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# How to fix the broken system of public policy making

By [Percy Allan](#)

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*Last week the NSW Legislative Council introduced a standing order requiring that all government bills include a Statement of Public Interest (SPI). This is the first time in Australia that a public policy framework for interrogating bills has been given legal force. It's a big breakthrough that other governments and parliaments should emulate.*

Australian federal and state governments continue to fall far short of good practice in developing and deciding policies that affect us all.

That's the conclusion of two philosophically opposed Right and Left think tanks that were commissioned by the Evidence-Based Policy Research Project to review twenty federal and state laws enacted in 2021-22. With five years of reviews there are now 100 case studies.

The poor state of public policy making in Australia is despite each government having regulatory impact and cost/benefit guidelines for rigorous policy analysis before decisions are made. The findings suggest they are honoured in the breach, not the observance.

**Ten Questions**

The think tanks each asked ten questions of twenty federal and state laws enacted in 2021-22. They go to the heart of good policy making.

1. **Need:** Is there a statement of why the policy was needed based on factual evidence and stakeholder input?
2. **Objectives:** Is there a statement of the policy's objectives couched in terms of the public interest?
3. **Options:** Is there a description of the alternative policy options considered before the preferred one was adopted?
4. **Mechanisms:** Is there a disclosure of the alternative ways considered for implementing the chosen policy?
5. **Brainstorm:** Is there a published analysis of the pros/cons, data/assumptions and benefits/costs of the alternative options/mechanisms considered in 3 and 4?
6. **Pathway:** Is there evidence that a comprehensive project management plan was designed for the policy's rollout?
7. **Consultation:** Was there further consultation with affected stakeholders after the preferred policy was announced?
8. **Papers:** Was there (a) a green paper seeking public input on possible policy options and (b) a white paper explaining the final policy decision?
9. **Legislation:** Was the policy initiative based on new or existing legislation that enabled comprehensive Parliamentary debate and public discussion?
10. **Communication:** Is there an official online media release or website that explains the final policy in simple, clear, and factual terms?

Averaging the two think tanks total scores out of a possible 10.0 for each of the twenty laws reviewed, five received solid scores (between 7.0 and 9.5), six got unacceptable scores (below 5.0), and nine were mediocre (between 5.0 and 6.5).

The three laws that most approximated good policy making involved:

- NSW disease testing of persons who assault officials with their bodily fluids,
- Qld landlords and tenant's rights, and
- Federal changes to the definition of casual work in awards.

The ones that rated lowest covered:

- Federal restriction on political parties using other party names,

- NSW ban on protestors disrupting roads and infrastructure, and
- Federal temporary halving of fuel excise duty and custom tariffs.

The research was commissioned by the Evidence-Based Policy Research Project (https://www.evidencebasedpolicy.org.au/research/) and the work was done by the Blueprint Institute, an 'economically conservative' think tank and Per Capita Australia, a 'progressive' think tank.

The average scores of the two think tanks for each law are shown below.

**Solid Process** (Scored 7.0 to 10.0 out of a possible 10.0)

- Qld Housing Legislation Amendment Act (9.5)
- NSW Mandatory Disease Testing Act (9.5)
- Fed Fair Work Amendment Act (9.0)
- Fed Aged Care and Other Legislation Amendment Act (7.5)
- Qld Voluntary Assisted Dying Act (7.5)

**Mediocre Process** (Scored 5.0 to 6.5)

- Vic Sex Work Decriminalisation Act (6.5)
- Fed Narcotic Drugs Amendment Act (6.5)
- NSW Voluntary Assisted Dying Act (6.5)
- Vic Public Health and Wellbeing Amendment Act (6.0)
- Qld Youth Justice and Other Legislation Amendment Act 6.5)
- Fed Autonomous Sanctions Amendment Act (6.0)
- Fed Parliamentary Workplace Reform Act (5.5)
- Vic Zero & Low Emission Vehicle…Charge Act (5.5)
- Qld Defamation and Other Legislation Act (5.5)

**Unacceptable Process** (Scored nil to 4.5)

- Fed Foreign intelligence Legislation Amendment Act (4.5)
- NSW Electric Vehicles Act (4.5)
- Vic Windfall Gains Tax…Further Amendment Act (4.5)
- Fed Customs/Excise Tariff Amendment Act (4.0)
- NSW Roads and Crimes Legislation Amendment Act (3.5)
- Fed Electoral Legislation Amendment Act (2.0)

A description of each law is provided in appendix 2 of the EBP Research Project's media statement, November 18th, 2022.

Remarkably, there was only one case where the think tanks' total score for each law differed by more than one point. That was the Federal Autonomous Sanctions Amendment Act which differed by two points. Of the 200 questions marked in the 20 case studies the think tanks had identical scores on 175 and differed in judgement on 25.

It is reassuring that experts from both a Right and Left think tank could broadly agree in almost nine out of ten cases on whether legislation had been well formulated even though they did not necessarily agree on the policy prescriptions.

This suggests that standardising public policy making to accord with good practice (such as addressing the ten questions) could remove much of the distrust and discord in Australian politics. Adhering to a good process can make a public policy more widely accepted because it removes objections over insufficient information and lack of consultation.

The research found that most scope for improvement in policy making was in:

- 'Brainstorm Alternatives' (compare the costs and benefits of alternative policy options),
- 'Consider Methods' (explore different mechanisms to implement policies),
- 'Identify Options' (investigate alternative policy solutions in advance),
- 'Two-Step Process' (use 'green' and 'white' papers for developing policy), and
- 'Consult Further' (i.e., involve stakeholders again after a policy has been chosen).

**Big Breakthrough**

Following three years of representations by the EBP Research Project, the NSW Legislative Council in May adopted a sessional order requiring all government bills include a Statement of Public Interest (SPI) to answer the first seven of the ten questions posed above. The NSW Premier directed every government agency to observe the order.

Our close monitoring of the standard of the 34 SPIs tabled with bills since June show that two thirds adequately answered most if not all the questions and that the quality of SPIs improved over time.

Last week the Legislative Council upgraded its temporary order to a standing one. That's the first time in Australia that a public policy framework for interrogating bills has been given legal force.

It's a big breakthrough that other governments and parliaments should emulate. Only by insisting on meaningful answers to the basic steps in good policy making can parliaments genuinely hold governments to account on bills.



Percy Allan

Percy Allan AM is chair of the Evidence Based Policy Research Project. He is also a Visiting Professor at the Institute for Public Policy and Governance, University of Technology Sydney. He was formerly Secretary, NSW Treasury and Chair, NSW Premier's Council on the Cost and Quality if Government.

Source: https://johnmenadue.com/the-poor-quality-of-law-makingand-how-one-state-is-now-fixing-it/