

EVIDENCE-BASED POLICY ANALYSIS

A REPORT COMMISSIONED BY THE EVIDENCE
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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 country's future.

About the authors

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Introduction

Evidence-based policy

This report addresses the problem that policymaking in Australia is falling short of best practice. Policies are often built ‘on the run’ as quick reactions to the political issue of the day, designed to capture the interest of the 24-hour news cycle or motivated by short-term political advantage.¹ 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”.² 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 (IPA) – 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.

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.

This report is the project’s third annual instalment. In 2020, in light of the extraordinary policy-making times we find ourselves in, the project’s Steering Committee consulted with Professor Kenneth Wiltshire to revisit the methodology. These modifications are outlined in the Methodology section below.

Methodology

The Wiltshire business case criteria are presented in full below. For a policy to score a ‘yes’ in each criterion, the policymaker must satisfy the description provided.

¹ <http://www.ipaa.org.au/documents/2012/05/public-policy-drift.pdf/>

² <http://www.ipaa.org.au/documents/2012/05/public-policy-drift.pdf/>

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 both think tanks have committed 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 are 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.

The original Wiltshire criteria explicitly excluded policy responses that did not involve development of new legislation and placed warranted emphasis on the need for consultations with stakeholders, Green and White Paper processes, legislative bills, and Parliamentary debate. Given the number of 2020 policies that were necessarily introduced via immediate actions or under emergency powers, Professor Wiltshire agreed to a slight modification of the questionnaire used to apply the criteria this year.

Listed below are the two sets of questionnaires developed by the NewDemocracy Foundation for use in this year's analysis. The first questionnaire applies to 'normal' decisions and the second to 'emergency' decisions.

Normal decisions

'Normal' is a situation warranting standard good policy-making practice since immediate action is not necessitated by an emergency.

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 Analysis

Is there a published analysis of the pros/cons 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 online official media release or website that explains the final policy in simple, clear and factual terms?

Emergency decisions

An 'emergency' is an exceptional, unexpected, serious and dangerous situation requiring immediate action.

1 Urgency

Was a justification given for the short timeline of the policy decision and was it accepted by the Parliamentary Opposition and ratified under existing or new legislation?

2 Need

Was there a statement of why the policy was needed based on factual evidence and expert opinion?

3 Objectives

Was there a statement of the policy's objectives couched in terms of the public interest?

4 Options

Was there any disclosure of why the chosen policy was preferred over other possible policy responses?

5 Mechanisms

Was there any disclosure of different ways (e.g. incentives versus fines) considered for executing the chosen policy?

6 Analysis

Was there any disclosure of technical data, working assumptions and mathematical modelling behind the chosen policy?

7 Pathway

Was there any evidence of a carefully considered logistical strategy for rolling out the policy decision?

8 Consultation

Was there meaningful input from relevant experts and stakeholder representatives before and after the policy decision?

9 Communication

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

10 Review

Was there a stated intention to review the lessons learnt from the official policy response once the emergency was over?

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.

The project requires us to put ideology and opinions to one side. We understand, however, that this is never truly possible, and that ideological bias will of course filter into this analysis. We have done our best, however, and wherever Per Capita or its staff are on the record as criticising a particular policy decision, we have noted this in individual Disclaimer sections at the top of the analysis.

Findings

For a policy to be deemed as “acceptable, sound, or excellent” under the Wiltshire test, it must meet 7 to 10 of the 10 criteria. Policies that score 5 or 6 out of 10 are deemed “mediocre” while any policy that meets fewer than 5 of the 10 criteria is deemed “unacceptable”.

This year we saw the highest number of “acceptable, sound, or excellent” policies since the project commenced in 2018: 13 out of 20 policies met 7 or more of the 10 criteria. Only seven policies in 2018 and six in 2019 met this mark. A further four policies this year met the criteria for a “mediocre” ranking, while three were deemed “unacceptable”.

Of the federal policies implemented as emergency measures, three policies passed the Wiltshire test, with one judged “mediocre” and one “unacceptable”. At the state level, Victoria and Queensland’s use of emergency powers passed the Wiltshire test, while New South Wales was judged “mediocre”.

Federal emergency policies

Early release of superannuation: **5/10**

JobKeeper: **7/10**

COVIDSafe: **7/10**

HomeBuilder: **4/10**

Early Childhood Education and Care Relief Package: **7/10**

States’ use of emergency powers

Victoria: **7/10**

New South Wales: **6/10**

Queensland: **7/10**

Of the federal policies enacted under normal conditions, two policies passed, and one was judged “unacceptable”. In New South Wales and Queensland, two out of three non-emergency policies passed the Wiltshire test with the other judged “mediocre” and in Victoria, two out of three policies also passed, with the other judged “unacceptable”.

Federal

My Health Record: **10/10**

Migration Amendment (Repairing Medical Transfers) Act 2019: **3/10**

Treasury Laws Amendment (Consumer Data Right) Act 2019: **8/10**

Victoria

Wage Theft Act 2020: **8/10**

Gender Equality Act 2020: **8/10**

Free TAFE for priority courses: **4/10**

New South Wales

Abortion Law Reform Act 2019: **7/10**

Music Festivals Act 2019: **7/10**

Right to Farm Act 2019: **6/10**

Queensland

Child Death Review Legislation Amendment Act 2020: **7/10**

Police Service Administration (Discipline Reform) and Other Legislation Amendment Act 2019: **6/10**

Personalised Transport Ombudsman Act 2019: **9/10**

Full scores for each policy are outlined in the table overleaf.

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Full results table

Policy	Criteria (Emergency)										Final score
	Urgency	Need	Objectives	Options	Mechanisms	Analysis	Pathway	Consultation	Communication	Review	
FEDERAL											
Early release of superannuation	Yes	No	Yes	No	No	Yes	No	No	Yes	Yes	5/10
JobKeeper	Yes	Yes	Yes	No	Yes	No	No	Yes	Yes	Yes	7/10
COVIDSafe	Yes	Yes	Yes	No	Yes	No	No	Yes	Yes	Yes	7/10
HomeBuilder	Yes	No	No	No	Yes	No	No	No	Yes	Yes	4/10
Early Childhood Education and Care Relief Package	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes	Yes	7/10
STATES: USE OF EMERGENCY POWERS											
Victoria	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes	Yes	7/10
New South Wales	Yes	Yes	Yes	No	No	No	Yes	No	Yes	Yes	6/10
Queensland	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes	Yes	7/10

Policy	Criteria (Non-emergency)										Final score
	Need	Objectives	Options	Mechanisms	Analysis	Pathway	Consultation	Papers	Legislation	Communication	
FEDERAL											
My Health Record	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	10/10
Migration Amendment (Repairing Medical Transfers) Act 2019	No	No	No	No	Yes	No	Yes	No	Yes	No	3/10
Treasury Laws Amendment (Consumer Data Right) Act 2019	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	8/10
VICTORIA											
Wage Theft Act 2020	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	8/10
Gender Equality Act 2020	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	8/10
Free TAFE for priority courses	No	Yes	No	No	No	No	Yes	No	Yes	Yes	4/10

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NEW SOUTH WALES											
Abortion Law Reform Act 2019	Yes	Yes	Yes	Yes	No	No	Yes	No	Yes	Yes	7/10
Music Festivals Act 2019	Yes	Yes	No	Yes	No	Yes	Yes	No	Yes	Yes	7/10
Right to Farm Act 2019	No	Yes	Yes	Yes	No	No	Yes	No	Yes	Yes	6/10
QUEENSLAND											
Child Death Review Legislation Amendment Act 2020	Yes	Yes	Yes	Yes	No	No	Yes	No	Yes	Yes	7/10
Police Service Administration (Discipline Reform) and Other Legislation Amendment Act 2019	Yes	Yes	No	Yes	No	No	Yes	No	Yes	Yes	6/10
Personalised Transport Ombudsman Act 2019	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	9/10

Federal case studies: emergency

All of the federal emergency case studies considered here were policy decisions made in the context of the COVID-19 pandemic.

Early release of superannuation

Policy background

The second package of economic stimulus measures announced in response to the COVID-19 pandemic – legislated as the Coronavirus Economic Response Package Omnibus Act 2020 – included provisions to allow eligible people to access their superannuation early.³

The Treasurer announced on 22 March 2020 that individuals who could show a reduction in hours or income of at least 20% would be able to draw down \$10,000 from their superannuation in the 2019/20 financial year and a second \$10,000 in the 2020/21 financial year.⁴

The announcement took the superannuation industry by surprise. A number of industry representatives reported that there was no consultation prior to the announcement,⁵ and that as a result they were potentially facing liquidity risks.⁶

The Omnibus Bill was introduced to the House of Representatives on 23 March, with Schedule 13 containing the amendments to the Retirement Savings Accounts Regulations 1997 and the Superannuation Industry (Supervision) Regulations 1994 to provide for the early release.⁷ The Treasurer justified the early release with the argument that people should be able to access their superannuation balances in times of emergency “because this is the people’s money.”⁸

In Parliament, the Opposition placed it clearly on the record that they had had the opportunity to feed into the policymaking process for the package in the cabinet room and that they had opposed early access to superannuation, but that they would support the overall package due to the urgency of getting money into the economy.⁹ Labor’s criticisms of the policy included that people would permanently damage their retirement by withdrawing their superannuation at the very bottom of the market, and that

³ <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/supporting-australian-workers-and-business>

⁴ <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/transcripts/joint-press-conference-australian-parliament-house-act-0>

⁵ <https://www.smh.com.au/politics/federal/financially-stressed-workers-to-be-able-to-take-20-000-from-super-20200322-p54cmt.html>

⁶ <https://www.investmentmagazine.com.au/2020/03/canberra-grants-early-access-to-super/>

⁷ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6521

⁸ See Josh Frydenberg MP’s second reading speech at

https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/bead2837-76c9-4ce9-952b-eafe8e2d614f/toc_pdf/House%20of%20Representatives_2020_03_23_7656_Official.pdf;fileType=application%2Fpdf#search=%22chamber/hansardr/bead2837-76c9-4ce9-952b-eafe8e2d614f/0019%22, page 2781

⁹ See Dr Jim Chalmer MP’s second reading speech at https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/bead2837-76c9-4ce9-952b-eafe8e2d614f/toc_pdf/House%20of%20Representatives_2020_03_23_7656_Official.pdf;fileType=application%2Fpdf#search=%22chamber/hansardr/bead2837-76c9-4ce9-952b-eafe8e2d614f/0019%22, page 2783 – 2785

they should not be forced to do so by a government that was not forthcoming with income support, thereby “sending the bill to future generations as well as possibly compromising the stability of the financial system.”¹⁰

Second reading amendments from Shadow Minister for Financial Services Stephen Jones MP called on the government to acknowledge the negative impact that drawing down superannuation early could have on retirement balances and that early access should be a last resort; to certify formally that there would be no systemic impacts on the superannuation system; to increase funding for financial counselling and advice; and to consult further before implementing Schedule 13.¹¹

Jones argued that “an employee on average wages their late 20s who withdraws \$20,000 from their superannuation account will be somewhere between \$80,000 and \$100,000 worse off over their lifetime.”¹² His amendment did not pass the House.¹³ Labor also circulated an amendment in committee of the whole to ensure the prompt payment of any funds accessed early and to mandate the publication of full reports on the early access scheme, but this was also negated.¹⁴

In the Senate, Jones’ second reading amendment was moved again by Senator Gallagher and this time, was agreed to.¹⁵ The package passed both houses the same day it was introduced and received Assent on 24 March.

At the time of writing, concerns continue to be expressed about the scheme, particularly given the fact that estimates for the number of people using the scheme have blown out from 1.5 million people withdrawing \$27 billion in superannuation to 4 million people withdrawing \$42 billion.¹⁶

It is understood that more than half a million people have completely emptied their superannuation accounts,¹⁷ and that the ATO has not been checking whether people choosing to empty their accounts are in fact eligible for the scheme.¹⁸

¹⁰ See Tony Burke MP’s second reading speech at https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/beat2837-76c9-4ce9-952b-eafe8e2d614f/toc_pdf/House%20of%20Representatives_2020_03_23_7656_Official.pdf;fileType=application%2Fpdf#search=%22chamber/hansardr/beat2837-76c9-4ce9-952b-eafe8e2d614f/0019%22, page 2797 and Brendan O’Connor MP’s second reading speech at https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/beat2837-76c9-4ce9-952b-eafe8e2d614f/toc_pdf/House%20of%20Representatives_2020_03_23_7656_Official.pdf;fileType=application%2Fpdf#search=%22chamber/hansardr/beat2837-76c9-4ce9-952b-eafe8e2d614f/0019%22, page 2803

¹¹ See https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/beat2837-76c9-4ce9-952b-eafe8e2d614f/toc_pdf/House%20of%20Representatives_2020_03_23_7656_Official.pdf;fileType=application%2Fpdf#search=%22chamber/hansardr/beat2837-76c9-4ce9-952b-eafe8e2d614f/0019%22, pages 2807-8

¹² Ibid, page 2809

¹³ See Division in https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/beat2837-76c9-4ce9-952b-eafe8e2d614f/toc_pdf/House%20of%20Representatives_2020_03_23_7656_Official.pdf;fileType=application%2Fpdf#search=%22chamber/hansardr/beat2837-76c9-4ce9-952b-eafe8e2d614f/0019%22, page 2860

¹⁴ https://parlinfo.aph.gov.au/parlInfo/download/legislation/amend/r6521_amend_b0c405d4-cece-4b33-bc23-b298399e1b83/upload_pdf/20044Jones.pdf;fileType=application%2Fpdf

¹⁵ See https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansards/1a9389a8-d618-42f0-835f-581c3ea13dd2/toc_pdf/Senate_2020_03_23_7655_Official.pdf;fileType=application%2Fpdf#search=%22chamber/hansards/1a9389a8-d618-42f0-835f-581c3ea13dd2/0107%22, pages 1822-3

¹⁶ <https://www.smh.com.au/politics/federal/young-australians-ramp-up-their-early-superannuation-claims-20200731-p55haw.html>

¹⁷ <https://www.abc.net.au/news/2020-07-30/early-access-superannuation-estimate-double-coronavirus-payment/12505984>

¹⁸ <https://www.smh.com.au/politics/federal/we-give-money-to-people-on-their-say-so-ato-admits-no-checks-on-early-super-access-20200730-p55h00.html>

Policy process

1 Urgency

Was a justification given for the short timeline of the policy decision and was it accepted by the Parliamentary Opposition and ratified under existing or new legislation?

Yes. Like the other measures that were packaged into the stimulus Bill, the short timeline of the decision was justified by the need to get money into the economy and into people's pockets.

2 Need

Was there a statement of why the policy was needed based on factual evidence and expert opinion?

No. The government did not provide evidence or expert opinion to indicate that the best way to support people struggling financially was to allow them early access to their superannuation.

3 Objectives

Was there a statement of the policy's objectives couched in terms of the public interest?

Yes. The Treasurer did make a public interest argument that the policy would allow Australians facing hardship to access finances they would otherwise not have had access to.

4 Options

Was there any disclosure of why the chosen policy was preferred over other possible policy responses?

No. There was no explanation of why the government chose early access to superannuation as the way to offer financial support to people who had lost income due to COVID-19 over other options such as expanded income support, wage subsidies, etc.

5 Mechanisms

Was there any disclosure of different ways (e.g. incentives versus fines) considered for executing the chosen policy?

No. There was no disclosure of different mechanisms considered for executing the policy. Alternative mechanisms proposed through amendments in Parliament (for the ATO to change the information it provides to superannuation funds when a fund member is found eligible to receive early relief in order to enable prompter payment) were negatived.

6 Analysis

Was there any disclosure of technical data, working assumptions and mathematical modelling behind the chosen policy?

Yes. The Treasurer disclosed from the first announcement that the modelling suggested \$27 billion of superannuation would be withdrawn, and the point was made that this represented less than 1% of the total superannuation system.

7 Pathway

Was there any evidence of a carefully considered logistical strategy for rolling out the policy decision?

No. The logistics that were announced either turned out to be incorrect (the projections of how many people would withdraw and the amount they would withdraw) or unapplied (the eligibility criteria for early access).

8 Consultation

Was there meaningful input from relevant experts and stakeholder representatives before and after the policy decision?

No. A number of different members of the superannuation industry spoke about the lack of consultation with the industry.

9 Communication

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

Yes. There is a web page on the ATO's website detailing the final policy.¹⁹

10 Review

Was there a stated intention to review the lessons learnt from the official policy response once the emergency was over?

Yes. The policy is being considered as part of the Senate Select Committee on COVID-19's inquiry into the government's response to the COVID-19 pandemic.

Final scores

	Criterion	Yes/No
1	Urgency	Yes
2	Need	No
3	Objectives	Yes
4	Options	No
5	Mechanisms	No
6	Analysis	Yes
7	Pathway	No
8	Consultation	No
9	Communication	Yes
10	Review	Yes
		5/10

¹⁹ <https://www.ato.gov.au/individuals/super/withdrawing-and-using-your-super/early-access-to-your-super/>

JobKeeper

Policy background

By 30 March 2020, Australia was well into the throes of the COVID-19 crisis. The WHO had declared COVID-19 a global pandemic, the Australian border had closed, and a strict lockdown was in place that allowed just four reasons to leave the home and closed businesses across the country, causing a spike in unemployment.

Two economic stimulus packages had already been announced, which had amongst other things provided a \$750 stimulus payment to individuals in receipt of social security allowances, increased the amount of the JobSeeker payment by the \$550 Coronavirus Supplement, introduced wage subsidies for apprentices and trainees, and legislated cash payments and a guaranteed loan scheme for suffering businesses.²⁰

In terms of direct support to employees who had either lost their jobs or were at risk of losing their jobs however, by this point the only wage subsidy offered had been a reduction in the amounts of PAYG withholding tax that businesses would have to pay to the Australian Tax Office (ATO). New Zealand, Canada, and the United Kingdom had all introduced fuller wage subsidies as part of their stimulus packages, and during Parliamentary debate over the second economic stimulus package on 23 March, the government came under pressure to do the same.²¹ Lobbying efforts from the Opposition, the union movement, and the business community all called for wage subsidies.²²

On 30 March the third and largest stimulus package was announced, which included the JobKeeper program.²³ Under the JobKeeper program, eligible businesses who were able to demonstrate a significant reduction in turnover as a result of the COVID-19 pandemic would be able to apply for a flat \$1,500 fortnightly payment per eligible employee to keep that employee on the books, with a legal obligation on employers to pass the subsidy onto their employees.²⁴

After the announcement, Attorney General Christian Porter entered into a series of consultations and negotiations on the preliminary draft with key stakeholders including the Opposition and the unions. The central point of discussion was the concern that employers might not abide by the spirit of the scheme, for example by using it to weaken employee rights. A change was made to the draft to include an assurance that employees would have the right to seek arbitration at the Fair Work Commission in such a circumstance and the legislation was cleared to pass through Parliament.²⁵

During debate in both the House and the Senate on 8 April, the Opposition made clear that it would not hold up the passage of the Bill at a time when Australians were desperately in need of financial help, but

²⁰ <https://www.pm.gov.au/media/economic-stimulus-package> and https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6521

²¹ For example, in Senator Ayres' speech on page 1807-9 here: https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansards/1a9389a8-d618-42f0-835f-581c3ea13dd2/toc_pdf/Senate_2020_03_23_7655_Official.pdf;fileType=application%2Fpdf

²² Described in Senator Keneally's speech on page 1924 here: https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansards/f7febdd5-d88f-4196-b9d3-3015db29c96b/toc_pdf/Senate_2020_04_08_7663_Official.pdf;fileType=application%2Fpdf

²³ <https://www.pm.gov.au/media/130-billion-jobkeeper-payment-keep-australians-job>

²⁴ <https://theconversation.com/1-500-a-fortnight-jobkeeper-wage-subsidy-in-massive-130-billion-program-135049>

²⁵ <https://www.smh.com.au/politics/federal/union-deal-clears-way-for-130-billion-wage-subsidy-20200406-p54hjj.html>

that it would move a number of amendments designed to point out how certain cohorts were excluded from the legislation.²⁶ For example, the legislation excluded casual employees who had been working for their employer for less than 12 months and also excluded all temporary visa holders.

