ Ibid., p.2.

⁵⁵¹ Hansard, 11 August 2020, p. 1900, https://documents.parliament.qld.gov.au/events/han/2020/2020_08_11_WEEKLY.PDF

⁵⁵² Hansard, 20 May 2020, p. 973.

However, It is not clear how the Planning Act amendments are in the public interest. While introducing the Bill, Minister Jones states that Springfield Structure Plan is a “huge job-generating project”, however the specific impact on employment is not explained⁵⁵³.

Criterion 3 – Identify Options: Identify alternative approaches to the design of the policy, preferably with international comparisons where feasible. Engage in realistic costings of key alternative approaches.

Guiding question: Is there a description of the alternative policy options considered before the preferred one was adopted?

Yes. Alternative tenure options under the current legislative framework were included in the explanatory notes of the Bill.

Criterion 4 – Consider Mechanisms: Consider implementation choices along a full spectrum from incentives to coercion.

Guiding question: Is there a disclosure of the alternative ways considered for implementing the chosen policy?

Yes. Alternate methods of implementing the Bill’s objectives are outlined in the Bill’s explanatory note. These involved various uses of existing legislative framework to facilitate the construction of the Forest Wind Project such as revoking the Forest designations of the proposed sites and compulsorily acquiring the forests. These options were determined to not be satisfactory to all parties or did not allow the Forest Wind Project to coexist with HQ Plantations’ licence.

The Government also considered amending the Springfield Structure Plan, rather than the Planning Act, in order to achieve its objectives however the Planning Act amendment was found to provide more certainty and clarity to planning processes⁵⁵⁴.

Criterion 5 – Brainstorm Alternatives: Consider the pros and cons of each option and mechanism. Subject all key alternatives to a rigorous cost-benefit analysis.

Guiding question: Is there a published analysis of the pros/cons and benefits/costs of the alternative options/mechanisms considered in 3 and 4?

Yes. The Explanatory note outlines the reasons why the Bill’s legislative amendments are preferable to other options. There is no cost benefit analysis, however this is likely due to the fact that there are no estimated costs for implementation of the bill⁵⁵⁵.

Criterion 6 – Design Pathway: Develop a complete policy design framework including principles, goals, delivery mechanisms, program or project management structure, the implementation process and phases, performance measures, ongoing evaluation mechanisms and reporting requirements, oversight and audit arrangements, and a review process ideally with a sunset clause.

Guiding question: Is there evidence that a comprehensive project management plan was designed for the policy’s rollout?

No. This score is a line call decision. Forest Wind Holdings submitted a detailed development proposal during the application process including a construction management plan which was approved by the Government⁵⁵⁶. The Forest Wind Project is still in the planning stage⁵⁵⁷, with additional project management data not yet released.

It is unclear how the impact of the changes to the Springfield Structure Plan will be monitored.

Criterion 7 – Consult Further: Undertake further consultation with key affected stakeholders of the policy initiative.

Guiding question: Was there further consultation with affected stakeholders after the preferred policy was announced?

Yes. Further consultation with affected stakeholders occurred during the State Development, Tourism, Innovation and Manufacturing Committee’s consideration of the Bill. The Committee held a public hearing with representatives from HQ

⁵⁵³ Ibid., p. 973.

⁵⁵⁴ Explanatory Note, p. 4, <https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T783.pdf>

⁵⁵⁵ Ibid.

⁵⁵⁶ Forest Wind Development Process, <https://www.forestwind.com.au/development-process-1>

⁵⁵⁷ <https://reneweconomy.com.au/massive-1200mw-wind-farm-planned-for-queensland-flags-15-month-delay/>

Plantations, Timber Queensland, Forest Wind Holdings as well as local community representatives⁵⁵⁸. Stakeholder submissions were also invited, of which 21 were received⁵⁵⁹.

Criterion 8 – Publish Proposals: Produce a Green and then a White paper for public feedback and final consultation purposes and to explain complex issues and processes.

Guiding question: Was there a) a Green paper seeking public input on possible policy options and b) a White paper explaining the final policy decision?

Yes. There is no official Green or White paper for this proposal. However, the Bill was reviewed by the State Development, Tourism, Innovation and Manufacturing Committee. This process included a public hearing with representatives from the Queensland Treasury and the Department of State Development, Tourism and Innovation⁵⁶⁰. A public hearing was also held, and the Committee tabled a report examining the Bill and putting forward recommendations.

Criterion 9 – Introduce Legislation: Develop legislation and allow for comprehensive parliamentary debate especially in committee, and also intergovernmental discussion where necessary.

Guiding question: Was there legislation and adequate Parliamentary debate on the proposed policy initiative?

Yes. Legislation was introduced in Parliament in May. Debate took place during the second and third readings in June.

Criterion 10 – Communicate Decision: Design and implement a clear, simple, and inexpensive communication strategy based on information not propaganda, regarding the new policy initiative.

Guiding question: Is there an online official media release that explains the final policy in simple, clear and factual terms?

No. There is an official media release detailing the passage of the Bill. However, this media release does not mention the Planning Act Amendments and their relation to the Spring Field Structure Plan⁵⁶¹. Very little information relating to the Planning Act Amendments could be found online.

Final Scores

	CRITERION	YES/NO
1	Establish Need (demonstrable, evidence-based need)	Yes
2	Set Objectives (public interest parameters)	Yes
3	Identify Options (consideration of alternatives)	Yes
4	Consider Mechanisms (implementation choices)	Yes
5	Brainstorm Alternatives (cost-benefit analysis)	Yes
6	Design Pathway (policy design framework)	No
7	Consult Further (further consultation after policy announcement)	Yes
8	Publish Proposals (produce Green then White paper, or equivalents)	Yes
9	Introduce Legislation (comprehensive parliamentary debate)	Yes

558 Public Hearing, 15 June 2020, <https://documents.parliament.qld.gov.au/committees/SDTIMC/2020/ForestWindFarmDB20/trns-ph-15Jun2020.pdf>

559 <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=215&id=3978>

560 Public Briefing, 1 June 2020, <https://documents.parliament.qld.gov.au/committees/SDTIMC/2020/ForestWindFarmDB20/trns-pb-01Jun2020.pdf>

561 <https://statements.qld.gov.au/statements/90415>

10 Communicate Decision
(information not propaganda)

No

Final Score

8/10

Queensland Future Fund Act 2020

Policy Background

The Queensland Government's 2019-2020 Mid-Year Fiscal and Economic Review (MYFER) announced the Government's intention to create a "Future Fund". A "Future Fund" would quarantine certain funds which could only be withdrawn to pay government debt⁵⁶². Former Treasurer Jackie Trad stated that establishing a Future Fund aligned with debt-reduction advice given to the Queensland Government by independent ratings agencies and would help Queensland retain its credit rating "without compromising on the infrastructure [Queensland needs] now"⁵⁶³.

Debt-reduction funds are active in Western Australia, New South Wales and at a Commonwealth level⁵⁶⁴. The New South Wales Fund, known as the "Generations Fund" increased its initial \$10 billion investment to \$10.9 billion within its first year of operation⁵⁶⁵.

The *Queensland Future Fund Bill 2020* was introduced by Queensland Treasurer Cameron Dick on the 14th of July 2020⁵⁶⁶. The Bill has multiple objectives.

- Firstly, the Bill aims to establish a Queensland Future Fund under an Act of Parliament. The Bill's Explanatory Note states that the Bill would be following the legislative model established by the *NSW Generation's Funds Act 2018*, a model which had already been accepted by rating agencies.
- The Bill also aims to establish the first Future Fund, known as the "Debt Retirement Fund". Money from the Debt Retirement Fund's interest and investments can only be used to pay off debt or pay costs related to the fund's administration. This will be done by amending the *Financial Accountability Act 2019* to allow the establishment of a Special Purpose Account, earnings from which can only be used for purposes set out in the Act⁵⁶⁷.
- The Bill enables the establishment of additional Future Funds in the future⁵⁶⁸.
- The Bill establishes that any state assets invested in the Future Fund must not be sold to the private sector and can only be transferred to a government entity or government-owned corporation⁵⁶⁹.

The Bill also amends the state's *Superannuation (State Public Sector Act)* to provide additional guarantees to the superannuation entitlements of members of the State's Defined Benefit superannuation scheme. All member's entitlements were already guaranteed by the State. The Bill aims to strengthen this guarantee by requiring the State to hold assets in the Government's Defined Benefit Fund which are equal to the State's benefit liabilities. The Bill proposes Defined Benefit Fund's surplus be measured every three years by the state Actuary⁵⁷⁰.