Opposition members encouraged the Treasurer to use his new powers under the legislation to expand JobKeeper's remit to include these groups, but ultimately they voted to pass the legislation. The package passed both Houses on 8 April and received Assent on 9 April.²⁷

On 22 May, an error was revealed in the budgeting for the program. The government had been referring to JobKeeper as a \$130 billion piece of legislation but, the Treasury announced, this was based on businesses incorrectly filling out application forms.²⁸ The cost of JobKeeper was revised down to \$70 billion, renewing calls for the government to extend it to include previously excluded cohorts. At the time of writing, such an extension had not occurred. On 21 July, the government announced it was extending JobKeeper to March 2021 but reducing the payment and further tightening eligibility.²⁹

Policy process

1 Urgency

Was a justification given for the short timeline of the policy decision and was it accepted by the Parliamentary Opposition and ratified under existing or new legislation?

Yes. In Parliament there was considerable mention – by both the government and the Opposition – of the need to get the legislation through quickly in order to provide relief to struggling businesses and employees who had lost work.

2 Need

Was there a statement of why the policy was needed based on factual evidence and expert opinion?

Yes. The government made a clear argument that the policy was needed in order to cushion the economic impact of the COVID-19 pandemic and to keep employees attached to their employers until such time as they were able to work again. It was widely and internationally agreed that wage subsidies were a necessary response to the kind of economic disruption Australia was facing.

3 Objectives

Was there a statement of the policy's objectives couched in terms of the public interest?

Yes. The public interest argument was made that the JobKeeper package would support the jobs and livelihoods of six million Australians (although this was later revised down to three million).

²⁶ A number of amendments moved from page 2927 through to divisions on page 2984 onwards:

<https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/247e20e8-7bbe-4712-afcb-c8833dc6a228/toc.pdf/House%20of%20Representatives%202004087666Official.pdf;fileType=application%2Fpdf#search=%22chamber/hansardr/247e20e8-7bbe-4712-afcb-c8833dc6a228/0034%22>

²⁷ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6533

²⁸ <https://www.abc.net.au/news/2020-05-22/jobkeeper-numbers-cut-by-3-million-businesses-accounting-bungle/12277488>

²⁹ <https://treasury.gov.au/coronavirus/jobkeeper/extension>

4 Options

Was there any disclosure of why the chosen policy was preferred over other possible policy responses?

No. It was never disclosed or justified why certain large cohorts were excluded from the package. This became particularly significant after the accounting error and the removal of the cost justification.

5 Mechanisms

Was there any disclosure of different ways (e.g. incentives versus fines) considered for executing the chosen policy?

Yes. The government disclosed that it had considered other mechanisms for distributing wage subsidies – for example the method used in the United Kingdom – and had chosen to distribute through employers in order to keep employees on the payroll and use the existing tax and transfer system to enact the policy, rather than developing a new transaction.

6 Analysis

Was there any disclosure of technical data, working assumptions and mathematical modelling behind the chosen policy?

No. The data/assumptions/modelling was never publicly disclosed, which became particularly significant after the projections were shown to be flawed. There remains considerable uncertainty about the reasons behind the accounting error and the downward revision of the budget allocation.

7 Pathway

Was there any evidence of a carefully considered logistical strategy for rolling out the policy decision?

No. There was no project management document or rollout plan made available to the public. Again, this caught the public's attention in particular when the budgeting error was revealed, because the source of that error was (and remains) unclear.

8 Consultation

Was there meaningful input from relevant experts and stakeholder representatives before and after the policy decision?

Yes. Even the Opposition acknowledged in Parliament that there had been "lots of consultation" with stakeholder groups including unions, banks, and peak business groups.³⁰ The government also engaged in further consultation and negotiation with the unions after the policy was announced.

³⁰ For example, on page 2786 here: https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/bead2837-76c9-4ce9-952b-eafe8e2d614f/toc_pdf/House%20of%20Representatives_2020_03_23_7656_Official.pdf;fileType=application%2Fpdf

9 Communication

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

Yes. Pages were put up on the ATO's website, the Treasury's website, and the Department of Industry's website for businesses detailing the JobKeeper package and providing fact sheets and videos as well as details of future review.

10 Review

Was there a stated intention to review the lessons learnt from the official policy response once the emergency was over?

Yes. From the start the stated intention was to review JobKeeper halfway through the initial timeline of the program. This three-month review has now been published and the details of the package have been altered as a result of the review.³¹

Final scores

	Criterion	Yes/No
1	Urgency	Yes
2	Need	Yes
3	Objectives	Yes
4	Options	No
5	Mechanisms	Yes
6	Analysis	No
7	Pathway	No
8	Consultation	Yes
9	Communication	Yes
10	Review	Yes
		7/10

³¹ <https://treasury.gov.au/publication/jobkeeper-review>

COVIDSafe

Policy background

A central element of the public health response to the COVID-19 pandemic has been ‘contact tracing’. ‘Contact tracing’ refers to a process of identifying, contacting, and testing people who have been exposed to an individual who has tested positive for COVID-19.

Initially in Australia, contact tracing was carried out manually by health officials at the state and territory level, but following some reported success of using smartphone applications (apps) to support contact tracing in other jurisdictions (notably, the United Kingdom and Singapore), the government began a process of developing and launching a smartphone app called COVIDSafe.

The government initially indicated on 14 April 2020 that it would be asking Australians to sign up to an app based on Singapore’s TraceTogether app, which would allow for faster contact tracing. It was reported that 40% of Australians would need to sign up for the app to be effective and that the Attorney-General Christian Porter would be looking at the privacy implications.³²

Immediately there were concerns expressed about privacy³³ and confusion as to whether downloading the app would be mandatory, with mixed messages issued by officials until the Prime Minister confirmed that it would be voluntary but encouraged.³⁴ The Privacy Impact Assessment published on 24 April made 19 recommendations,³⁵ all of which the Department of Health agreed to enact, including a recommendation to publish the app’s source code.³⁶

On 25 April, a determination was made under the Biosecurity Act 2015 as an initial legislative instrument to govern the use of the data collected by the app.³⁷ The app, now called COVIDSafe, then launched on 26 April with a coordinated government communications and advertising campaign across multiple media to encourage people to download it.³⁸ Within two weeks more than four million people had downloaded and registered on the app, despite the fact that the app was not yet fully functional, with the infrastructure not yet set up to share the app’s data with the states and territories.³⁹

Reports began to emerge of issues with the user experience of the app, including not being able to sign up with a non-Australian phone number, not being able to download the app on older iPhone models, and the app not working correctly if the phone was locked or if the app wasn’t running in the foreground.

Questions relating to these issues and the ongoing privacy concerns were the focus of the Senate Select Committee on COVID-19’s questions for the Department of Health, the Attorney-General’s Department,

³² <https://www.abc.net.au/news/2020-04-14/coronavirus-app-government-wants-australians-to-download/12148210>

³³ <https://www.lawcouncil.asn.au/media/media-releases/privacy-protections-must-be-built-into-covid-19-tracking-app>

³⁴ <https://www.abc.net.au/news/2020-04-18/prime-minister-rules-out-making-coronavirus-app-mandatory/12161126>

³⁵ <https://www.health.gov.au/sites/default/files/documents/2020/04/covidsafe-application-privacy-impact-assessment-covidsafe-application-privacy-impact-assessment.pdf>

³⁶ <https://www.health.gov.au/sites/default/files/documents/2020/04/covidsafe-application-privacy-impact-assessment-agency-response.pdf>

³⁷ <https://www.legislation.gov.au/Details/F2020L00480>

³⁸ <https://www.pm.gov.au/media/covidsafe-new-app-slow-spread-coronavirus>

³⁹ <https://www.abc.net.au/news/2020-05-02/coronavirus-app-currently-not-fully-operational/12208924>

and the Digital Transformation Agency on 6 May.⁴⁰ Senators also repeatedly mentioned the as-yet unactioned recommendation from the Privacy Impact Assessment to release the app's source code publicly. The code was released on 8 May.

Legislation to codify the determination that had been made was introduced to Parliament as the Privacy Amendment (Public Health Contact Information) Bill 2020 and debated on 12 and 13 May. The government had been open to discussion with the Opposition on changes to improve the Bill and engaged in that process "in good faith", including adding a number of recommended changes to the final legislation.⁴¹

Key issues raised by the Opposition and the crossbench included the effectiveness of the app especially if running in the background on an iPhone, ongoing privacy concerns, the use of the American company Amazon Web Services (AWS) to store the data rather than an Australian company and the connected possibility of the American government being able to access Australian data, the fact that there was no clear uptake target or pathway to reach that target, and the fact that the app was only available in English.

The Greens and Centre Alliance moved amendments in the Senate to further protect app users' data privacy within Australia and overseas, but these were negated as the Opposition voted against them in the interests of passing the legislation speedily.⁴² The Bill passed both houses on 14 May and received Assent on 15 May.

Meanwhile, the app had been announced as being "fully functional" on 13 May.⁴³ Since its release, there have been eight updates to the app to fix bugs and to attempt to improve the ongoing issue wherein the app works less effectively when running in the background of a locked iPhone (which would represent the normal circumstances of most users). At the time of writing, the app had been used by tracers around 400 times.⁴⁴ It has identified six contacts not already known to tracers in New South Wales and none in Victoria.⁴⁵ Members of the Opposition and crossbench have labelled the app a "\$2 million failure"⁴⁶ that was promoted in a "misleading and deceptive" manner,⁴⁷ but Minister for Government Services Stuart Robert recently argued that the app is "working exactly as intended."⁴⁸

⁴⁰ https://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/21693643-a9ab-41e2-8440-77267c6c7b37/toc_pdf/Senate%20Select%20Committee%20on%20COVID-19_2020_05_06_7691_Official.pdf;fileType=application%2Fpdf#search=%22committees/commsen/21693643-a9ab-41e2-8440-77267c6c7b37/0000%22

⁴¹ See Shadow Attorney-General Mark Dreyfus MP's speech here: https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/d60e629d-8ad3-43db-8b0c-ce5f57f5ad9e/toc_pdf/House%20of%20Representatives_2020_05_12_7703_Official.pdf;fileType=application%2Fpdf, page 3081

⁴² See https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansards/8111eadf-fbc5-4def-8c0e-20b667e3a32c/toc_pdf/Senate_2020_05_14_7713_Official.pdf;fileType=application%2Fpdf, pages 2377-2385

⁴³ <https://www.abc.net.au/news/2020-05-13/coronavirus-australia-live-news-covid-19-latest-covidsafe-app/12239412>

⁴⁴ <https://www.abc.net.au/news/science/2020-07-27/how-does-covidsafe-compare-contact-tracing-apps-apple-google/12488188>

⁴⁵ <https://www.smh.com.au/national/covidsafe-app-yet-to-trace-useful-number-of-unique-cases-despite-second-wave-20200725-p55fd7.html>

⁴⁶ <https://www.smh.com.au/politics/federal/covidsafe-app-a-2-million-failure-bowen-20200713-p55boq.html>

⁴⁷ <https://www.smh.com.au/national/covidsafe-app-yet-to-trace-useful-number-of-unique-cases-despite-second-wave-20200725-p55fd7.html>

⁴⁸ <https://www.smh.com.au/national/covidsafe-app-yet-to-trace-useful-number-of-unique-cases-despite-second-wave-20200725-p55fd7.html>

Policy process

1 Urgency

Was a justification given for the short timeline of the policy decision and was it accepted by the Parliamentary Opposition and ratified under existing or new legislation?

Yes. As the app was being developed justifications were given for the short timeline of decision-making (the need to use the app as soon as possible in the effort to control the spread of the pandemic), and this was generally accepted.

A framework for use and control of the data collection was ratified under existing legislation and then codified in new legislation.

2 Need

Was there a statement of why the policy was needed based on factual evidence and expert opinion?

Yes. There was evidence that state and territory health officials would need support in contact tracing if the numbers affected by COVID-19 grew significantly, and there was evidence from overseas that a smartphone app could be useful in supporting the contact tracing effort.

3 Objectives

Was there a statement of the policy's objectives couched in terms of the public interest?

Yes. The public interest argument was made that the app would help control the spread of the pandemic.

4 Options

Was there any disclosure of why the chosen policy was preferred over other possible policy responses?

No. The government never outlined the different policy options they considered for augmenting the contact tracing process nor explained why a smartphone app was chosen as the preferred method.

5 Mechanisms

Was there any disclosure of different ways (e.g. incentives versus fines) considered for executing the chosen policy?

Yes. Throughout the process there was discussion and disclosure about different options that had been considered for collecting and protecting data and the Privacy Impact Assessment highlighted a few of these.

At the Senate Select Committee and in Parliament there was also discussion about other mechanisms within the policy, for example the decision to use AWS rather than an Australian company, and the decision not to switch to the Google/Apple framework once that became available.

6 Analysis

Was there any disclosure of technical data, working assumptions and mathematical modelling behind the chosen policy?

No. It remains unclear whether modelling took place, particularly with regard to the stated 40% uptake target, which the government appears to have since retreated from. The government has never provided numbers to demonstrate the degree of deterioration of effectiveness when the app is running in the background of iPhones.⁴⁹ The government also refused to disclose the exact amount that was spent on promoting the app.⁵⁰

7 Pathway

Was there any evidence of a carefully considered logistical strategy for rolling out the policy decision?

No. This was exemplified best by the confusion over whether or not the rate of uptake was linked in any formal way to an easing of restrictions; the government provided contradictory advice in this regard.⁵¹

8 Consultation

Was there meaningful input from relevant experts and stakeholder representatives before and after the policy decision?

Yes. There is evidence of consultation with the Opposition on the legislation, with independent legal advisors on the privacy implications, and with Apple and Google on the effectiveness issues.

9 Communication

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

Yes. There was a broad communications campaign that sought to persuade people to download the app to support the national effort to fight COVID-19.

⁴⁹ See, for example, Senator Patrick's comments here: https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansards/d1b94f32-61e9-47e8-ab31-cc37f40b5093/toc_pdf/Senate_2020_05_13_7709_Official.pdf;fileType=application%2Fpdf, pages 2216-7, and the Senate Select Committee testimony here: https://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/21693643-a9ab-41e2-8440-77267c6c7b37/toc_pdf/Senate%20Select%20Committee%20on%20COVID-19_2020_05_06_7691_Official.pdf;fileType=application%2Fpdf#search=%22committees/commsen/21693643-a9ab-41e2-8440-77267c6c7b37/0000%22, page 14

⁵⁰ <https://www.smh.com.au/national/covidsafe-app-yet-to-trace-useful-number-of-unique-cases-despite-second-wave-20200725-p55fd7.html>

⁵¹ See for example, Senator Payne's comments here under questioning from Senator Watt: https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansards/d1b94f32-61e9-47e8-ab31-cc37f40b5093/toc_pdf/Senate_2020_05_13_7709_Official.pdf;fileType=application%2Fpdf, page 2241

10 Review

Was there a stated intention to review the lessons learnt from the official policy response once the emergency was over?

Yes. The legislation requires six-monthly reporting to be carried out on the app by both the Privacy Commissioner and the Minister for Health. Furthermore, the Senate Select Committee on COVID-19 announced that it intends to oversee the COVIDSafe app and the associated legislation by formally reviewing the rollout of the app.

Final scores

	Criterion	Yes/No
1	Urgency	Yes
2	Need	Yes
3	Objectives	Yes
4	Options	No
5	Mechanisms	Yes
6	Analysis	No
7	Pathway	No
8	Consultation	Yes
9	Communication	Yes
10	Review	Yes
		7/10

HomeBuilder

Disclaimer

Per Capita's Executive Director Emma Dawson is on the record as a critic of the HomeBuilder program.⁵² However, Emma was not involved in analysis of the policy for this project, which has been carried out independently.

Policy background

On 4 June 2020, the Prime Minister, Treasurer, and Minister for Housing jointly announced a new program to "support jobs in the residential construction sector", named 'HomeBuilder'.⁵³ The program was described as offering eligible owner-occupiers with grants of \$25,000 to build or renovate a home.

Eligibility was time-limited and means-tested, requiring contracts to be signed by the end of 2020, on properties worth no more than \$750,000 (for new builds) or \$1.5 million (for renovations), for renovations worth at least \$150,000, by owners earning no more than \$125,000 (single) or \$200,000 (couples).⁵⁴ The government said the program would be expected to allow 27,000 new residential construction projects to start and would cost \$680 million.

The program enjoyed support from some representatives of the construction industry such as Master Builders Australia, which described it as a "lifeline" for the industry.⁵⁵ However, it also attracted early criticism from economists and others who warned that the strict eligibility criteria and time limits would mean in practice that the grants would only be used by wealthy individuals who would have proceeded with their projects anyway.⁵⁶

Advocates in the housing and community services sector also criticised the policy for directing government stimulus funds towards expensive projects carried out by high net worth individuals and families rather than building and renovating social and affordable housing.⁵⁷

The Opposition expressed an intention to amend the scheme. However, the government announced that HomeBuilder would not be passed through Parliament, but rather implemented through National Partnership Agreements with the states and territories.⁵⁸ This was justified by the desire to use

⁵² <https://www.theguardian.com/commentisfree/2020/jun/04/the-homebuilder-scheme-is-simply-pork-barrelling-to-the-coalitions-electoral-base>

⁵³ <https://www.pm.gov.au/media/homebuilder-program-drive-economic-activity-across-residential-construction-sector>

⁵⁴ https://treasury.gov.au/sites/default/files/2020-06/Fact_sheet_HomeBuilder_0.pdf

⁵⁵ <https://www.masterbuilders.com.au/Newsroom/Federal-Government-Comes-To-The-Rescue-Of-Home-Bui>

⁵⁶ <https://theconversation.com/scott-morrison-s-homebuilder-scheme-is-classic-retail-politics-but-lousy-economics-140076>, <https://theconversation.com/homebuilder-might-be-the-most-complex-least-equitable-construction-jobs-program-ever-devised-140162>

⁵⁷ <https://www.abc.net.au/news/2020-06-05/funding-coronavirus-homebuilder-renovation-grants/12321724>, <https://www.abc.net.au/news/2020-06-17/homebuilder-grants-gippsland-welfare-workers-stimulus-package/12360430>, <https://www.abc.net.au/news/2020-06-17/calls-for-homebuilder-to-fix-appalling-social-housing/12334972>, <https://www.theguardian.com/commentisfree/2020/jun/09/homebuilder-was-a-blunder-spend-the-money-retrofitting-social-housing-instead>

⁵⁸ <https://www.smh.com.au/politics/federal/homebuilder-stimulus-pushed-through-without-house-vote-20200607-p550bd.html>

“established systems” to administer the grants through state and territory revenue offices, which already disburse similar payments, such as first homeowner grants.⁵⁹

In reality, however, the process of getting states and territories to sign up to the National Partnership Agreements progressed slowly. ACT Chief Minister Andrew Barr blamed the delay on the lack of consultation between federal and state governments, leading to implementation issues that already-stretched state revenue offices were having to work through themselves.⁶⁰ A spokesperson for Queensland’s Treasurer Cameron Dick expressed the same sentiments; by the end of June, only Tasmania and South Australia were signatories to HomeBuilder.⁶¹

In July, Housing Minister Michael Sukkar announced that Queensland, the final holdout state, had signed its National Partnership Agreement.⁶² With all states now signed on, each state is working through the process of building the infrastructure to disburse the grants; at the time of writing, it is only possible to apply for HomeBuilder grants in Queensland, South Australia, and Tasmania.⁶³ The scheme has received only 247 official applications and has made no payments so far.⁶⁴ Despite this, in his most recent commentary on the HomeBuilder program, the Prime Minister said it “is proving to be great, a tremendous success”.⁶⁵

Policy process

1 Urgency

Was a justification given for the short timeline of the policy decision and was it accepted by the Parliamentary Opposition and ratified under existing or new legislation?

Yes. The government made reference to the construction jobs that were under immediate threat due to the economic impact of COVID-19. The requirement for contracts to be signed by the end of 2020, and for construction to begin within three months of signing, was linked to this urgency.

2 Need

Was there a statement of why the policy was needed based on factual evidence and expert opinion?

No. The government did not formally or publicly provide evidence or expert opinion to support its assertion that the implementation of HomeBuilder would support jobs in the residential construction sector. For example, the government provided no evidence to back its claim a grant program of this nature was likely to attract enough demand to “help to fill the gap in construction activity expected in the second half of 2020”.⁶⁶

⁵⁹ <https://ministers.treasury.gov.au/ministers/michael-sukkar-2019/transcripts/interview-patricia-karvelas-abc-rn-drive>

⁶⁰ <https://thenewdaily.com.au/finance/property/2020/07/02/homebuilder-grants-construction/>

⁶¹ <https://www.abc.net.au/news/2020-06-29/queensland-homebuilder-hold-up-no-timeline-for-federal-scheme/12394130>

⁶² <https://www.afr.com/politics/federal/homebuilder-program-gets-green-light-from-states-20200702-p558jo>

⁶³ <https://treasury.gov.au/coronavirus/homebuilder>

⁶⁴ <https://www.theguardian.com/australia-news/2020/aug/15/coalitions-homebuilder-scheme-attracts-less-than-250-applicants-and-no-payments-have-been-made>

⁶⁵ <https://www.pm.gov.au/media/press-conference-australian-parliament-house-act-29jul20>

⁶⁶ <https://www.pm.gov.au/media/homebuilder-program-drive-economic-activity-across-residential-construction-sector>

3 Objectives

Was there a statement of the policy's objectives couched in terms of the public interest?

No. The policy's objectives were only discussed within the context of supporting the residential building industry, not the public at large.

4 Options

Was there any disclosure of why the chosen policy was preferred over other possible policy responses?

No. The government has not disclosed whether it looked at other ways to stimulate the residential construction industry.

5 Mechanisms

Was there any disclosure of different ways (e.g. incentives versus fines) considered for executing the chosen policy?

Yes. The government explained, for example, why it had chosen to implement the grant through National Partnership Agreements with states and territories, rather than passing legislation and disbursing the grants federally.

6 Analysis

Was there any disclosure of technical data, working assumptions and mathematical modelling behind the chosen policy?

No. The government did not release or disclose any of the modelling or data behind the HomeBuilder program.

7 Pathway

Was there any evidence of a carefully considered logistical strategy for rolling out the policy decision?

No. A number of spokespeople from the states and territories lamented the lack of strategy with regard to rollout and implementation.

8 Consultation

Was there meaningful input from relevant experts and stakeholder representatives before and after the policy decision?

No. The government has not claimed that it undertook consultation related to the HomeBuilder program.

9 Communication

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

Yes. All of the information on HomeBuilder is gathered on the Treasury's Economic Response to the Coronavirus website and each state also has its own dedicated webpage providing updates on the progress in that state.⁶⁷

10 Review

Was there a stated intention to review the lessons learnt from the official policy response once the emergency was over?

Yes. The policy is being considered as part of the Senate Select Committee on COVID-19's inquiry into the government's response to the COVID-19 pandemic.

Final scores

	Criterion	Yes/No
1	Urgency	Yes
2	Need	No
3	Objectives	No
4	Options	No
5	Mechanisms	Yes
6	Analysis	No
7	Pathway	No
8	Consultation	No
9	Communication	Yes
10	Review	Yes
		4/10

⁶⁷ <https://treasury.gov.au/coronavirus/homebuilder>

Early Childhood Education and Care Relief Package

Policy background

Prior to the COVID-19 pandemic, the federal government provided assistance to families accessing early childhood education and care (ECEC) services via the Child Care Subsidy (CCS) payment.⁶⁸ The CCS was means-tested based on a number of factors and families were eligible to receive a percentage of the fees charged by their early childhood education and care (ECEC) provider, paid directly to providers and passed on to families as a fee reduction.

After the pandemic struck, the ECEC sector began to issue warnings that the existing funding arrangements would no longer work in the context of COVID-19 and that the sector was facing a crisis. As parents pulled their children out of child care services, either because they were worried about health risks or because, laid off from their jobs or working from home, they were choosing to care for their children at home, many were cancelling enrolments altogether to avoid paying the gap fee charged for non-attendance.⁶⁹

Subsequent reports have shown that nearly a third of centre-based day care services in the ECEC sector experienced a decrease in attendance of more than half, and a further 50% of services experienced declines of between 20 and 50%, meaning that an estimated 30% of ECEC providers faced imminent closure.⁷⁰

On 2 April 2020, Minister for Education Dan Tehan announced new federal funding arrangements for the ECEC sector.⁷¹ Legislated via an amendment to the *Child Care Subsidy Minister's Rules 2017*, the new arrangements suspended the CCS system.⁷² Instead, the government provided a 'business continuity payment' of 50% of fees charged to ECEC providers on the condition that they remain open, not charge families any fees, and continue to prioritise care for the children of essential workers and vulnerable children.⁷³ Eligible providers could also receive JobKeeper to cover the cost of staff wages.

The announcement was welcomed but met with some key concerns by the sector. Goodstart Early Learning, the largest ECEC provider in Australia, issued a media release asserting that the new funding arrangements could not compensate for the fact that as an organisation they remained ineligible for JobKeeper and as such would not be able to keep their centres open.⁷⁴

The United Services Union also warned that other child care services, such as those run by local governments, would not be eligible for JobKeeper.⁷⁵ Meanwhile, economists were also beginning to point out that high numbers of employees in the health and social care and education sectors would find

⁶⁸ <https://www.education.gov.au/child-care-subsidy-1>

⁶⁹ <https://www.theguardian.com/australia-news/2020/apr/02/australian-childcare-operators-fear-they-will-have-to-close-without-a-government-lifeline>

⁷⁰ https://www.dese.gov.au/system/files/doc/other/ecec_relief_package_four_week_review_summary_report_0.pdf, page 4

⁷¹ <https://ministers.dese.gov.au/morrison/early-childhood-education-and-care-relief-package>

⁷² <https://www.legislation.gov.au/Details/F2020L00406>

⁷³ https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2020/April/Coronavirus_response-Free_child_care

⁷⁴ [https://www.goodstart.org.au/news-and-advice/april-2020/goodstart-responds-to-government-announcement-\(1\)](https://www.goodstart.org.au/news-and-advice/april-2020/goodstart-responds-to-government-announcement-(1))

⁷⁵ <https://usu.org.au/usu-flaw-in-fed-gov-free-childcare-plan-could-force-council-run-services-to-close/>

themselves ineligible for JobKeeper, either because they were casual workers who had been with their most recent employer for less than 12 months, or because they were temporary visa holders.⁷⁶

On 18 May, the Department of Education's four-week review of the program, which surveyed more than 7,000 ECEC providers on the relief package, found it had "succeeded in its objective".⁷⁷ 99% of providers remained operational, and 86% reported that the package had supported them to stay open, while 76% reported it had helped them remain financially viable and 87% said it allowed them to care for the children of essential workers and vulnerable children.⁷⁸

However, the report also found "pockets of dissatisfaction" with the package including, as expected, services that were ineligible for JobKeeper or had a high proportion of staff who were ineligible because they were recent casual employees or temporary visa holders.⁷⁹ The report asked for "further consideration" of this issue and recommended at least four weeks' notice be given to the sector before returning to the CCS system.⁸⁰

This notice was given by the Minister on 8 June; the scheme ended and employees were taken off JobKeeper on 12 July.⁸¹ Funding arrangements returned to the CCS system, with loosened criteria for subsidised care for families hit by the economic downturn.⁸²

When Victoria re-entered Stage 3 lockdown and then progressed to Stage 4 lockdown, there was initial confusion and concern about how ECEC services would remain funded.⁸³ On 5 August, the federal government announced it would be providing extra funding to centres to incentivise them to allow parents to keep their children at home without losing their enrolment places or facing gap fees for the six weeks of Stage 4 lockdown.⁸⁴ At the time of writing, these funding measures were facing criticism from the sector and from the Opposition for being unclear.⁸⁵

Policy process

1 Urgency

Was a justification given for the short timeline of the policy decision and was it accepted by the Parliamentary Opposition and ratified under existing or new legislation?

Yes. The urgency of the policy was explained by the "significant reduction of enrolments the sector has seen" and the urgent need for services to remain open to serve families of essential workers.⁸⁶ The policy was ratified by the Minister's power to make amendments to existing legislation.

⁷⁶ <https://research.curtin.edu.au/story/jobkeeper-payment-how-will-it-work-who-will-miss-out-and-how-to-get-it/>, for example

⁷⁷ https://www.dese.gov.au/system/files/doc/other/ecec_relief_package_four_week_review_summary_report_0.pdf, page 4

⁷⁸ Ibid.

⁷⁹ Ibid, page 5

⁸⁰ Ibid, page 7

⁸¹ <https://ministers.dese.gov.au/tehan/return-child-care-subsidy>

⁸² <https://www.abc.net.au/news/2020-06-08/free-childcare-coronavirus-support-to-end-july/12332066>

⁸³ <https://www.abc.net.au/news/2020-08-05/victorian-coronavirus-restrictions-childcare-centre-confusion/12524294>

⁸⁴ <https://www.abc.net.au/news/2020-08-05/federal-government-tehan-child-care-coronavirus-victoria/12522576>

⁸⁵ <https://www.abc.net.au/news/2020-08-05/victoria-coronavirus-childcare-funding-dan-andrews-government/12526678>

⁸⁶ <https://ministers.dese.gov.au/morrison/early-childhood-education-and-care-relief-package>

2 Need

Was there a statement of why the policy was needed based on factual evidence and expert opinion?

Yes. The evidence shows a significant number of children were unenrolled from childcare at the beginning of the pandemic, and sector experts issued warnings that this threatened the viability of the sector as a whole.

3 Objectives

Was there a statement of the policy's objectives couched in terms of the public interest?

Yes. The public interest argument was made that the policy would support families, particularly vulnerable families and families of essential workers.

4 Options

Was there any disclosure of why the chosen policy was preferred over other possible policy responses?

No. There was no disclosure of whether other options were considered to expand access to childcare during COVID-19.

5 Mechanisms

Was there any disclosure of different ways (e.g. incentives versus fines) considered for executing the chosen policy?

No. The decision to rely on JobKeeper, for example, rather than providing separate subsidies that all ECEC workers would be eligible for, was never explained, and nor were questions around why parents were not allowed to continue paying fees if they wanted to.⁸⁷

6 Analysis

Was there any disclosure of technical data, working assumptions and mathematical modelling behind the chosen policy?

No. The government does not appear to have disclosed or released any data or modelling behind the policy.

7 Pathway

Was there any evidence of a carefully considered logistical strategy for rolling out the policy decision?

Yes. From the policy's announcement, a clear timeline and mechanisms for rollout were laid out, as well as a plan for a review, and for ultimately ending the policy. This strategy was adhered to.

⁸⁷ The Minister was asked both of these questions directly here but did not provide answers:

<https://ministers.dese.gov.au/tehan/minister-education-dan-tehan-interview-nadia-mitsopoulos-and-russell-woolf-abc-radio-perth-0>

8 Consultation

Was there meaningful input from relevant experts and stakeholder representatives before and after the policy decision?

Yes. Sector peak body the Australian Childcare Alliance issued a media release explaining that they were consulted through “working closely with the Education Minister...in helping to design the new early learning ‘lifeline’ package”.⁸⁸

9 Communication

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

Yes. There are regular updates to a dedicated section of the Department of Education, Skills and Employment’s website.⁸⁹

10 Review

Was there a stated intention to review the lessons learnt from the official policy response once the emergency was over?

Yes, the explicit intention to review was announced alongside the policy, and the review was carried out as intended.

Final scores

	Criterion	Yes/No
1	Urgency	Yes
2	Need	Yes
3	Objectives	Yes
4	Options	No
5	Mechanisms	No
6	Analysis	No
7	Pathway	Yes
8	Consultation	Yes
9	Communication	Yes
10	Review	Yes
		7/10

⁸⁸ <https://childcarealliance.org.au/media-publications/aca-media-releases/136-aca-media-release-aca-applauds-government-for-lifeline-to-families-and-early-learning-sector-02-04-2020/file>

⁸⁹ <https://www.dese.gov.au/covid-19/childcare>

State case studies: emergency powers

All three of the states considered in this project (Victoria, New South Wales, and Queensland) invoked some kind of emergency powers legislation to facilitate policymaking in response to the COVID-19 pandemic. This section analyses each state's response in turn.

Victoria

Policy background

There are two pieces of legislation in Victoria that allow the state government to declare emergencies and exercise the use of emergency powers. The Public Health and Wellbeing Act 2008 allows the government to declare a 'state of emergency', while the Emergency Management Act 2013 provides the legislative justification for declaring a 'state of disaster'. Both of these declarations have been made in Victoria in response to COVID-19; we will discuss each in turn below.

On 16 March the Premier Daniel Andrews and then Minister for Health Jenny Mikakos declared a 'state of emergency' under the Public Health and Wellbeing Act.⁹⁰ This declaration was described as necessary to help "provide the Chief Health Officer with the powers he needs to enforce 14-day isolation requirements for all travellers entering Australia, and cancel mass gatherings of more than 500 people, as agreed by the National Cabinet."⁹¹ This was initially operational for four weeks – the longest enforceable period – and has been extended every four weeks since.

A 'state of emergency' in Victoria provides the state's Chief Health Officer with a number of emergency powers, including but not limited to:⁹²

- the power to issue public directions to eliminate or reduce risks to public health, including detention, restricting movement, and preventing entry to Victoria
- the power to delegate public health risk powers to authorised officers, including to close premises, to enter premises without a warrant, to require cleaning/disinfection/destruction/disposal at premises, and to request assistance from Victoria Police in carrying out any of these powers.

Since the 'state of emergency' was declared, a number of directions have been made under the emergency powers, including directions relating to airport arrivals and cruise ship docking, restrictions on mass gatherings, restricted activity in aged care, hospitals, and businesses, self-isolation requirements, stay at home/stay safe directions, the 'hard lockdown' in specific public housing towers, area-specific Stage 3 lockdowns, mandatory masks, and Stage 4 lockdowns.⁹³

⁹⁰ <https://www.premier.vic.gov.au/state-emergency-declared-victoria-over-covid-19>

⁹¹ Ibid.

⁹² <https://www.parliament.vic.gov.au/publications/research-papers/send/36-research-papers/13962-emergency-powers-public-health-and-covid-19>, page 27-8

⁹³ <https://www.parliament.vic.gov.au/publications/research-papers/send/36-research-papers/13962-emergency-powers-public-health-and-covid-19>, page 29-33

Further to the 'state of emergency' declaration, on 25 April the Victorian Parliament passed the COVID-19 Omnibus (Emergency Measures) Act 2020.⁹⁴ This made temporary amendments to approximately 30 pieces of legislation and allowed for a number of high-profile uses of emergency powers, for example compulsory quarantine for people arriving in Victoria from overseas and a temporary moratorium on evictions for tenants facing financial hardship as a result of COVID-19.⁹⁵ The Act was passed with a six-month sunset clause.

After the second wave of COVID-19 cases in Victoria, the Premier returned Metro Melbourne and Mitchell Shire into Stage 3 lockdown.⁹⁶ Unfortunately, case numbers continued to increase at a worrying rate and on 2 August, a 'state of disaster' was declared under the Emergency Management Act, and Metro Melbourne and Mitchell Shire moved into Stage 4 lockdown, which included a curfew and the re-closure of schools.⁹⁷ The primary effect of the 'state of disaster' was to give Victoria Police greater power to enforce public health directions, and to give the Minister for Police ultimate responsibility for directing and coordinating the response of government agencies. The 'state of disaster' currently applies for one month, the maximum period under the Act.

The human rights implications of the use of emergency powers were a particular issue in Victoria given that the state has had a Charter of Human Rights and Responsibilities since 2006. Legal scholars and human rights experts have argued that, theoretically at least, many of the emergency measures have contravened Victoria's human rights obligations.⁹⁸ In general, Victorian human rights advocates have supported the government's emergency measures but have declared concerns about some areas including policing during the pandemic, limitations on the right to protest, and the rights of tenants.⁹⁹

Pandemic policing and the exercise of emergency powers by Victoria Police has become the most controversial element of the use of emergency powers in Victoria. The Department of Health and Human Services delegated enforcement and penalties to Victoria Police, which enabled the police to issue on-the-spot infringement notices and fines. Data released by Victoria Police revealed that there was no correlation between the issuing of fines and penalties and the spread of COVID-19 in Victoria, and that instead areas with high migrant populations or more social housing were heavily targeted, despite there being few cases in those areas.¹⁰⁰

The hard lockdown of nine public housing towers in the suburbs Flemington and North Melbourne also raised significant human rights concerns relating to freedom of movement, discrimination, and policing.¹⁰¹ The treatment of public housing tenants under the hard lockdown is now under formal investigation by the Victorian Ombudsman.¹⁰²

⁹⁴ <https://www.legislation.vic.gov.au/as-made/acts/covid-19-omnibus-emergency-measures-act-2020>

⁹⁵ See the Premier's second reading speech at https://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2020/Legislative_Assembly_2020-04-23.pdf, pages 1196-1201

⁹⁶ <https://www.premier.vic.gov.au/statement-premier-74>

⁹⁷ <https://www.premier.vic.gov.au/statement-changes-melbournes-restrictions>

⁹⁸ For example, <https://auspublaw.org/2020/05/covid-19-and-the-australian-human-rights-acts/>

⁹⁹ For example, <https://libertyvictoria.org.au/content/covid-19-and-human-rights>

¹⁰⁰ <https://www.theguardian.com/world/2020/jun/06/covid-19-lockdown-victoria-police-data-sparks-fears-disadvantaged-unfairly-targeted>

¹⁰¹ <https://theconversation.com/melbourne-tower-lockdowns-unfairly-target-already-vulnerable-public-housing-residents-142041>

¹⁰² <https://www.ombudsman.vic.gov.au/our-impact/news/ombudsman-announces-investigation-into-treatment-of-public-housing-tenants-in-lockdown/>

Policy process

1 Urgency

Was a justification given for the short timeline of the policy decision and was it accepted by the Parliamentary Opposition and ratified under existing or new legislation?