The Treasurer stated that the Bill would be "vital in helping Queensland navigate uncertain times" by helping to reduce state debt and ensuring ongoing public ownership of state assets⁵⁷¹.

Shortly after the Bill was introduced into Parliament, the Treasurer announced that the Debt Retirement Fund would be seeded with an investment of \$5b. This includes the transfer of publicly owned assets to the Fund as well the investment of \$1b from the surplus of the Defined Benefit Fund.⁵⁷²

The Future Fund Bill was referred to the Economics and Governance Committee for scrutiny. The Committee's report, tabled on 6 August 2020, recommended the Bill be passed with no proposed amendments. The Committee held a hearing and public briefing and invited stakeholder submissions, of which only two were received. The first submission, from the Australian Nurses and Midwives Union, supported the passing of the Bill. The second submission came from

562 Queensland Government 2019-2020 Mid-Year Fiscal and Economic Review, p. 19, <https://s3.treasury.qld.gov.au/files/Mid-Year-Fiscal-and-Economic-Review-2019-20.pdf>

563 Ibid., p. 3, <https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T11225.pdf>

564 Economics and Governance Committee Report no. 44, p. 4,

<https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T11225.pdf>

565 NSW Treasury, NSW Generations Fund Annual Report 2018-19, p 2, https://www.treasury.nsw.gov.au/sites/default/files/2019-12/NGF%20Annual%20Report_FINAL_0.pdf.

566 56th Parliament Bills Register, <https://www.parliament.qld.gov.au/Work-of-the-Assembly/Bills-and-Legislation/Bills-previous-Parliaments/56th-Parliament>

567 Explanatory Note, p. 2, <https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T1135.pdf>

568 Explanatory Note, pp. 1-2, <https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T1135.pdf>

569 Ibid., p. 4.

570 Economics and Governance Committee Report no. 44, p. 4,

<https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T11225.pdf>

571 Hansard, 14 July 2020, pp. 1526-1527.

572 Ibid., p. 8.

economist Gene Tunny of Adept Economics, who described the Future Fund as “undesirable” based on concerns the Fund would “lock up funds” and “reduce [government] flexibility”⁵⁷³.

The Bill was debated in Parliament on the 12th and 13th of August. The Bill declared as an urgent matter to be debated before the state election and was therefore debated cognately with the Royalty Legislation Bill, limiting MP’s speaking time to five minutes per bill⁵⁷⁴.

The LNP did not oppose the Bill however put forward several criticisms. Multiple Members referenced Mr. Tunny’s Committee submission in criticising the Government’s economic planning⁵⁷⁵. Member for Everton Tim Mander raised concerns relating to the Government’s costing of the assets which were to be used to seed the Fund, stating that valuations were only estimates and could produce lower than expected returns for the Fund⁵⁷⁶.

Multiple MP’s also criticised the Government’s decision to measure the Government’s Defined Benefit Funds’ surplus every three years, rather than yearly. Mr Mander stated that this “decreased transparency” was “worrying” for public sector employees with superannuation in the Defined Benefit scheme⁵⁷⁷. Moreover, the limited time allocated to debate the Bill was criticised, with Mr Mender describing the cognate debate as a “desperate attempt to avoid legislative scrutiny”⁵⁷⁸.

Michael Berkman, the Greens Member for Maiwar did not make comment on the Future Fund Bill, instead focusing on the Royalty Legislation Bill. Katter Australia Party MP Bob Katter stated that his party “understood” the objectives of the Bill however suggested that a portion of the Fund be quarantined for the development of North Queensland⁵⁷⁹.

Before the Bill’s third reading, the Treasurer stated his confidence in the accuracy of valuations of the assets used to seed the Debt Retirement Fund in response to criticisms from the LNP. The Treasurer also confirmed that members of the Direct Benefit scheme would not be negatively impacted by the Bill in any way⁵⁸⁰. The Bill was passed after the third reading and received ascent on 20/08/2020⁵⁸¹.

Policy Process

Criterion 1 - Establish Need: Identify a demonstrable need for the policy, based on hard evidence and consultation with all the stakeholders involved, particularly interest groups who will be affected.