Yes. The urgent need to allow for the use of emergency powers was justified by the nature of the pandemic and was largely accepted by the public. The powers were ratified under existing legislation in a process that is commonly understood in Victoria and was used as recently as the 2019/20 bushfire season.

2 Need

Was there a statement of why the policy was needed based on factual evidence and expert opinion?

Yes. Health experts advising the government supported the use of emergency powers to tackle the COVID-19 pandemic.

3 Objectives

Was there a statement of the policy's objectives couched in terms of the public interest?

Yes. The use of emergency powers was always justified by the public interest argument of keeping Victorians safe from COVID-19 to the greatest possible extent.

4 Options

Was there any disclosure of why the chosen policy was preferred over other possible policy responses?

No. There was no specific declaration as to why Victoria required a state of emergency to be declared in order to enforce the restrictions and isolation requirements, or why they could not be enforced under regular public health legislation, as was done in New South Wales.

5 Mechanisms

Was there any disclosure of different ways (e.g. incentives versus fines) considered for executing the chosen policy?

No. As soon as the state of emergency was declared the Victorian government took a punitive approach to compliance with the directives, allowing Victoria Police to issue infringements, penalties, and fines. There was no disclosure of a process by which other mechanisms were considered to aid compliance.

6 Analysis

Was there any disclosure of technical data, working assumptions and mathematical modelling behind the chosen policy?

Yes. Throughout its pandemic response the government has released data, modelling, numbers, and information to support its various decisions and measures.

7 Pathway

Was there any evidence of a carefully considered logistical strategy for rolling out the policy decision?

Yes. The government has been fairly transparent in its strategy, providing regular updates and announcements on new measures, publishing detailed FAQs on every new rule, and ensuring all policies are brought in with sunset and review clauses.

8 Consultation

Was there meaningful input from relevant experts and stakeholder representatives before and after the policy decision?

No. Many of the emergency measures were implemented without consultation where it could have been done, a clear example being the hard lockdown in the public housing towers.

9 Communication

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

Yes. The Victorian government has maintained clear communication about the use of emergency powers throughout the pandemic.

10 Review

Was there a stated intention to review the lessons learnt from the official policy response once the emergency was over?

Yes. Almost all of the measures that were introduced under emergency powers are either going to be reviewed or are already under review. There are also two high profile formal investigations planned or already underway.

PER CAPITA REPORT

Final scores

	Criterion	Yes/No
1	Urgency	Yes
2	Need	Yes
3	Objectives	Yes
4	Options	No
5	Mechanisms	No
6	Analysis	Yes
7	Pathway	Yes
8	Consultation	No
9	Communication	Yes
10	Review	Yes
		7/10

New South Wales

Policy background

Social restrictions were introduced in NSW through a series of ‘public health orders’ issued under Section 7 of the Public Health Act 2010. Under this Act the Health Minister has broad powers to manage public health risks by issuing ministerial directions.¹⁰³ The Minister may exercise these powers if they are satisfied on “reasonable grounds” that a situation has arisen which poses a risk to public health.¹⁰⁴ The Minister may also declare any part of the State a “public health risk area”, restrict access to that area and segregate or isolate its inhabitants.¹⁰⁵ A ‘state of emergency’ does not need to be declared to trigger these powers. The orders must be published in the government gazette and expire after 90 days.

The Public Health Act also delegates certain powers to authorised officers and medical practitioners. Section 62 stipulates that an authorised medical practitioner may make a written order naming a person diagnosed with a category 4 or 5 condition (COVID-19 is a category 4) which compels that individual to comply with restrictions on their movement and activities.¹⁰⁶ The Secretary of the Ministry of Health may also appoint authorised officers who are empowered enter and inspect premises, request documents, and compel people to provide their name and address.¹⁰⁷ Failure to comply with these directions is an offence under the Act.

The Minister for Health, Brad Hazzard, announced on 15 March that special state powers had been triggered to implement the decisions of the first National Cabinet meeting and cancel public events and gatherings of more 500 people.¹⁰⁸ A week later 2700 people disembarked from the Ruby Princess cruise ship in Sydney despite a significant number of passengers displaying COVID symptoms and four confirmed cases onboard.¹⁰⁹ This single event rapidly accelerated the spread of COVID-19 throughout NSW and eventually resulted in 900 cases and 28 deaths.¹¹⁰ It also precipitated the swift escalation of lockdown measures in NSW and Australia at large. In the following months public health powers were used in NSW to restrict social gatherings, limit access to aged care facilities, close businesses, and direct people to quarantine or self-isolate.¹¹¹

On 24 March, the government introduced the COVID-19 Legislation Amendment (Emergency Measures) Bill 2020, which temporarily amended over 20 pieces of legislation to allow greater flexibility in the health, justice, and corrections sectors to respond to the pandemic.¹¹² The legislation also amended the *Public Health Act* to grant NSW Police new powers to enforce ministerial directions. These changes empowered

¹⁰³ <https://www.legislation.nsw.gov.au/view/html/inforce/current/act-2010-127#sec.7>

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ <https://www.legislation.nsw.gov.au/view/html/inforce/current/act-2010-127#sec.62>

¹⁰⁷ https://justiceconnect.org.au/resources/how-the-new-south-wales-governments-emergency-restrictions-on-covid-19-work/#_ftn3

¹⁰⁸ <https://www.nsw.gov.au/news/special-state-powers-triggered-to-combat-coronavirus>

¹⁰⁹ <https://www.theguardian.com/world/2020/mar/21/ruby-princess-logged-158-cases-of-illness-before-passengers-disembarked-without-coronavirus-testing>

¹¹⁰ <https://www.9news.com.au/national/ruby-princess-coronavirus-report-findings-released-by-gladys-berejiklian-all-passengers-should-have-been-tested/f6e91390-ff72-4f90-9541-f55d16579800>

¹¹¹ <https://www.health.nsw.gov.au/Infectious/covid-19/Pages/public-health-orders.aspx>

¹¹² [https://www.parliament.nsw.gov.au/bill/files/3741/XN%20COVID-19%20Legislation%20Amendment%20\(Emergency%20Measures\)%20Bill.pdf](https://www.parliament.nsw.gov.au/bill/files/3741/XN%20COVID-19%20Legislation%20Amendment%20(Emergency%20Measures)%20Bill.pdf)

police to question, fine, and arrest individuals they reasonably suspect of violating restrictions.¹¹³ New on-the-spot fines of \$1000 were introduced for individuals and \$5000 for corporations.¹¹⁴ NSW Police also retained the option of charging an individual with an offence under section 10 of the *Public Health Act*, which carries a fine of up to \$11,100 and the possibility of six months in prison.¹¹⁵ Concerns have been raised in NSW over the use of discretion in pandemic policing. While some legal scholars have seen the exercise of police discretion as appropriate, others have argued that it has led to discriminatory policing practices.¹¹⁶ Analysis has shown that a greater proportion of fines have been issued in areas with higher migrant populations, despite low case numbers, and fewer fines are issued in wealthier areas, despite a greater number of cases.¹¹⁷ Following the introduction of the emergency legislation, from 26 March to 2 April, NSW Police issued over \$1 million in fines.¹¹⁸

From May the NSW government began gradually easing restrictions as case numbers continued to decline. However, in response to rising cases in Victoria, the government made the decision on 8 July to close the Victorian border. This came as a surprise to border communities who said they were not adequately consulted on the decision.¹¹⁹ As of 4 September, a single border region has been established extending 50km each side of the border and a new permit system is in place which allows residents to travel more freely within this zone.¹²⁰

Policy process

1 Urgency

Was a justification given for the short timeline of the policy decision and was it accepted by the Parliamentary Opposition and ratified under existing or new legislation?

Yes. The Health Minister warned of an “exponential” increase in cases if measure were not taken immediately.¹²¹ The public health powers are based on existing legislation, however there is no evidence that the Opposition was consulted on their use or accepted the justification.

2 Need

Was there a statement of why the policy was needed based on factual evidence and expert opinion?

Yes. The initial social restrictions were implemented based on the unanimous decision of the National Cabinet, acting on the advice of the Australian Health Protection Principal Committee (AHPPC), to slow the spread of COVID-19 in the community.¹²²

¹¹³ <https://www.publicdefenders.nsw.gov.au/Documents/levin-kashyap-law-enforcement-police-powers.pdf>

¹¹⁴ <https://www.nsw.gov.au/news/police-to-crackdown-on-reckless-social-gatherings>

¹¹⁵ <https://www.legislation.nsw.gov.au/view/html/inforce/current/act-2010-127#sec.10>

¹¹⁶ <https://www.smh.com.au/national/nsw/nsw-police-internal-directives-for-covid-19-fines-revealed-20200716-p55coc.html>

¹¹⁷ <https://www.thesaturdaypaper.com.au/news/health/2020/04/18/compliance-fines-under-the-microscope/15871320009710>, <https://auspublaw.org/2020/07/accountability-discretion-and-the-rule-of-law-issues-in-pandemic-policing/>

¹¹⁸ <https://www.smh.com.au/national/nsw/covid-19-fines-in-nsw-alone-totalled-more-than-1-million-20200614-p552hf.html>

¹¹⁹ <https://www.bordermail.com.au/story/6869323/utter-chaos-government-slammed-for-making-dark-of-night-changes/?cs=9681>, <https://www.sbs.com.au/news/multicultural-communities-split-by-nsw-victoria-border-closure-report-confusion-and-information-delays>

¹²⁰ <https://www.nsw.gov.au/covid-19/what-you-can-and-cant-do-under-rules/border-restrictions/guide>

¹²¹ <https://www.abc.net.au/news/2020-03-17/coronavirus-cases-across-nsw-in-record-rise/12063052>

¹²² https://www.health.nsw.gov.au/news/Pages/20200318_01.aspx

3 Objectives

Was there a statement of the policy's objectives couched in terms of the public interest?

Yes. The objective of each public health order is to "deal with the public health risk of COVID-19 and its possible consequences", which was justified in terms of "[protecting] the wider community".¹²³

4 Options

Was there any disclosure of why the chosen policy was preferred over other possible policy responses?

No. There was no disclosure of other policy options, or why the use of public health powers was preferred.

5 Mechanisms

Was there any disclosure of different ways (e.g. incentives versus fines) considered for executing the chosen policy?

No. There was no disclosure of different ways considered for executing and enforcing the social restrictions.

6 Analysis

Was there any disclosure of technical data, working assumptions and mathematical modelling behind the chosen policy?

No. Although NSW Health has consistently released statistics on the number of new cases in the state, there has been no technical data or mathematical modelling released to support the chosen policies.¹²⁴

7 Pathway

Was there any evidence of a carefully considered logistical strategy for rolling out the policy decision?

Yes. While the initial implementation of social restrictions escalated rapidly, they were eased in a carefully considered manner based on the federal government's three-step roadmap to a 'COVIDSafe' Australia.¹²⁵

¹²³ <https://www.health.nsw.gov.au/Infectious/covid-19/Pages/public-health-orders.aspx>,
https://www.health.nsw.gov.au/news/Pages/20200315_02.aspx

¹²⁴ See: <https://www.health.nsw.gov.au/news/Pages/2020-nsw-health.aspx>

¹²⁵ <https://www.nsw.gov.au/news/nsw-to-ease-covid-19-restrictions-from-friday-15-may>

8 Consultation

Was there meaningful input from relevant experts and stakeholder representatives before and after the policy decision?

No. The Health Minister initially acted on the decisions of the National Cabinet, which was advised by the AHPPC, however later decisions were made without input from stakeholder representatives. One example is the closure of the NSW-Victoria border.

9 Communication

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

Yes. There is a dedicated section of the NSW government website which explains the current restrictions in simple, clear, and factual terms.¹²⁶

10 Review

Was there a stated intention to review the lessons learnt from the official policy response once the emergency was over?

Yes. The Public Accountability Committee self-referred an ongoing inquiry into the NSW government's response to the COVID-19 pandemic.¹²⁷

Final scores

	Criterion	Yes/No
1	Urgency	Yes
2	Need	Yes
3	Objectives	Yes
4	Options	No
5	Mechanisms	No
6	Analysis	No
7	Pathway	Yes
8	Consultation	No
9	Communication	Yes
10	Review	Yes
		6/10

¹²⁶ <https://www.nsw.gov.au/covid-19/what-you-can-and-cant-do-under-rules>

¹²⁷ <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2593>

Queensland

Policy background

Queensland was the first state to invoke its emergency powers, declaring a Public Health Emergency on 29 January 2020.¹²⁸ In Queensland, a Public Health Emergency can be declared under the Public Health Act 2005 for a maximum of seven days, so on 5 February 2020 the Minister for Health Steven Miles MP introduced the Public Health (Declared Public Health Emergencies) Amendment Bill to Parliament, to enable extensions of up to 90 days.¹²⁹

The legislation was declared urgent and thereby passed immediately with no referral to committee and with a 12-month sunset clause.¹³⁰ Since then the Public Health Emergency has been extended for further periods of 90 days; at the time of writing it has been extended to 2 October 2020.¹³¹

This initial declaration gave the Queensland Chief Health Officer (CHO) broad powers to assist in tackling the spread of COVID-19, including by restricting people's movement, preventing people from entering certain premises, requiring people to stay at certain premises, requiring premises to open, close, or limit access, restricting contact between people, and delegating the same powers to Emergency Officers.¹³²

However, these powers stopped short of allowing the CHO to enforce the restrictions that were implemented by National Cabinet at the federal level on 18 March 2020. Where other states and territories declared a 'state of emergency' or 'state of disaster' to implement these measures, Queensland preferred to stay within the existing Public Health Act, and introduced the Public Health and Other Legislation (Public Health Emergency) Amendment Bill to Parliament. The Bill would grant further emergency powers to the CHO to enact the federal measures, such as bans on non-essential gatherings of people and mandatory self-isolation for a period of up to 14 days.¹³³

This Bill was also declared urgent, although the Opposition voted against the declaration.¹³⁴ The Opposition and the crossbench argued that the legislation was a significant Bill, amending 11 acts or regulations, but was being rushed through Parliament without time to debate it properly.¹³⁵

The Liberal National Party (LNP) said they would support the legislation but would move a number of amendments, mostly to provide relief for businesses during the declared public health emergency.¹³⁶ North Queensland First supported the LNP in not opposing the Bill and voting for their amendments.¹³⁷ The amendments were ultimately negatived and the Bill passed.¹³⁸

¹²⁸ https://www.publications.qld.gov.au/dataset/ada25992-9f9e-48a8-9511-6cf690dedaab/resource/ce375a63-7bbb-4068-8625-00673132fd09/fs_download/31.01.20-combined.pdf, page 97

¹²⁹ https://www.parliament.qld.gov.au/documents/hansard/2020/2020_02_04_WEEKLY.pdf#page=63, page 59

¹³⁰ Ibid, page 60

¹³¹ <https://www.legislation.qld.gov.au/view/whole/html/asmade/sl-2020-0075>

¹³² https://justiceconnect.org.au/resources/how-the-queensland-governments-emergency-restrictions-on-covid-19-work/#_ftn1

¹³³ https://www.parliament.qld.gov.au/documents/hansard/2020/2020_03_18_WEEKLY.pdf#page=31, page 680-1

¹³⁴ Ibid, page 685

¹³⁵ Ibid.

¹³⁶ See Deputy Leader of the Opposition Tim Mander's second reading speech at *ibid*, pages 686-7

¹³⁷ Ibid, page 701

¹³⁸ Ibid, pages 702-3

Between March and August, the CHO has made a number of binding ‘directions’ under the powers granted by these amendments. Each ‘direction’ has been published formally as a new section under the Public Health Act. These directions have included restricting travel and gatherings,¹³⁹ restricting businesses and activities,¹⁴⁰ limiting who can cross the Queensland border,¹⁴¹ detaining overseas arrivals in hotel quarantine,¹⁴² and limiting access to aged care facilities, hospitals, and prisons.¹⁴³

Most of these directions have been aligned with other states and territories, but unique to Queensland and particularly controversial were early decisions made to close Queensland’s borders. Closing state borders raises constitutional issues in Australia because Section 92 of the Constitution guarantees that “trade, commerce and intercourse among the states...shall be absolutely free.”¹⁴⁴

High profile figures such as Former Minister Alexander Downer and Senator Pauline Hanson publicly questioned whether Queensland’s border closures were constitutional,¹⁴⁵ while Minister for Home Affairs Peter Dutton encouraged Queenslanders to challenge the measures.¹⁴⁶

In May 2020, an application to challenge the border closures was filed by former federal MP Clive Palmer,¹⁴⁷ followed by a similar application in June filed by a group of Queensland tourism operators.¹⁴⁸ Both challenges were dropped in July when Queensland reopened its borders to all states and territories except Victoria.¹⁴⁹

¹³⁹ <https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/movement-gathering-direction>

¹⁴⁰ <https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/business-activity-undertaking-direction>

¹⁴¹ <https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/border-restrictions>

¹⁴² Ibid.

¹⁴³ <https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/aged-care>, <https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/hospital-visitors-direction>, <https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/revoked/revocation-of-corrective-services-facilities-direction-no.-2>

¹⁴⁴ https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Constitution

¹⁴⁵ <https://www.abc.net.au/news/2020-04-23/fact-check-state-border-closures-australian-constitution-corona/12164440#:~:text=When%20Queensland%20closed%20its%20borders,under%20section%20117%20of%20the,https://www.sbs.com.au/news/pauline-hanson-threatens-to-challenge-state-coronavirus-border-closures-in-the-high-court>

¹⁴⁶ <https://www.theguardian.com/world/2020/may/22/peter-dutton-encourages-people-to-challenge-queenslands-covid-19-border-closures>

¹⁴⁷ <https://www.theguardian.com/australia-news/2020/may/28/clive-palmer-launches-high-court-challenge-to-queensland-coronavirus-border-closure>

¹⁴⁸ <https://www.theaustralian.com.au/business/legal-affairs/coronavirus-see-you-in-court-border-rebels-tell-annastacia-palaszczuk/news-story/938dc3d6ddbc3096ad8a261ca20e6eea>

¹⁴⁹ <https://www.theguardian.com/law/2020/jul/23/clive-palmer-backed-court-challenge-to-queensland-covid-19-border-closure-dropped>

Policy process

1 Urgency

Was a justification given for the short timeline of the policy decision and was it accepted by the Parliamentary Opposition and ratified under existing or new legislation?