Guiding question: Is there a statement of why the policy was needed based on factual evidence and stakeholder input?

Yes. The Government established that the Future Fund was needed in order to pay off state debt and support Queensland’s credit rating. In proposing the Bill, the Government references the success of the New South Wales *Generations Fund*, on which this Fund is modelled⁵⁸².

The Government underwent consultation with numerous stakeholders before drafting the Bill. These included Queensland Treasury Corporation, the Queensland Investment Corporation and multiple ratings agencies⁵⁸³. In consultation with the three ratings agencies in operation in Queensland, the Government received support for a Future Fund as a method of debt reduction, especially in the face of the COVID-19 pandemic⁵⁸⁴.

Amendments to the *Superannuation (State Public Sector Act)* were developed in consultation with super fund Qsuper and the State Actuary in order to achieve previously made commitments to fully fund future defined benefit liabilities⁵⁸⁵.

573 Ibid., p. 10.

574 Hansard, 12 August 2020, https://documents.parliament.qld.gov.au/events/han/2020/2020_08_12_WEEKLY.pdf

575 Hansard, 13 August 2020, p. 2059, https://documents.parliament.qld.gov.au/events/han/2020/2020_08_13_WEEKLY.PDF

576 Hansard, 12 August 2020, p. 1981. https://documents.parliament.qld.gov.au/events/han/2020/2020_08_12_WEEKLY.pdf

577 Ibid., p. 1981.

578 Ibid., p. 1978.

579 Hansard, 13 August 2020, p. 2056. https://documents.parliament.qld.gov.au/events/han/2020/2020_08_13_WEEKLY.PDF

580 Ibid.

581 56th Parliament Bills Register, <https://www.parliament.qld.gov.au/Work-of-the-Assembly/Bills-and-Legislation/Bills-previous-Parliaments/56th-Parliament>

582 Hansard, 12 August 2020, p. 1977, https://documents.parliament.qld.gov.au/events/han/2020/2020_08_12_WEEKLY.pdf

583 Explanatory Note, p. 3, <https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T1135.pdf>

584 Public Briefing, 27 July 2020, <https://documents.parliament.qld.gov.au/committees/EGC/2020/QFFB2020/trns-pb-27July2020-QFFB2020.pdf>

585 Ibid., p. 4.

Criterion 2 - Set Objectives: Outline the public interest parameters of the proposed policy and clearly establish its objectives.

Guiding question: Is there a statement of the policy's objectives couched in terms of the public interest?

Yes. The objectives public interest parameters of this policy were outlined by various ALP members in Parliament. The Future Fund was described as keeping “strategic public assets in Queenslanders’ hands” while paying down state debt. Debt reduction was also said to “free up [Queensland’s] borrowing capacity” in order to invest in additional, “job-creating” infrastructure⁵⁸⁶.

Changes to the *Superannuation (State Public Sector Act)* were said to “deliver future security” for defined benefit scheme members⁵⁸⁷. This is done by introducing further safeguards to ensure that members are guaranteed the payment of their full entitlements once they retire.

Criterion 3 – Identify Options: Identify alternative approaches to the design of the policy, preferably with international comparisons where feasible. Engage in realistic costings of key alternative approaches.

Guiding question: Is there a description of the alternative policy options considered before the preferred one was adopted?

No. There is no published description of the alternative policy options considered by the government before the decision to create a Future Fund was made.

Criterion 4 – Consider Mechanisms: Consider implementation choices along a full spectrum from incentives to coercion.

Guiding question: Is there a disclosure of the alternative ways considered for implementing the chosen policy?

Yes. The Bill’s Explanatory Note outlines an alternative choice for the establishment of the Future Fund. This option related to the establishment of Future Funds as departmental accounts, rather than “special purpose accounts”⁵⁸⁸.

Criterion 5 – Brainstorm Alternatives: Consider the pros and cons of each option and mechanism. Subject all key alternatives to a rigorous cost-benefit analysis.

Guiding question: Is there a published analysis of the pros/cons and benefits/costs of the alternative options/mechanisms considered in 3 and 4?

No. The Explanatory Note outlines the Government’s concern that establishing the Future Fund as a departmental account would not satisfy the requirements of the ratings agencies. The Note therefore states that “special purpose accounts” must be created⁵⁸⁹.