Yes. The use of emergency powers and the short timeline to exercise them was justified as urgent and in fact declared urgent by the Parliament without opposition initially. However, the urgency and short timeline of later changes to these initial emergency powers was not accepted by the Parliamentary Opposition.

2 Need

Was there a statement of why the policy was needed based on factual evidence and expert opinion?

Yes. Health experts advising the government supported the use of emergency powers to tackle the COVID-19 pandemic.

3 Objectives

Was there a statement of the policy's objectives couched in terms of the public interest?

Yes. The listed policy objectives of both sets of emergency powers (Queensland's Parliament requires Explanatory Notes to include policy objectives) invoke public interest arguments related to public health implications for Queenslanders, particularly older and more vulnerable people.¹⁵⁰

4 Options

Was there any disclosure of why the chosen policy was preferred over other possible policy responses?

No. Again, in Queensland, Explanatory Notes are expected to include alternative ways of achieving policy objectives, but for both pieces of legislation the Explanatory Notes simply state "there are no alternative ways for achieving the policy objectives."¹⁵¹

5 Mechanisms

Was there any disclosure of different ways (e.g. incentives versus fines) considered for executing the chosen policy?

No. Failure to comply with a direction under Queensland's Emergency and Public Health Powers can result in a fine of approximately \$13,345 for an individual, higher than the fines legislated in Victoria and New South Wales, and there was no disclosure of other mechanisms considered for encouraging compliance.¹⁵²

¹⁵⁰ See <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2020/5620T165.pdf> and <https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2020/5620T442.pdf>

¹⁵¹ Ibid. page 2 and ibid, page 9

¹⁵² <https://www.parliament.vic.gov.au/publications/research-papers/send/36-research-papers/13962-emergency-powers-public-health-and-covid-19>, Table 6

6 Analysis

Was there any disclosure of technical data, working assumptions and mathematical modelling behind the chosen policy?

Yes. As the pandemic progressed, modelling was released to show that the hospital system would be overwhelmed if new restrictions were not brought in, justifying new emergency measures.

7 Pathway

Was there any evidence of a carefully considered logistical strategy for rolling out the policy decision?

Yes. The government has released periodic information relating to the rollout of emergency powers and changes to restrictions and also published in full the Queensland Government pandemic plan¹⁵³ and a 'Roadmap' to easing restrictions.¹⁵⁴

8 Consultation

Was there meaningful input from relevant experts and stakeholder representatives before and after the policy decision?

No. The Explanatory Notes for both pieces of legislation explain that "due to its urgent nature, consultation on the Bill was not possible."¹⁵⁵

9 Communication

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

Yes. Like the other states and territories, the Queensland government's Department of Health maintains a web page with updated information about the use of emergency powers,¹⁵⁶ including publishing in full the public health directions from the CHO.¹⁵⁷

10 Review

Was there a stated intention to review the lessons learnt from the official policy response once the emergency was over?

Yes. Both pieces of legislation were passed with 12-month sunset clauses and an intention to review at that time.

¹⁵³ https://www.qld.gov.au/_data/assets/pdf_file/0025/124585/FINAL-QLD-WoG-Pandemic-Plan.pdf

¹⁵⁴ https://www.covid19.qld.gov.au/_data/assets/pdf_file/0016/127150/DPC7309-COVID-19-Restrictions-roadmap.pdf?nocache-v3

¹⁵⁵ <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2020/5620T165.pdf>, page 3 and

<https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2020/5620T442.pdf>, pages 16-17

¹⁵⁶ <https://www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19>

¹⁵⁷ <https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers>

PER CAPITA REPORT

Final scores

	Criterion	Yes/No
1	Urgency	Yes
2	Need	Yes
3	Objectives	Yes
4	Options	No
5	Mechanisms	No
6	Analysis	Yes
7	Pathway	Yes
8	Consultation	No
9	Communication	Yes
10	Review	Yes
		7/10

Federal case studies: non-emergency

Migration Amendment (Repairing Medical Transfers) Bill 2019

Policy background

In December 2018, newly elected Independent MP Kerryn Phelps introduced the Migration Amendment (Urgent Medical Treatment) Bill to Parliament as a private member's Bill, with the goal of establishing a framework for the temporary transfer of 'transitory persons' currently held in offshore immigration detention on Manus Island or Nauru to Australia where doctors agreed they required emergency medical treatment.¹⁵⁸

The measures were then attached to Schedule 6 of the Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2019 by Australian Greens Senator Nick McKim and Independent Senator Tim Storer in February 2019.¹⁵⁹ The government voted against the amendments but the provisions passed Parliament with the support of the Australian Labor Party and the crossbench; the first time since 1941 that the Australian government had lost a vote on its own legislation in the lower house.¹⁶⁰

During its campaign for the 2019 federal election, the Coalition promised that it would introduce legislation to repeal the medical transfer provisions, which came to commonly be known as the 'medevac' law. After winning the election, the new government fulfilled that promise by introducing the Migration Amendment (Repairing Medical Transfers) Bill 2019 to Parliament in July 2019.¹⁶¹

In his second reading speech, Minister for Home Affairs Peter Dutton claimed that the medevac law had "weaken[ed] Australia's border protection policies by effectively removing the ability of the government to decide who comes to Australia" and described the objective of the Bill as being to ensure that the government had "ultimate discretion to decide who enters Australia's borders".¹⁶²

These claims were disputed by Opposition and crossbench MPs in the lower house, who presented figures to show that of all the transfer requests lodged under the medevac laws, the Minister had straight away approved 80%, while just 20 cases were not approved by the Minister, all on medical grounds and none on security grounds. These 20 cases were considered by the Independent Health Advice Panel (IHAP) established by the medevac legislation, which upheld the Minister's decision on 13 occasions and overturned his decision on seven occasions.¹⁶³ As was acknowledged by the Senate Legal and Constitutional Affairs Legislation Committee's report on the Bill, the Minister always had the power to

¹⁵⁸ <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr6236%22>

¹⁵⁹ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1920a/20bd034#_ftn3

¹⁶⁰ <https://www.bbc.com/news/world-australia-47193899>

¹⁶¹ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6343

¹⁶² See Peter Dutton MP's second reading speech: https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/ce759aa1-47bf-467d-a58b-3bf640990032/toc_pdf/House%20of%20Representatives_2019_07_04_7072_Official.pdf;fileType=application%2Fpdf, page 296-7

¹⁶³ Shayne Neumann MP's second reading speech here: https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/e79ccb2b-a20c-483b-95e8-ca89001fbbd2/toc_pdf/House%20of%20Representatives_2019_07_24_7080_Official.pdf;fileType=application%2Fpdf, page 857

approve or deny the transfer of any individual on national security, public safety, or character grounds.¹⁶⁴ The most up to date figures, provided at the Senate Committee Inquiry's public hearing on 26 August 2019, showed that under the medevac law 28 referrals were made to IHAP following the Minister's refusal to approve transfer, and in 18 cases his decision was upheld, while in 10 cases he was overruled.¹⁶⁵

There were no government speakers for the Bill in the House. The Bill passed on 25 July and was introduced to the Senate on 29 July. Further consideration was adjourned until the Senate Committee could report back.

Between July and October, the Senate Committee accepted submissions and undertook consultation including a public hearing at the end of August. The Committee acknowledged that the majority of the evidence to the Inquiry opposed the repeal Bill, including the Royal Australasian College of Physicians, the Australian Medical Association, the Royal Australian and New Zealand College of Psychiatrists, the Royal Australian College of General Practitioners, and Médecins Sans Frontières.¹⁶⁶ In fact of all the submissions to the Inquiry, only one recommended the repeal: the Department of Home Affairs' own submission.¹⁶⁷

In September 2019, the Parliamentary Joint Committee on Human Rights published its scrutiny of Bill and expressed a series of concerns including threats to Australia's international *non-refoulement* obligations, the right to effective remedy, and the right to health.¹⁶⁸

Despite this evidence from medical, legal, and human rights experts, in October 2019 the Senate Committee recommended passing the Bill.¹⁶⁹ A casting vote from Liberal Party Chair Senator Amanda Stoker broke a tie caused by dissenting opinions from the two ALP members and one Australian Greens member.

Consideration of the Bill resumed in the Senate on 2 December 2019 and the debate was lengthy, detailed, and combative. It was understood in the media that the government had the support of Pauline Hanson's One Nation and independent Senator Cory Bernardi but that the rest of the crossbench would be voting with the ALP and Greens against the repeal; this left the government's majority in the hands of Independent Senator Jacqui Lambie.¹⁷⁰

The Senate debate was cut short its third day by government motions to put the legislation to the vote. With media reports swirling that the government had reached a secret deal with Senator Lambie, the Opposition attempted to suspend standing orders until the Senate could see the deal, but this was

¹⁶⁴ [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024304/toc_pdf/MigrationAmendment\(RepairingMedicalTransfers\)Bill2019\[Provisions\].pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024304/toc_pdf/MigrationAmendment(RepairingMedicalTransfers)Bill2019[Provisions].pdf;fileType=application%2Fpdf), page 5

¹⁶⁵ [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024304/toc_pdf/MigrationAmendment\(RepairingMedicalTransfers\)Bill2019\[Provisions\].pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024304/toc_pdf/MigrationAmendment(RepairingMedicalTransfers)Bill2019[Provisions].pdf;fileType=application%2Fpdf), page 8

¹⁶⁶ [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024304/toc_pdf/MigrationAmendment\(RepairingMedicalTransfers\)Bill2019\[Provisions\].pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024304/toc_pdf/MigrationAmendment(RepairingMedicalTransfers)Bill2019[Provisions].pdf;fileType=application%2Fpdf), page 35

¹⁶⁷ See Senator Kristina Keneally's second reading speech, https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansards/034e579d-037b-4e71-b359-fe406d617763/toc_pdf/Senate_2019_12_02_7413_Official.pdf;fileType=application%2Fpdf, page 4678

¹⁶⁸ Parliamentary Joint Committee on Human Rights, Report 4 of 2019, 10 September 2019, pp. 2–9.

¹⁶⁹ [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024304/toc_pdf/MigrationAmendment\(RepairingMedicalTransfers\)Bill2019\[Provisions\].pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024304/toc_pdf/MigrationAmendment(RepairingMedicalTransfers)Bill2019[Provisions].pdf;fileType=application%2Fpdf)

¹⁷⁰ <https://www.smh.com.au/politics/federal/the-deal-that-dare-not-speak-its-name-government-puts-medevac-legislation-to-vote-20191204-p53goo.html>

unsuccessful.¹⁷¹ Finance Minister Matthias Cormann's assertion that "there is no secret deal" was almost immediately contradicted by Senator Lambie herself who, in her second reading speech, tearfully acknowledged that she had "put up to the government a proposal to work with me to secure my support" but that she could not "discuss it publicly due to national security concerns."¹⁷²

In a last ditch attempt to save some element of the medevac law, Labor moved a series of amendments to allow people who had already applied for a medevac transfer to be assessed under the existing process, but with the government now having the required majority of 39 votes, these were negated.¹⁷³ The medevac repeal passed the Senate and received Royal Assent on 4 December 2019.

Policy process

1 Need

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

No. Many of the claims the government made around the need for the policy were disputed or disproved by experts or by its own Senate Committee report. For example, as outlined by the summary above, the government's central argument that the medevac law stripped the Minister of his ability to prevent a transfer to Australia on national security grounds was rejected by legal experts, while assertions that individuals transferred to Australia would take hospital beds from Australians needing medical treatment were comprehensively rejected by St Vincent's Health and other public health providers.¹⁷⁴

2 Objectives

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

No. The government did not make a public interest argument for the policy. In the Minister's second reading speech the justification was entirely related to border protection without a connection to public interest.¹⁷⁵ Similarly, the Department of Home Affairs' submission to the Senate Committee did not connect border protection to a broader public interest argument.¹⁷⁶

¹⁷¹ https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansards/e334e180-9912-41c7-af31-5051507e72fa/toc_pdf/Senate_2019_12_04_7418_Official.pdf;fileType=application%2Fpdf, page 4972-3

¹⁷² Ibid, page 4979-80

¹⁷³ Ibid, page 4985

¹⁷⁴ See submissions from legal experts to the Senate Committee Inquiry here:

[https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024304/toc_pdf/MigrationAmendment\(RepairingMedicalTransfers\)Bill2019\[Provisions\].pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024304/toc_pdf/MigrationAmendment(RepairingMedicalTransfers)Bill2019[Provisions].pdf;fileType=application%2Fpdf); and Andrew Giles MP's second reading speech here:

https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/6de0d50b-0944-45f2-a320-4c1eb07a7e9c/toc_pdf/House%20of%20Representatives_2019_07_23_7077_Official.pdf;fileType=application%2Fpdf, pages 757-763

¹⁷⁵ Peter Dutton MP's second reading speech here: https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/ce759aa1-47bf-467d-a58b-3bf640990032/toc_pdf/House%20of%20Representatives_2019_07_04_7072_Official.pdf;fileType=application%2Fpdf, pages 296-7

¹⁷⁶ See for example [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024304/toc_pdf/MigrationAmendment\(RepairingMedicalTransfers\)Bill2019\[Provisions\].pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024304/toc_pdf/MigrationAmendment(RepairingMedicalTransfers)Bill2019[Provisions].pdf;fileType=application%2Fpdf), page 20

3 Options

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

No. It was pointed out repeatedly to the government that a clear policy alternative would have been to propose amendments to address the elements of medevac law that it saw as problematic. The Law Council of Australia, the Castan Centre for Human Rights Law, the Human Rights Law Centre, and the Kaldor Centre for International Refugee Law all agreed that any ambiguities presented by the government could be remedied through simple technical amendments, and that in many cases provisions to address the government's concerns already existed elsewhere in the Migration Act.¹⁷⁷

4 Mechanisms

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

No. The government did not disclose that it had considered other mechanisms for implementing this policy other than by repealing the Medevac legislation.

5 Analysis

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

Yes. The Senate Inquiry process did take on board some of the alternative options and mechanisms raised by Opposition and crossbench MPs as well as expert and stakeholder groups, and weighed these up against each other in its final report.

6 Pathway

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

No. The government never provided answers as to how, once the medevac law was repealed, it would address the significant issues around urgent medical transfer that preceded the medevac provisions. The government has not revealed what its deal with Senator Lambie was or how that will factor into the policy rollout.

7 Consultation

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

Yes. Consultation took place as part of the Senate Committee Inquiry.

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?

No. There was no green paper/white paper process or published equivalent.

¹⁷⁷[https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024304/toc_pdf/MigrationAmendment\(RepairingMedicalTransfers\)Bill2019\[Provisions\].pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024304/toc_pdf/MigrationAmendment(RepairingMedicalTransfers)Bill2019[Provisions].pdf;fileType=application%2Fpdf), pages 11-13

9 Legislation

Was the policy initiative based on new or existing legislation that enabled comprehensive Parliamentary debate and public discussion?

Yes. There was 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?

No. There does not appear to be an official online media release or website that outlines the medevac repeal law.

Final scores

	Criterion	Yes/No
1	Need	No
2	Objectives	No
3	Options	No
4	Mechanisms	No
5	Analysis	Yes
6	Pathway	No
7	Consultation	Yes
8	Papers	No
9	Legislation	Yes
10	Communication	No
		3/10

My Health Record

Disclaimer: the decade of policy decisions, Budget announcements, Parliamentary debates, media controversy, and pieces of legislation that has culminated in what is now known as My Health Record is not a single policy decision that can be judged against the Wiltshire criteria, nor does it fall neatly within the remit of our timeline.

However, 2019 was the year that the system as it currently exists became fully operational, and also the year in which the Auditor-General released a comprehensive report on the policy's formation and implementation. For this reason, we have chosen to include it in this year's project, in the hope that analysing a policy with such a long history, and where so much detail on the policymaking process has been published, will give us interesting and useful insights related to our project.

Policy background

The capabilities of digital health technologies (often referred to as 'e-health') have been of interest to successive Australian governments since the 1990s. The Howard federal government's consideration of a Medicare 'smartcard' was the first attempt to manifest this interest as policy; however, the card was criticised as a threat to information security and privacy, and as having potential for 'function creep'.¹⁷⁸ In 2007, the newly elected Rudd Labor government resolved to keep working on e-health policy and introduced a National E-health Strategy in 2008.¹⁷⁹

At the 2010-11 Budget, a measure was announced creating a personally controlled electronic health record (PCEHR) for Australians who chose to opt into the system, to hold their health information securely online and allow different healthcare providers to access their medical history more quickly and accurately.¹⁸⁰ This intention was ultimately formalised by the Personally Controlled Electronic Health Records Act of June 2012.

The passing of this Act was subject to a significant amount of consultation, including the release of a draft plan and legislative framework paper, both of which were published and opened up for consultation and stakeholder feedback, Exposure Draft legislation which was also open for submission, and a Senate Community Affairs Legislation Committee Inquiry, which also opened for submissions and conducted more consultation.¹⁸¹ Privacy and security of information were central issues for stakeholders and the public from the very start,¹⁸² but a number of stakeholders also recommended an opt-out model rather than an opt-in model, on the basis that the opt-in model intended would be cumbersome and costly, and result in lower consumer engagement.¹⁸³

The 2013 federal election brought in a new Liberal/National Coalition government under Tony Abbott. In November 2013, the then Health Minister Peter Dutton announced a review of the PCEHR on the basis of

¹⁷⁸ https://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/1403420/upload_binary/1403420.pdf;fileType=application/pdf, page 3

¹⁷⁹ [https://www1.health.gov.au/internet/main/publishing.nsf/content/69B9E01747B836DCCA257BF0001DC5CC/\\$File/National%20eHealth%20Strategy%20final.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/content/69B9E01747B836DCCA257BF0001DC5CC/$File/National%20eHealth%20Strategy%20final.pdf)

¹⁸⁰ <https://archive.budget.gov.au/2010-11/bp2/bp2.pdf>, page 225

¹⁸¹ https://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/1403420/upload_binary/1403420.pdf;fileType=application/pdf

¹⁸² Ibid, pages 6, 10

¹⁸³ Ibid, page 9

low uptake and the need to encourage more people and providers to register with the system, to be conducted by a panel chaired by the then-Executive Director of UnitingCare Health Richard Royle.¹⁸⁴

The Royle review was publicly released in May 2014. The review found that there was broad public support for the intentions of the PCEHR, but recommended a “change in approach”, including renaming it, replacing the administrative body in charge of it, and moving it to an opt-out system.¹⁸⁵ The government then conducted public consultations on these recommendations.¹⁸⁶

The 2015-16 Budget included a measure called *My Health Record – a New Direction for Electronic Health Records in Australia*.¹⁸⁷ The government announced it would be implementing the recommendations from the Royle review, including renaming the PCEHR as ‘My Health Record’ and initiating trials of an opt-out model. Again, the Budget measure was formalised by legislation, with the Health Legislation Amendment (eHealth) Bill introduced in September 2015.

Once again, privacy and the collection, distribution, and use of personal information were key features of the Parliamentary debate, and the Bill was referred to the Senate Community Affairs Legislation Committee, which opened for limited submissions and held one public hearing, ultimately recommending that the Bill be passed but that the Department of Health consider recommendations from the Australian Information Commissioner with regard to privacy.¹⁸⁸ The Parliamentary Joint Committee on Human Rights also raised questions about privacy, particularly of children and persons with a disability, while the Senate Standing Committee for the Scrutiny of Bills had questions about the conduct of the trials; these questions were not answered by the Minister at the time of the Senate Inquiry.¹⁸⁹ The legislation passed in November 2015.¹⁹⁰

The Department of Health’s opt-out participation trials began in 2016 in two sites: the Northern Queensland Primary Health Network and the Nepean Blue Mountains Primary Health Network. The trial was formally evaluated and the evaluation was published in May 2017, finding that there was almost universal support for the automatic creation of My Health Records under an opt-out approach, and that concerns about confidentiality and security were few once the system and its benefits were explained.¹⁹¹ The 2017-18 Budget announced that My Health Record would transition to opt-out participation.¹⁹²

The initial opt-out period was set for three months from 16 July to 15 October 2018. During this time there was a flurry of media about privacy concerns accompanying switching to the opt-out model and accusations that the public was not correctly informed about the privacy implications of being automatically signed up for a My Health Record; for example, the Minister for Health Greg Hunt claimed that a My Health Record could only be accessed by police with a court order, and was then quickly

¹⁸⁴ https://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/4185428/upload_binary/4185428.pdf;fileType=application/pdf, page 7

¹⁸⁵ <https://delimiter.com.au/wp-content/uploads/2014/05/FINAL-Review-of-PCEHR-December-2013.pdf>

¹⁸⁶ https://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/4185428/upload_binary/4185428.pdf;fileType=application/pdf, page 7

¹⁸⁷ https://archive.budget.gov.au/2015-16/bp2/BP2_consolidated.pdf

¹⁸⁸ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/eHealth/Report

¹⁸⁹ Ibid, page 7-8

¹⁹⁰ https://www.aph.gov.au/Parliamentary_Business/Bills_LEgislation/Bills_Search_Results/Result?bld=r5534

¹⁹¹ [https://www1.health.gov.au/internet/main/publishing.nsf/Content/A892B3781E14E1B3CA25810C000BF7C6/\\$File/Evaluation-of-the-My-Health-Record-Participation-Trials-Report.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/A892B3781E14E1B3CA25810C000BF7C6/$File/Evaluation-of-the-My-Health-Record-Participation-Trials-Report.pdf)

¹⁹² <https://archive.budget.gov.au/2017-18/bp2/bp2.pdf>

contradicted by Parliamentary Library advice.¹⁹³ Concerns were raised by diverse stakeholders: major medical groups, domestic violence support organisations, privacy, security, and legal experts, unions, media commentators, and the Opposition.

In response to the backlash, the Minister extended the opt-out period for an extra month on 9 August 2018.¹⁹⁴ On 15 August, the whole My Health Record system was referred to the Senate Community Affairs Reference Committee for an Inquiry to focus particularly on the decision to shift from an opt-in to an opt-out model, the privacy and security concerns, and the government's administration of the roll-out including the public information campaign and community concerns.¹⁹⁵

On 22 August, the My Health Records Amendment (Strengthening Privacy) Bill was introduced with the explicit purpose of removing the provision that allowed the Australian Digital Health Agency (ADHA) to disclose health information to law enforcement agencies and other government bodies without a court order.¹⁹⁶ On 23 August, the legislation was referred to the Senate Community Affairs Legislation Committee for inquiry and report, effectively establishing two concurrent Senate inquiries, the first into the privacy implications of the My Health Record system as a whole and the second into the particular legislation seeking to strengthen privacy.

The second reading debate took place in the House from 17 to 19 September, before either Senate Inquiry had reported. The Opposition noted that as initial architects of the My Health Record system they continued to support it in principle, but that the government had "botched the implementation" by failing to adequately inform the public of the details of the switch to an opt-out model and by trying to "implement on opt-out system on opt-in foundations", failing to consider that fundamental changes would need to be made to the system to facilitate a tenable opt-out process.¹⁹⁷ The Opposition referred to the Strengthening Privacy Bill as a "clean-up exercise" that did not "go nearly far enough" and foreshadowed that they would be moving to strengthen the Bill in the Senate, a process that they argued the government should suspend until the two Inquiries could report.¹⁹⁸ The Bill was introduced to the Senate on 19 September with debate adjourned until after the report dates.

Both Inquiries progressed through September and October, accepting submissions and holding public hearings. On 12 October 2018, the Legislation Committee reported back on the Bill, recommending that it be passed.¹⁹⁹ On 18 October, the References Committee reported back on the My Health Record system as a whole, making a series of recommendations for amendments to the legislation governing My Health Record to improve privacy, including that the opt-out period be extended for a further 12

¹⁹³ <https://www.theguardian.com/australia-news/2018/jul/25/police-can-access-my-health-record-without-court-order-parliamentary-library-warns>

¹⁹⁴ <https://www.legislation.gov.au/Details/F2018L01099>

¹⁹⁵ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/MyHealthRecordsystem

¹⁹⁶ See Minister for Health Greg Hunt MP's second reading speech here:

https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/8476f2bd-f956-415f-ae14-0f9718751478/0011/hansard_frag.pdf;fileType=application%2Fpdf

¹⁹⁷ See Catherine King MP's second reading speech here:

https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/b8101fb1-edde-4753-a50e-1709934db485/toc_pdf/House%20of%20Representatives_2018_09_17_6565_Official.pdf;fileType=application%2Fpdf, page 9166 – 9171.

¹⁹⁸ Ibid.

¹⁹⁹ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/MyHealthRecords/Report

months.²⁰⁰ As a result of issues raised during the Inquiry processes, the Opposition flagged a number of amendments it would be moving to the legislation in the Senate. The government announced that it would amend its legislation to match this plan. The Opposition also moved that the opt-out period be extended for a further 12 months, but this amendment was negated.²⁰¹ Instead, an amendment moved by Pauline Hanson's One Nation to extend the opt-out period to 31 January 2019 was passed,²⁰² and the Minister formalised this at the end of the day of debate on 14 November.²⁰³

On the final day of debate, the government moved its amendments as announced: removing the ability for the ADHA to disclose information to law enforcement agencies without a court order, requiring the ADHA to permanently delete health information upon cancellation of a My Health Record, safeguards to prevent a parent's access to a child's My Health Record if they have supervised access arrangements, clarifying that My Health Records could not be accessed by health insurers or employers, increasing penalty levels for breaches, tightening rules around secondary use of information, and formalising a promise never to privatise the system.²⁰⁴ An amendment from the Australian Greens to protect the privacy of young people aged 14-17 by ensuring that a parent would not be granted automatic access to their My Health Record also passed in the Senate.²⁰⁵ The amended legislation passed both houses on 26 November and received Assent on 10 December 2018.²⁰⁶

The deadline to opt-out of My Health Record passed on 31 January 2019, and at Senate Estimates on 20 February 2019, the Department of Health confirmed that more than 2.5 million people (close to 10% of the eligible population) had opted out of the system, which the Department said was in line with their expectations, and which Labor pointed out was more than double the amount that had opted out by the previously planned deadline.²⁰⁷ Other than some reporting about a My Health Record that had been set up without consent²⁰⁸ and a software glitch that was preventing some clinicians from uploading information to the system,²⁰⁹ My Health Record remained relatively uncontroversial in the mainstream media for most of the rest of the year.

In November 2019, the Australian National Audit Office (ANAO) published the Auditor-General's performance audit of the My Health Record system's implementation. The audit found that implementation had been largely effective, particularly with regard to planning, governance, and

²⁰⁰ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/MyHealthRecordsystem/Final_Report

²⁰¹ https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansards/b8a44c40-3453-4209-9b0b-b13bdd868983/toc_pdf/Senate_2018_11_14_6735_Official.pdf;fileType=application%2Fpdf, page 8092

²⁰² Ibid, page 8093

²⁰³ <https://www.legislation.gov.au/Details/F2018L01575>

²⁰⁴ https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansards/180e57a2-f846-48db-9314-0022ab9c4706/toc_pdf/Senate_2018_11_15_6736_Official.pdf;fileType=application%2Fpdf, page 8238-9

²⁰⁵ [https://parlinfo.aph.gov.au/parlInfo/download/legislation/sched/r6169_sched_8f90a9a4-d09c-4140-abd1-e1cc71e72b8a/upload_pdf/My%20Health%20Records%20Amendment%20\(Strengthening%20Privacy\)%20Bill%202018.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/legislation/sched/r6169_sched_8f90a9a4-d09c-4140-abd1-e1cc71e72b8a/upload_pdf/My%20Health%20Records%20Amendment%20(Strengthening%20Privacy)%20Bill%202018.pdf;fileType=application%2Fpdf), Schedule 5

²⁰⁶ https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bld=r6169

²⁰⁷ https://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/01e502e6-3d7b-4205-ab9d-e04d2a2186ae/toc_pdf/Community%20Affairs%20Legislation%20Committee_2019_02_20_6951_Official.pdf;fileType=application%2Fpdf#search=%22committees/estimate/01e502e6-3d7b-4205-ab9d-e04d2a2186ae/0000%22, page 97-8

²⁰⁸ <https://www.theguardian.com/australia-news/2019/jan/31/my-health-record-deadline-couple-finds-account-set-up-without-consent-in-2016>

²⁰⁹ <https://www.theguardian.com/australia-news/2019/jan/25/my-health-record-government-warned-of-significant-patient-data-glitch>

communication, but that management of the cyber security risks shared between multiple stakeholders (including healthcare providers and IT vendors) was not appropriate and should be improved.²¹⁰

The audit revealed that the ADHA was unable to guarantee that all “emergency access” requests to view a My Health Record were legitimate and that only 8.2% of such emergency accesses were meeting guidelines. The ANAO also noted that an end-to-end privacy risk assessment of the system’s operation under the opt-out model had not been completed, although four reviews were initiated. The Auditor-General made five recommendations to improve risk management and evaluation, all of which were agreed to by the ADHA and the Department of Health.

Policy process

1 Need

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

Yes. The need for an opt-out My Health Record system was supported by the Royle review and associated consultations, as well as evidence from prior Senate Inquiries to show that the majority of Australians wanted an e-health record and that transitioning to opt-out would be the best way to improve uptake from the PCEHR system.

2 Objectives

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

Yes. The public interest argument was made that switching to an opt-out system would “improve the health of all Australians”.²¹¹

3 Options

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

Yes. Over the course of the decade, a number of policy options for delivering widespread e-health services to Australians were proposed or implemented, including as examples, the Medicare smartcard and the PCEHR.

4 Mechanisms

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

Yes. For example, the merits of an opt-in vs. an opt-out system were considered and also formally trialled. The government also showed flexibility in adopting amendments to the legislation that changed many of the implementation mechanisms.

²¹⁰ <https://www.anao.gov.au/work/performance-audit/implementation-the-my-health-record-system>

²¹¹ See Minister for Health Sussan Ley MP’s second reading speech here:

https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/108deaf7-f29c-4e1f-96aa-3f9b4ff9bf1a/0033/hansard_frag.pdf;fileType=application%2Fpdf

5 Analysis

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

Yes. There have been a number of reviews analysing different policy options and implementation mechanisms for My Health Record, including the Royle review, the Senate Inquiry into the Health Legislation Amendment (eHealth) Bill, the evaluation of the opt-out participation trials, and the two Senate Inquiries associated with the My Health Records Amendment (Strengthening Privacy) Bill.

6 Pathway

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

Yes. The ANAO performance audit found that the planning, governance, and communication plans around the rollout of My Health Record were largely effective.

7 Consultation

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

Yes. There was consultation on the recommendations of the Royle review, consultations as part of all three Senate Inquiries, and consultations as part of the trials.

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?

Yes. The Royle review followed by the published reports of the Senate inquiries can be seen as the equivalent of a green/white paper process.

9 Legislation

Was the policy initiative based on new or existing legislation that enabled comprehensive Parliamentary debate and public discussion?

Yes. The policy initiative was based on a mix of new and existing legislation and was debated comprehensively in both Parliament and the media.

10 Communication

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

Yes. My Health Record has a dedicated website.²¹²

²¹² <https://www.myhealthrecord.gov.au/>

PER CAPITA REPORT

Final scores

	Criterion	Yes/No
1	Need	Yes
2	Objectives	Yes
3	Options	Yes
4	Mechanisms	Yes
5	Analysis	Yes
6	Pathway	Yes
7	Consultation	Yes
8	Papers	Yes
9	Legislation	Yes
10	Communication	Yes
		10/10

Treasury Laws Amendment (Consumer Data Right) Bill 2019

Policy background

In the 2017-18 Budget announcement in May 2017, the government committed to initial funding for an open banking regime.²¹³ 'Open banking' refers primarily to giving banking customers access to and control over data that is held on them by their banks, so that it can be used to identify new or better banking and financial management services or products.²¹⁴

In the first instance, the funding was directed towards a review into the potential for an open banking regime in Australia. The Open Banking Review was commissioned by then Treasurer Scott Morrison in July 2017 and was chaired by Scott Farrell. The Review released an Issues Paper in August 2017, opened for submissions, and conducted consultations, including in other jurisdictions.²¹⁵

In November 2017, while the Review was ongoing, then Assistant Minister for Digital Transformation Angus Taylor MP announced the development of a national Consumer Data Right (CDR), legislating consumer access to data held by third parties (such as banks).²¹⁶ The design of the CDR would be informed by the recommendations of the Open Banking Review, as it would be implemented initially in the banking sector before expanding to the energy and telecommunications sectors, and then economy-wide.

The Open Banking Review published its Final Report in December 2017,²¹⁷ and the government sought further comments on the 50 recommendations made, with submissions due by March 2018.²¹⁸ Following this round of consultation, the government agreed to the recommendations of the Review in May 2018, and announced it would implement the CDR in line with those recommendations.²¹⁹

Further consultation took place from August 2018, when the Treasury published Exposure Draft Legislation and opened for submissions, also conducting roundtables with industry stakeholders.²²⁰ Over the rest of 2018 and into 2019, the policy development occurred in tandem with the legislative development, with the Australian Competition and Consumer Commission (ACCC) holding consultation on and drafting the CDR Rules.²²¹

In February 2019, the first version of the Treasury Laws Amendment (Consumer Data Right) Bill 2019 was introduced to the House of Representatives; the provisions of which were referred to the Senate Economics Legislation Committee for Inquiry and report due to Opposition concern that the two processes occurring in tandem meant the outcomes would be rushed.²²² The Senate Committee accepted submissions and held public hearings in March 2019.

²¹³ <https://archive.budget.gov.au/2017-18/bp2/bp2.pdf>, page 161

²¹⁴ <https://treasury.gov.au/sites/default/files/2019-03/Review-into-Open-Banking-IP.pdf>, page 2

²¹⁵ <https://treasury.gov.au/sites/default/files/2019-03/Review-into-Open-Banking-IP.pdf>

²¹⁶ <https://treasury.gov.au/consultation/c2018-t247313>

²¹⁷ <https://treasury.gov.au/sites/default/files/2019-03/Review-into-Open-Banking- For-web-1.pdf>

²¹⁸ <https://treasury.gov.au/consultation/c2018-t247313>

²¹⁹ <https://treasury.gov.au/publication/p2018-t286983>

²²⁰ <https://treasury.gov.au/consultation/c2018-t316972>

²²¹ <https://www.accc.gov.au/focus-areas/consumer-data-right-cdr-0>

²²² https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/TLABConsumerDataRight

The Senate Committee published its Final Report on 21 March 2019 and recommended that the Bill be passed.²²³ However, Labor Senators raised some concerns in their additional comments about the short timeframe of the Bill, the potential for negative impacts on vulnerable cohorts of people, and privacy. Following the Senate Inquiry process, a number of changes were made to the legislation to address some of these concerns.²²⁴

The Treasury Laws Amendment (Consumer Data Right) Bill 2019 was ultimately introduced to Parliament in July 2019.²²⁵ The Bill was supported by the Opposition and made its way through both houses quickly, passing on 1 August 2019. However, the Opposition's support was contingent on the government tabling a new Bill to make amendments to ensure that the scheme's rules contained a requirement for data to be permanently deleted upon consumer request.²²⁶

This 'right to delete' took the form of Schedule 4 to the Treasury Laws Amendment (2019 Measures No. 2) Bill 2019, introduced to the House on 18 September 2019 and passing both houses on 17 October 2019.²²⁷

Policy process

1 Need

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

Yes. A number of reviews and inquiries recommended expanding customers' access to data in order to facilitate open banking and other improvements to customer choices, including the 2014 Financial System Inquiry (the Murray Inquiry), the 2015 Competition Policy Review (the Harper Review), the 2016 Report of the House of Representatives Standing Committee on Economics' Review of the Four Major Banks (the Coleman Report), and the Review into Open Banking in Australia (the Farrell Review). All of these reviews included stakeholder input.

2 Objectives

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

No. The Minister's second reading speech discussed benefits for "consumers" and for "small and medium businesses" but did not make a broader public interest argument.²²⁸

²²³ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/TLABConsumerDataRight/Report, page 27

²²⁴ See Ed Husic MP's second reading speech, page 1440:

https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/a84cce14-e82b-4b9f-8035-b3f8af36cbdf/toc_pdf/House%20of%20Representatives_2019_07_30_7089_Official.pdf;fileType=application%2Fpdf

²²⁵ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6370

²²⁶ See Senator Hume's second reading speech, page 1452:

https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansards/0ddd7d01-a5d8-4370-8b5d-bdcd71582383/toc_pdf/Senate_2019_08_01_7096_Official.pdf;fileType=application%2Fpdf

²²⁷ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6419

²²⁸ https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/e79ccb2b-a20c-483b-95e8-ca89001fbbd2/0026/hansard_frag.pdf;fileType=application%2Fpdf

3 Options

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

No. Legislating a CDR and adopting an open banking regime was the only policy option suggested for giving consumers better choice of and access to banking and financial services and products.

4 Mechanisms

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

Yes. The Open Banking Review and the Senate Inquiry process both investigated different implementation mechanisms for the CDR and the open banking regime. For example, the Open Banking review considered different options for the regime's regulatory framework, for the scope and type of data to be shared, for safeguards to inspire public confidence in the regime, and for the data transfer mechanism itself.

5 Analysis

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

Yes. This analysis is undertaken most clearly in the Open Banking Review.

6 Pathway

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

Yes. The Open Banking Review included a chapter that laid out an implementation timeline, which was adopted by the government. The ACCC also has a running project timeline for the CDR.²²⁹

7 Consultation

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

Yes. There were numerous rounds of consultation on the Review, on the legislation, on the Rules, and as part of the Senate Inquiry process.

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?

Yes. The Open Banking Review published both an Issues Paper and a Final Report, both of which were open for comment. The government also published Exposure Draft Legislation.

²²⁹ <https://www.accc.gov.au/focus-areas/consumer-data-right-cdr-0>

9 Legislation

Was the policy initiative based on new or existing legislation that enabled comprehensive Parliamentary debate and public discussion?