There are no listed alternatives to the *Superannuation (Public Sector Act)* amendments.

Criterion 6 – Design Pathway: Develop a complete policy design framework including principles, goals, delivery mechanisms, program or project management structure, the implementation process and phases, performance measures, ongoing evaluation mechanisms and reporting requirements, oversight and audit arrangements, and a review process ideally with a sunset clause.

Guiding question: Is there evidence that a comprehensive project management plan was designed for the policy’s rollout?

No. There were issues over ultimate objectives and how to monitor them.

⁵⁸⁶ Hansard, 12 August 2020, p. 1995, https://documents.parliament.qld.gov.au/events/han/2020/2020_08_12_WEEKLY.pdf

⁵⁸⁷ Ibid., p. 1990.

⁵⁸⁸ Explanatory Note, p. 2, <https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T1135.pdf>

⁵⁸⁹ Explanatory Note, p. 2

<https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T1135.pdf>
<https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T1135.pdf>

The Bill establishes that assets in any Future Fund would be managed by the Queensland Investment Corporation. The Bill outlines the ways in which movements to and from any Future Funds would be monitored and disclosed by the Treasury⁵⁹⁰. The Bill also outlines the process by which the State Actuary would measure the assets held by the State to ensure they are equal to the state's benefit liabilities⁵⁹¹.

Criterion 7 – Consult Further: Undertake further consultation with key affected stakeholders of the policy initiative.

Guiding question: Was there further consultation with affected stakeholders after the preferred policy was announced?

Yes. Further consultation with affected stakeholders occurred through the Economics and Governance Committee's enquiry. The Committee held a public hearing and accepted stakeholder submissions. The Committee also requested and received advice from the Queensland Treasury on issues that were raised in submissions⁵⁹².

Criterion 8 – Publish Proposals: Produce a Green and then a White paper for public feedback and final consultation purposes and to explain complex issues and processes.

Guiding question: Was there a) a Green paper seeking public input on possible policy options and b) a White paper explaining the final policy decision?

Yes. While Green or White paper was not published, the Economics and Governance Committee's inquiry process gave the public as well as key stakeholders the opportunity to give feedback on the issue. The Committee report also explains the issue and Bill in detail⁵⁹³.

Criterion 9 – Introduce Legislation: Develop legislation and allow for comprehensive parliamentary debate especially in committee, and also intergovernmental discussion where necessary.

Guiding question: Was there legislation and adequate Parliamentary debate on the proposed policy initiative?

Yes. Legislation was introduced to Parliament on the 14th of July 2020. The Bill was debated on the 12th and 13th of August 2020. While the decision to cognate the Bill with the Royalty Legislation Bill was criticised by certain MPs, the Bill did not appear to require a substantial additional amount of time to be debated as it was supported by the opposition.

Criterion 10 – Communicate Decision: Design and implement a clear, simple, and inexpensive communication strategy based on information not propaganda, regarding the new policy initiative.

Guiding question: Is there an online official media release that explains the final policy in simple, clear and factual terms?

No. There is no online official media release explaining the final policy. While the former Treasurer Jackie Trad published a statement announcing the Government's intention to establish a Future Fund in 2019, there was no stand-alone statement released once the Bill was passed. The establishment of the Debt Retirement Fund is briefly mentioned in a larger statement released in September 2020.

Final Scores

	CRITERION	YES/NO
1	Establish Need (demonstrable, evidence-based need)	Yes
2	Set Objectives (public interest parameters)	Yes
3	Identify Options (consideration of alternatives)	No
4	Consider Mechanisms (implementation choices)	Yes

590 Economics and Governance Committee Report no. 44, p. 6,
<https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T1225.pdf>

591 Ibid., p. 9.

592 Ibid., p. 1.

593 Ibid.

EVIDENCE BASED POLICY ANALYSIS

5	Brainstorm Alternatives (cost-benefit analysis)	No
6	Design Pathway (policy design framework)	No
7	Consult Further (further consultation after policy announcement)	Yes
8	Publish Proposals (produce Green then White paper, or equivalents)	Yes
9	Introduce Legislation (comprehensive parliamentary debate)	Yes
10	Communicate Decision (information not propaganda)	No
Final Score		6/10