Yes. The policy was ratified under new legislation which proceeded through Parliamentary debate.

10 Communication

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

Yes. The ACCC and the Treasury both have web page dedicated to the CDR.²³⁰

Final scores

	Criterion	Yes/No
1	Need	Yes
2	Objectives	No
3	Options	No
4	Mechanisms	Yes
5	Analysis	Yes
6	Pathway	Yes
7	Consultation	Yes
8	Papers	Yes
9	Legislation	Yes
10	Communication	Yes
		8/10

²³⁰ <https://www.accc.gov.au/focus-areas/consumer-data-right-cdr-0>, <https://treasury.gov.au/consumer-data-right>

State case studies: Victoria

Wage Theft Act 2020

Policy background

The issue of wage theft was brought to the nation's attention in 2015 following a high profile investigation by the ABC and Fairfax Media which uncovered fraudulent bookkeeping, blackmail, and mass underpayment of staff in the 7-Eleven franchise.²³¹ Wage theft is defined as “the practice of paying workers less than they are entitled to under Australia's workplace relations system” and is distinct from other issues associated with insecure work because it is unlawful.²³² Numerous high profile cases of wage theft followed this investigation, exposing the practice as endemic in the retail, hospitality, and farming industries, affecting young and migrant workers in particular.

In March 2017, the Victorian government commenced an inquiry into a decision by the Fair Work Ombudsman to cut penalty rates for workers in retail and hospitality. The final Committee report revealed that non-payment of penalty rates was a significant issue in these industries and made a number of recommendations to increase worker protection, including the introduction of a new criminal offence for wage theft in Victoria.²³³

The Victorian Labor government then committed to introducing new laws to criminalise wage theft prior to its re-election campaign for the November 2018 election.²³⁴ The proposed new laws would operate separately from the federal *Fair Work Act* and would criminalise the dishonest underpayment of employee wages and entitlements in Victoria.

In July the following year it was reported that MAdE Group, the franchise of restaurants headed by celebrity chef George Calombaris, had entered into an undertaking with the Fair Work Ombudsman to back-pay workers over \$7.8 million in unpaid wages and superannuation.²³⁵ Within a week the federal government had announced its intention to address the issue of wage theft and commenced working on draft legislation.²³⁶

The Attorney-General's Department released a discussion paper calling for feedback on the current regulatory regime and the option of introducing criminal offences.²³⁷ A second discussion paper was

²³¹ <https://www.parliament.vic.gov.au/publications/research-papers/download/36-research-papers/13958-wage-theft-bill-2020>, <https://www.abc.net.au/4corners/7-eleven-promo/6729716>

²³² <https://www.smh.com.au/national/underpayment-as-business-model-what-is-wage-theft-20190509-p51lko.html#:~:text=Wage%20theft%20describes%20the%20practice,under%20Australia's%20workplace%20relations%20system.&text=This%20has%20wider%20implications%3A%20if,their%20staff%20a%20pay%20rise>

²³³ https://www.parliament.vic.gov.au/file_uploads/PRFPSC_58-02_Text_WEB_V0t4G6dx.pdf

²³⁴ <https://www.smh.com.au/business/workplace/labor-promises-to-jail-bosses-over-wage-theft-20180525-p4zhko.html>

²³⁵ <http://www.fairwork.gov.au/about-us/news-and-media-releases/2019-media-releases/july-2019/20190718-made-establishment-eu-media-release>

²³⁶ <https://www.smh.com.au/national/underpayment-as-business-model-what-is-wage-theft-20190509-p51lko.html#:~:text=Wage%20theft%20describes%20the%20practice,under%20Australia's%20workplace%20relations%20system.&text=This%20has%20wider%20implications%3A%20if,their%20staff%20a%20pay%20rise>

²³⁷ <https://www.ag.gov.au/industrial-relations/consultations/improving-protections-employees-wages-and-entitlements-strengthening-penalties-non-compliance>

released in February 2020, focussing on the adequacy of the current compliance and enforcement regime, but consultation on the paper was paused due to COVID-19.²³⁸ A Senate Committee Inquiry into the unlawful underpayment of employee's remuneration was due to report in June 2020 but also received an extension until 2021 due to COVID-19.²³⁹

Meanwhile, the Victorian government began public consultation in August 2019 through a series of public forums at which victims of wage theft were invited to testify.²⁴⁰ A discussion paper was released in February 2020 outlining the principles and scope of the proposed legislation.²⁴¹ Submissions closed on 9 March and the Wage Theft Bill 2020 was introduced to the Legislative Assembly a week later by Attorney-General Jill Hennessey.

The legislation sought to establish a new criminal offence of dishonestly underpaying staff wages or entitlements and two new bookkeeping offences of falsifying or failing to keep records with the intent of profiting.²⁴² The offences would carry monetary penalties of up to \$190,284 for individuals and \$951,420 for corporations, and the possibility of 10 years in prison. The Bill also established a Victorian Wage Inspectorate with broad powers to investigate offences, enforce compliance and bring criminal proceedings.

In her second reading speech the Attorney-General made it clear that the law was aimed at dishonest conduct and would not apply to businesses which mistakenly underpaid their staff.²⁴³ However, the new definition of 'dishonesty' in the Bill departed from the definition used for regular theft offences. Conduct would be deemed 'dishonest' if it is considered dishonest by the 'standards of a reasonable person', rather than by determining the genuine beliefs of the accused person.²⁴⁴ Shadow Attorney-General Edward O'Donohue argued that this new definition inappropriately imported the lower civil burden of proof (on the balance of probability) into criminal proceedings.²⁴⁵

The Bill was opposed by organisations such as the National Retail Association and Victorian Chamber of Commerce, which argued that the law could be subject to a legal challenge if the federal government introduced legislation in the same area, as they had promised to do.²⁴⁶ In Parliament, the Opposition argued that workplace relations should be left to the federal government, that the policy was inappropriate during the coronavirus pandemic, and that it didn't address the primary concerns of workers: to regain their lost payments.²⁴⁷ Greens MP Sam Hibbins also raised this latter point during

²³⁸ <https://www.ag.gov.au/industrial-relations/publications/improving-protections-employees-wages-and-entitlements-further-strengthening-civil-compliance-and-enforcement-framework-discussion-paper>

²³⁹ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Underpaymentofwages

²⁴⁰ <https://www.parliament.vic.gov.au/component/jdownloads/download/36-research-papers/13958-wage-theft-bill-2020>

²⁴¹ <https://engage.vic.gov.au/wage-theft>

²⁴² https://content.legislation.vic.gov.au/sites/default/files/2020-06/591084bs1_0.PDF

²⁴³ https://hansard.parliament.vic.gov.au/search/?LDMS=Y&IW_DATABASE=*&IW_FIELD_ADVANCE_PHRASE=be+now+read+a+s+econd+time&IW_FIELD_IN_SpeechTitle=Wage+Theft+Bill+2020&IW_FIELD_IN_HOUSENAME=ASSEMBLY&IW_FIELD_IN_ACTIVI_TYTYPE=Second+reading&IW_FIELD_IN_SittingYear=2020&IW_FIELD_IN_SittingMonth=March&IW_FIELD_IN_SittingDay=19

²⁴⁴ <https://engage.vic.gov.au/wage-theft>

²⁴⁵ https://www.parliament.vic.gov.au/images/stories/daily-hansard/Council_2020/Legislative_Council_2020-06-16.pdf, page 1919

²⁴⁶ https://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2020/Legislative_Assembly_2020-06-02.pdf, page 1429

²⁴⁷ https://www.parliament.vic.gov.au/images/stories/daily-hansard/Council_2020/Legislative_Council_2020-06-16.pdf, see Mr O'Donohue's speech from 1918-1923

debate, but ultimately supported the Bill.²⁴⁸ An amendment was moved by the Opposition in both houses to delay the start of the law by one year but was defeated both times. The Bill passed Parliament without any amendments and received Royal Assent on 23 June, making Victoria the first state in the country to criminalise wage theft.

Policy process

1 Need

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

Yes. In her second reading speech Attorney-General Jill Hennessey argued that “the existing Commonwealth civil penalty regime does not provide a strong enough deterrent to prevent wage theft,” citing the recent string of high-profile companies who self-reported “almost half a billion dollars” in underpayments.²⁴⁹ The Inquiry into Penalty Rates and Fair Pay had also conducted consultation and tabled its interim report prior to the policy’s announcement.

2 Objectives

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

Yes. The objective of the Bill is to protect workers from exploitation by holding employers to account.²⁵⁰

3 Options

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

Yes. Several alternative options were considered in the Select Committee Inquiry into Penalty Rates and Fair Pay, for example advocating for increased pecuniary penalties under the Fair Work Act, new educational initiatives, and a Victorian government penalty rates procurement guarantee.²⁵¹ An international comparison was made to wage theft laws in Seattle.

4 Mechanisms

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

Yes. The Committee report identifies alternative mechanisms for the introduction of a new state-based enforcement agency which could assist employees with disputes, enforce criminal offences, and educate Victorian workers about their rights.²⁵²

²⁴⁸ https://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2020/Legislative_Assembly_2020-06-02.pdf, page 1433

²⁴⁹ https://hansard.parliament.vic.gov.au/search/?LDMS=Y&IW_DATABASE=*&IW_FIELD_ADVANCE_PHRASE=be+now+read+a+s econd+time&IW_FIELD_IN_SpeechTitle=Wage+Theft+Bill+2020&IW_FIELD_IN_HOUSENAME=ASSEMBLY&IW_FIELD_IN_ACTIVI TYTYPE=Second+reading&IW_FIELD_IN_SittingYear=2020&IW_FIELD_IN_SittingMonth=March&IW_FIELD_IN_SittingDay=19

²⁵⁰ Ibid.

²⁵¹ https://www.parliament.vic.gov.au/file_uploads/PRFPSC_58-02_Text_WEB_V0t4G6dx.pdf

²⁵² Ibid.

5 Analysis

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

No. While there is a discussion of the pros and cons of alternative options in the Committee report, there is no discussion of the pros and cons of alternative mechanisms.

6 Pathway

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

No. While there is a 'statement of expectations' and an action plan available online for the Victorian Wage Inspectorate, these appear to be from 2018 before the Wage Theft Bill was legislated.²⁵³

7 Consultation

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

Yes. After the initial public forums, the government released a discussion paper outlining the preferred policy and calling for submissions.

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?

Yes. The Select Committee Inquiry into Penalty Rates and Fair Pay can be seen as the equivalent of a green paper, as the Committee was tasked with investigating ways to protect vulnerable Victorian workers and the final report outlined a number of potential policy responses. The Wage Theft Bill discussion paper is the equivalent of 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?

Yes. Legislation was introduced which allowed for comprehensive Parliamentary debate.

10 Communication

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

Yes. There is a media release which explains the policy in simple, clear, and factual terms.²⁵⁴ However, it appears that the Wage Inspectorate page has not been updated to include its new functions.²⁵⁵

²⁵³ <https://www.vic.gov.au/wage-inspectorate-victoria>

²⁵⁴ <https://www.premier.vic.gov.au/wage-theft-legislation-passes-victorian-parliament/>

²⁵⁵ <https://www.vic.gov.au/wage-inspectorate-victoria>

PER CAPITA REPORT

Final scores

	Criterion	Yes/No
1	Need	Yes
2	Objectives	Yes
3	Options	Yes
4	Mechanisms	Yes
5	Analysis	No
6	Pathway	No
7	Consultation	Yes
8	Papers	Yes
9	Legislation	Yes
10	Communication	Yes
		8/10

Gender Equality Act 2020

Policy background

The Gender Equality Act 2020 establishes a legal framework to promote workplace gender equality within the Victorian public sector, universities, and local councils.²⁵⁶ The Act establishes a general duty for public sector organisations to promote gender equality (defined as a set of principles) within their workforce and the community by conducting gender impact assessments of their programs, policies, and services.²⁵⁷

The Act also requires public service entities to develop a Gender Equality Action Plan (GEAP), which describes how the organisation will promote gender equality based on a list of indicators including pay equity, workforce gender composition, sexual harassment policies, recruitment and promotion, availability and uptake of flexible working arrangements, and parental leave. Other provisions allow the Assistant Treasurer to issue guidelines regarding government funding and procurement to promote gender equality in the private sector. Finally, the Act establishes a new Victorian Public Service Gender Equality Commissioner to assist in the implementation and monitoring of the Act, and to provide education and support.

The Act comes into operation in March 2021 and will apply to more than 300 organisations across the state, including all Victorian public service bodies, public entities, universities, local government, court services, and the Office of Public Prosecutions.²⁵⁸

The policy originated from the 2015 Royal Commission into Family Violence, which found that promoting gender equality at all levels of society is essential to addressing violence against women.²⁵⁹ As part of its response to the commission, in December 2016 the Victorian government released *Safe and Strong: A Victorian Gender Equality Strategy*, which aimed to address family violence by promoting gender equality across the state.²⁶⁰ A key commitment of this strategy was to introduce legislation to improve gender equality within the public sector.²⁶¹

The Department of Health and Human Service (DHHS) began consultation on this element of the strategy in late 2017. It conducted a series of consultations with representatives from the Ministerial Council on Women's Equality and the Equal Workplaces Advisory Council (EWAC), which collectively represented a cross-section of women in business, health, STEM, local government, unions, and the not-for-profit sector.²⁶² DHHS also commissioned 10 stakeholder workshops across Victoria to gather insight into the vision and parameters for the new legislation.²⁶³ They found there was widespread support for positive obligations on organisations but no consistent view as to what they should be.²⁶⁴ They also found broad

²⁵⁶ <https://engage.vic.gov.au/gender-equality>

²⁵⁷ https://content.legislation.vic.gov.au/sites/default/files/d73855fb-421d-31c7-bb81-26006c410242_591061bab1.pdf,
https://content.legislation.vic.gov.au/sites/default/files/0e2a7787-bd44-33a2-a2aa-b740294e4627_591061exab1.pdf

²⁵⁸ https://www.parliament.vic.gov.au/images/stories/daily-hansard/Council_2020/Legislative_Council_2020-02-20.pdf, page 482

²⁵⁹ https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/3915/7481/1417/Gender_Equality_Bill_Consultation_Feedback_Report.pdf, page 9

²⁶⁰ <https://www.vic.gov.au/safe-and-strong-victorian-gender-equality>

²⁶¹ https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/3915/7481/1417/Gender_Equality_Bill_Consultation_Feedback_Report.pdf, page 9

²⁶² Ibid, page 10

²⁶³ Ibid, page 11

²⁶⁴ Ibid.

consensus that the policy should be aligned with the goal of preventing violence against women, and it should address the structural, systematic, and cultural barriers facing women.²⁶⁵

The draft legislation and a discussion paper were released on the Engage Victoria website in August 2018, and the public was invited to make submissions.²⁶⁶ DHHS reported that it was one of their most successful public consultations, with 56 submissions made and over 700 responses received through the website.²⁶⁷ DHHS then conducted a further eight stakeholder forums and one targeted forum which were structured around the issues in the discussion paper and focussed specifically on testing the legislative model and seeking feedback on implementation.²⁶⁸ The feedback from the consultation process as a whole was discussed at length in the Consultation Feedback Report and focussed on the need to:

- have a stronger focus on intersectionality;
- strengthen the Bill's focus on gender equality in policy, programs, and service delivery;
- clarify compliance requirements on organisations;
- extend the Bill's influence beyond the public sector to influence private organisations and not-for-profit organisations;
- ensure targets and quotas are tailored and reasonable;
- increase accountability and transparency; and
- the importance of guidance materials, implementation support and communications to the success of the Bill.²⁶⁹

DHHS also commissioned MosaicLab and the newDemocracy foundation to conduct a citizens' jury to consider the specific question of targets and quotas. 80 jurors were selected through a randomised process, briefed on the legislation,²⁷⁰ and presented with research, data and evidence.²⁷¹ The jurors produced 11 practical recommendations and 6 aspirational recommendations, which included a quota of 40% women, 40% men and 20% of any gender for senior management roles and above.²⁷² They also expressed a preference for incentives rather than sanctions and a requirement that the quotas be implemented within a 5 year timeframe. Most of the recommendations were accepted by the government, however the 40:40:20 quota was rejected on the basis that "mandating inflexible quotas... is not in keeping with best practice policy-making and risks low compliance, negative backlash and unintended outcomes."²⁷³ The final version of the Bill did not stipulate specific targets but allowed for tailored quotas to be made by regulation.

Following this extensive community consultation, the legislation was introduced to Parliament in November 2019. The Opposition supported the Bill but moved several amendments. First, amendments were moved to remove the role of the commissioner, which it was argued inappropriately outsourced the

²⁶⁵ Ibid.

²⁶⁶ <https://engage.vic.gov.au/gender-equality>

²⁶⁷ https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/3915/7481/1417/Gender_Equality_Bill_Consultation_Feedback_Report.pdf, page 12

²⁶⁸ Ibid.

²⁶⁹ Ibid, pages 35-42

²⁷⁰ Ibid, page 42

²⁷¹ <https://engage.vic.gov.au/gender-equality>

²⁷² https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/3915/7481/1417/Gender_Equality_Bill_Consultation_Feedback_Report.pdf, page 43

²⁷³ Ibid, page 44

role of the Minister for Women to an external body.²⁷⁴ Second, amendments were moved to ensure small businesses and not-for-profit organisations would exempt from any funding or procurement guidelines issued under the Act. It was argued that these guidelines could potentially discriminate against rural and regional organisations with limited funding and resources.²⁷⁵

In reply, the government argued that the amendments would weaken the Bill's scope to influence the private sector, and all amendments were rejected.²⁷⁶ The Bill passed both houses and received Assent on 25 February 2020. In September 2020, Dr Niki Vincent was appointed Victoria's first Public Sector Gender Equality Commissioner.²⁷⁷

Policy process

1 Need

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

Yes. The need for the policy was established based on hard evidence and extensive stakeholder consultation.²⁷⁸

2 Objectives

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

Yes. The objectives of the Bill, as outlined in the second reading speech, are to "improve workplace gender equality across the Victorian public sector... and to embed firm and measurable gender equitable outcomes in the community through policies, programs and services."²⁷⁹ It was repeatedly argued that all Victorians benefit from gender equality.

3 Options

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

No. Although the suggestion that alternative policy options were considered in the early stages of the consultation process is made in the Consultation Feedback Report, these are implied rather than systematically described. There is no clear description of what policy options were considered prior to the publication of the exposure legislation.

²⁷⁴ https://www.parliament.vic.gov.au/images/stories/daily-hansard/Council_2020/Legislative_Council_2020-02-20.pdf, page 484

²⁷⁵ Ibid, page 553

²⁷⁶ Ibid, page 554

²⁷⁷ <https://www.theage.com.au/national/victoria/gender-commissioner-will-enforce-equal-opportunity-laws-across-public-service-20200909-p55u19.html>

²⁷⁸ For an overview see pages 6-10 of this report: https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/3915/7481/1417/Gender_Equality_Bill_Consultation_Feedback_Report.pdf

²⁷⁹ https://hansard.parliament.vic.gov.au/search/?LDMS=Y&IW_DATABASE=*&IW_FIELD_ADVANCE_PHRASE=be+now+read+a+s+econd+time&IW_FIELD_IN_SpeechTitle=Gender+Equality+Bill+2019&IW_FIELD_IN_HOUSENAME=ASSEMBLY&IW_FIELD_IN_ACTIVITYTYPE=Second+reading&IW_FIELD_IN_SittingYear=2019&IW_FIELD_IN_SittingMonth=November&IW_FIELD_IN_SittingDay=27

4 Mechanisms

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

Yes. The citizens' jury considered alternative ways to implement the chosen policy in detail, including specifically considering whether incentives or sanctions were the preferred option for implementing quotas.²⁸⁰

5 Analysis

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

No. The benefits of the policy were discussed but there was no formal analysis of costs vs. benefits or pros vs. cons.

6 Pathway

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

Yes. The Act comes into force a year after it was legislated to allow organisations time to prepare. The Public Sector Gender Equality Commissioner was established to assist with implementation and rollout, and the legislation is subject to a four-year statutory review.²⁸¹

7 Consultation

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

Yes. After the draft legislation and discussion paper was released, DHHS conducted a further eight stakeholder forums.

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?

Yes. The discussion paper opened for submission on the Engage Victoria website and the Consultation Feedback Report published following consultation can be seen as the equivalent of a green/white paper process.

9 Legislation

Was the policy initiative based on new or existing legislation that enabled comprehensive Parliamentary debate and public discussion?

Yes. Legislation was introduced which allowed for comprehensive Parliamentary debate.

²⁸⁰ See the Citizen Jury's Report here: <https://engage.vic.gov.au/gender-equality>

²⁸¹ https://content.legislation.vic.gov.au/sites/default/files/0e2a7787-bd44-33a2-a2aa-b740294e4627_591061exab1.pdf, page 22

10 Communication

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

Yes. There is a dedicated webpage which explains the final policy, what has changed, and who it affects in simple, clear, and factual terms.²⁸²

Final scores

	Criterion	Yes/No
1	Need	Yes
2	Objectives	Yes
3	Options	No
4	Mechanisms	Yes
5	Analysis	No
6	Pathway	Yes
7	Consultation	Yes
8	Papers	Yes
9	Legislation	Yes
10	Communication	Yes
		8/10

²⁸² <https://www.vic.gov.au/gender-equality-bill>

Free TAFE for priority courses

Policy background

The free TAFE policy was introduced by the Victorian Labor government in the 2018-19 state budget. The budget provided \$172 million over four years to make TAFE free for 30 priority courses and 18 pre-apprenticeship courses in sectors such as agriculture, accounting, construction, disability, and education support.²⁸³

The policy was part of a larger \$644 million package to strengthen TAFE in Victoria at a time when fee and quality scandals in private colleges had damaged the reputation of the sector as a whole and uncapped university placements had pulled students away.²⁸⁴ In his budget speech, Treasurer Tim Pallas said it was “the single biggest investment in Victoria’s TAFE system since its inception in the 1970s”.²⁸⁵ The policy was aimed at reducing financial barriers to people seeking further education and designed to meet skill shortages in the workforce.

Following the budget announcement, the Australian Council for Private Education and Training expressed concern that the policy was not equitable and would put private providers on the back foot.²⁸⁶ The Shadow Minister for Training, Skills & Apprenticeships Steph Ryan said that free TAFE was not the answer to issues in the sector and dismissed the policy as a marketing gimmick.²⁸⁷ However, other commentators saw the policy as a positive step away from the market-oriented policies which have dominated the vocational education sector and forced TAFEs to compete with private providers for “contestable” public funding.²⁸⁸

The free courses opened in 2019 and attracted 25,000 students in the first six months, representing a 92% increase in enrolments from the previous year.²⁸⁹ However, the increased number put acute pressure on providers, which struggled with ballooning class sizes and teacher shortages.²⁹⁰ The government responded by announcing an additional \$11.7 million in funding to help accommodate the increasing demand.²⁹¹ By the end of its first year more than 39,700 students had commenced in a free TAFE course across Victoria,²⁹² led by a 118% surge in female students.²⁹³ Female participation also doubled in

²⁸³ <https://www.dtf.vic.gov.au/sites/default/files/2018-05/2018-19%20State%20Budget%20-%20Strategy%20and%20Outlook.pdf>, page 40

²⁸⁴ <https://www.theage.com.au/national/victoria/victorian-state-budget-2018-19-free-tafe-courses-under-172-million-education-package-20180501-p4zco0.html>

²⁸⁵ https://www.dtf.vic.gov.au/sites/default/files/2018-05/Treasurer%27s%20Speech%202018-19_0.pdf

²⁸⁶ <https://www.smh.com.au/politics/victoria/private-training-providers-fear-they-ll-be-penalised-under-tafe-boost-20180502-p4zcva.html?csp=d42371e611111c536bdbc91b68e4a696%200>

²⁸⁷ https://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2018/Assembly_Daily_Extract_Wednesday_9_May_2018_from_Book_5.pdf, page 1262

²⁸⁸ <https://theconversation.com/free-tafe-in-victoria-who-benefits-and-why-other-states-should-consider-it-96102>

²⁸⁹ <https://www.premier.vic.gov.au/funding-boost-free-tafe-enrolments-surge>

²⁹⁰ <https://www.theage.com.au/national/victoria/teacher-shortages-and-huge-classes-the-concerns-about-free-tafe-20190702-p523en.html>

²⁹¹ <https://www.premier.vic.gov.au/funding-boost-free-tafe-enrolments-surge>

²⁹² <https://www.vic.gov.au/free-tafe>

²⁹³ <https://www.theage.com.au/national/victoria/free-tafe-enrolments-almost-double-in-first-year-118-per-cent-surge-in-female-students-20200525-p54w7v.html>

traditionally male dominated courses such as surveying and construction.²⁹⁴ Close to half of the new students were over the age of 30, and a quarter were from regional backgrounds.²⁹⁵

In January 2020 two early childcare courses were added to the free TAFE list to cater to increased demand in that sector.²⁹⁶ In July, a further \$163 million package was announced to expand free TAFE as part of the government's plan to rebuild the economy after COVID-19.²⁹⁷ The new package introduced 10,000 new free TAFE places in health, mental health, construction, and disability care and was aimed particularly at women and young people who have been disproportionately affected by the pandemic.²⁹⁸

Policy process

1 Need

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

No. The budget paper states that "more than ever, the skills needed to build our state are learned at TAFE", and provides significant evidence of workforce skills shortages,²⁹⁹ but does not provide evidence for targeting the funding at TAFE. There is also no evidence of consultation with stakeholders ahead of the announcement.

2 Objectives

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

Yes. The objective of the policy is to reduce financial barriers to participation in vocational education which is justified in terms of skilling the Victorian workforce in areas of future job growth.³⁰⁰

3 Options

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

No. There is no publicly available documentation which describes alternative policy options.

4 Mechanisms

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

No. There is no publicly available documentation which discloses alternative ways for implementing the chosen policy.

²⁹⁴ Ibid.

²⁹⁵ https://www.education.vic.gov.au/training/update/Pages/TTUpdate_TAFE_funding_boost_19.aspx

²⁹⁶ <https://www.gayletierney.com.au/ministers-statements-tafe-funding-4/>

²⁹⁷ <https://www.theage.com.au/politics/victoria/10-000-new-free-tafe-places-funded-as-part-of-covid-19-recovery-plan-20200706-p559ie.html>

²⁹⁸ Ibid.

²⁹⁹ <https://s3-ap-southeast-2.amazonaws.com/budgetfiles201819.budget.vic.gov.au/2018-19+State+Budget+-+Budget+Overview.pdf>

³⁰⁰ Ibid.

5 Analysis

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 the pros/con and costs/benefits of the options/mechanisms.

6 Pathway

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

No. There is no evidence of a comprehensive project management plan designed for the policy's rollout, as evidenced by the extra \$11.7 million the government was required to spend to manage the increased demand.

7 Consultation

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

Yes. Only twenty of the 30 subsidised courses were announced alongside the budget. There was further consultation with industry to select the remain 10 courses after the announcement.³⁰¹

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?

No. There was no green paper seeking public input on possible policy options, although various aspects of the final policy decision are explained in the budget papers.

9 Legislation

Was the policy initiative based on new or existing legislation that enabled comprehensive Parliamentary debate and public discussion?

Yes. The policy was legislated through the Appropriation (2018-2019) Bill 2018³⁰² and there was comprehensive Parliamentary debate regarding TAFE funding on a Matter of Public Importance raised by the Minister for Education.³⁰³

10 Communication

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

Yes. There is a dedicated webpage which explains the final policy in simple, clear, and factual terms.³⁰⁴

³⁰¹ <https://www.gayletierney.com.au/tafe-funding-5/>

³⁰² <https://www.legislation.vic.gov.au/bills/appropriation-2018-2019-bill-2018>

³⁰³ [https://www.parliament.vic.gov.au/images/stories/daily-](https://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2018/Assembly_Daily_Extract_Wednesday_9_May_2018_from_Book_5.pdf)

[hansard/Assembly_2018/Assembly_Daily_Extract_Wednesday_9_May_2018_from_Book_5.pdf](https://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2018/Assembly_Daily_Extract_Wednesday_9_May_2018_from_Book_5.pdf), page 1259

³⁰⁴ <https://www.vic.gov.au/free-tafe>

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Final scores

	Criterion	Yes/No
1	Need	No
2	Objectives	Yes
3	Options	No
4	Mechanisms	No
5	Analysis	No
6	Pathway	No
7	Consultation	Yes
8	Papers	No
9	Legislation	Yes
10	Communication	Yes
		4/10

State case studies: New South Wales

Music Festivals Act 2019

Policy background

After two young people tragically died from MDMA toxicity at the Defqon.1 dance festival in September 2018, NSW Premier Gladys Berejiklian announced an expert panel to advise on ways to improve safety at music festivals.³⁰⁵ Panellists Dr Kerry Chant (Chief Health Officer), Police Commissioner Mick Fuller, and Independent Liquor & Gaming Authority (ILGA) Chair Philip Crawford, were given four weeks to investigate, consult with stakeholders and produce a report.³⁰⁶

Following the announcement, MusicNSW published an open letter requesting industry representation on the panel. The letter, signed by more than 60 representatives from the music industry, argued that any attempt to address drug use and safety concerns at music festivals would be ineffective without their participation.³⁰⁷ However, there was no official response.

The panel's final report *Keeping People Safe at Music Festivals* recommended the creation of a new 'music festival liquor licence' with a mandatory safety management plan to replace the existing "ad hoc and inconsistent" approach.³⁰⁸ The new system split all festivals into a 'base tier' and a 'higher risk tier', with the latter required to submit a rigorous safety management plan to the ILGA for approval.³⁰⁹ The panel noted that although the issue of pill testing had been raised by numerous stakeholders, it was explicitly excluded from their terms of reference.³¹⁰ However, they did recommend the development of best practice guidelines for drug harm minimisation. In a press release on 23 October 2018 the government accepted the panel's recommendations in principal and announced the development of the new licensing regime.³¹¹

After the draft regulations were announced, the industry was brought in for consultation, with representatives invited to stakeholder forums and face-to-face meetings.³¹² As a result, the draft regulations replaced the original two-tier state-wide system with a single licence requirement for 14 festivals identified as 'high risk'.³¹³ Despite this process, the regulations remained controversial. Festival organisers began to cancel or threaten to move interstate, blaming the government's "war on festivals".³¹⁴ A Don't Kill Live Music rally was held in Sydney, and by the time the regulations came into force on 1 March 2019, a further three young people had died at festivals in NSW.

³⁰⁵ <https://www.nsw.gov.au/media-releases/ensuring-safety-at-music-festivals>

³⁰⁶ Ibid.

³⁰⁷ <https://www.musicnsw.com/2018/09/an-open-letter-to-the-premier-of-nsw/>

³⁰⁸ <https://static.nsw.gov.au/1540188213/Keepingpeoplesafe.pdf>, page 2

³⁰⁹ Ibid, page 10

³¹⁰ Ibid, page 1

³¹¹ <https://www.nsw.gov.au/media-releases/safety-at-music-festivals-to-be-improved>

³¹² <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2521/FINAL%20REPORT%20-%2027%20August%202019.pdf>, page 17

³¹³ Ibid, page 15

³¹⁴ <https://www.abc.net.au/triplej/news/musicnews/mountain-sounds-festival-2019-cancelled-nsw-govt-war-on-festival/10795174#:~:text=Mountain%20Sounds%20cancelled%2C%20blames%20NSW%20Government's%20%22war%20on%20festivals%22,-By%20AI%20Newstead&text=Some%20bad%20news%20if%20you,Government's%20%22war%20on%20festivals%22>

On 30 May 2019 the regulations were referred to Committee by the Legislative Council to inquire into their impact and implementation. The Committee found that the consultation process was “inadequate” and recommended that the regulations be disallowed.³¹⁵ The Committee also recommended the government establish a roundtable with the music festival industry, and that the findings of the ongoing coronial inquest should be taken to the roundtable. The regulations were subsequently disallowed in the Legislative Council on 26 September 2019.

The Music Festivals Bill was introduced to parliament by Minister for Customer Service Victor Dominello MP to “reinstate the policy intent” of the disallowed regulations.³¹⁶ The new legislation required nominated festivals to prepare and submit an extensive safety management plan to the ILGA 90 days before the start of the festival, to provide pre- and post- event briefings for health service providers and to keep a detailed incident register. The Bill also proposed several new penalties, including a maximum fine of 100 penalty units or 12 months in prison for nominated festivals that failed to have or comply with a safety management plan. Live Performance Australia immediately published an open letter criticising the legislation, asserting that proper consultation “had not happened” and insisting the government convene an industry roundtable immediately.³¹⁷

In the Legislative Assembly Labor indicated that it would support the Bill but would be moving a number of amendments. Debate was heated, with the Opposition accusing the government of rushing the regulations through before the election and the government accusing Labor of placing young people at risk by disallowing them. In the upper house Labor moved an amendment to establish the industry roundtable, which was agreed to with support from One Nation and the Greens. They also moved a successful amendment to insert a review clause, and the Greens moved an amendment to remove the option of a carceral sentence but to increase the maximum penalty units from 100 to 500 for failure to comply with a plan. All amendments were agreed to in the Legislative Assembly and the Bill received Assent on the 21 November 2019.

Policy process

1 Need

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

Yes. Victor Dominello MP stated in his second reading speech that “there has been a number of critical incidents which give rise to the need for a stronger legislative approach”.³¹⁸ The policy was based on recommendations made by the expert panel, which consulted with industry stakeholders.

2 Objectives

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

Yes. The government made a broad public interest argument in Parliamentary debate that the policy will “keep people safe at music festivals” by increasing regulatory oversight.³¹⁹

³¹⁵ <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2521/FINAL%20REPORT%20-%202027%20August%202019.pdf>, page ix

³¹⁶ <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-108008>, page 1526

³¹⁷ <https://liveperformance.com.au/wp-content/uploads/2019/10/LPA-MR-Letter-to-Premier-17October2019-1.pdf>

³¹⁸ <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-108008>, page 1526

³¹⁹ Ibid.

3 Options

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

No. The Coroner's report described multiple alternative policy options including pill testing, decriminalisation, amnesty bins, establishing a drug summit, and changes in policing at music festivals. However, this report was handed down after the government had adopted their preferred policy option and introduced legislation to Parliament.

4 Mechanisms

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

Yes. There were several changes made to the policy mechanisms from the original two-tier licencing system to the Act which was ultimately passed by Parliament. Some of the mechanisms that were considered are disclosed in the Committee report, such as amending the draft regulations to allow festival operators to make submissions on their own behalf before their nomination as 'high risk'.³²⁰

5 Analysis

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 the pros/cons or benefits/costs of the alternative options/mechanisms. There is no evidence that alternative policy options were considered, and the mechanisms are only briefly mentioned in the Committee report.

6 Pathway

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

Yes. While the policy's rollout caused significant confusion and uncertainty in the industry, the ILGA was instructed to manage the implementation process, with a timeline set to begin with creating a list of high-risk festivals, and the final legislation does include reporting requirements and a review clause.

7 Consultation

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

Yes. There were several rounds of consultation after the initial licencing scheme was announced. The consultation process on the draft regulations was widely criticised by stakeholders and subsequently deemed 'inadequate' by the Regulations Committee. The Committee process itself represents a further, more in-depth consultation process. There is no evidence of an additional round of consultation before legislation was introduced, however the industry roundtable facilitates ongoing consultation.

³²⁰ <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2521/FINAL%20REPORT%20-%202027%20August%202019.pdf>, page 15

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?

No. There was no green/white paper process, or a published equivalent.

9 Legislation

Was the policy initiative based on new or existing legislation that enabled comprehensive Parliamentary debate and public discussion?

Yes. Legislation was introduced which allowed for comprehensive Parliamentary debate, including consideration of a number of amendments.

10 Communication

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

Yes. There is a dedicated page on the Liquor and Gambling website which explains the policy in factual terms and provides detailed information for festival operators.³²¹

Final scores

	Criterion	Yes/No
1	Need	Yes
2	Objectives	Yes
3	Options	No
4	Mechanisms	Yes
5	Analysis	No
6	Pathway	Yes
7	Consultation	Yes
8	Papers	No
9	Legislation	Yes
10	Communication	Yes
		7/10

³²¹ <https://www.liquorandgaming.nsw.gov.au/independent-liquor-and-gaming-authority/music-festival-safety-management-plans>

Right to Farm Act 2019

Policy background

The concept of a 'right to farm' refers to a farmer's protection against the tort of nuisance when conducting lawful agricultural activity.³²² The NSW government introduced a 'right to farm' policy in 2015, which was given a legislative base in the Right to Farm Act 2019.³²³ The Act delivers on the Coalition's election promise to crack down on rural trespass after a spate of high-profile activism on agricultural properties in early 2019.³²⁴

The Right to Farm Act establishes a 'nuisance shield' to protect farmers from legal action stemming from the tort of nuisance.³²⁵ This means a farmer cannot be sued by their neighbours for the sounds, smells, dust, and chemicals associated with their work if it is performed lawfully on agricultural land used for that purpose for the past 12 months. Where a nuisance claim is successful, the Act requires a court to consider alternative remedies other than the complete cessation of the activity.

The Act also introduces amendments to the *Inclosed Lands Protection Act 1901* to extend the aggravating circumstances for on-farm trespass and increase the associated penalties, create a new offence of inciting aggravated unlawful entry, and modify the offence of leaving a gate open on agricultural land to increase its scope.

In his second reading speech, Minister for Agriculture Adam Marshall MP quoted evidence from the NSW Bureau of Crime Statistics and Research which found that on-farm trespass had increased 27% since 2014.³²⁶ Marshall claimed that animal rights groups are becoming "more organised and more aggressive", and that the policy was necessary to protect farmers.³²⁷ Labor indicated that it supported farmer's rights but denounced the Bill as rushed and poorly drafted.³²⁸ When the Bill was first introduced to parliament it applied broadly to all enclosed lands, not just agricultural properties.

The legislation was sent to Portfolio Committee No. 4 – Industry for inquiry and report. The Committee received 391 submissions and 2,829 copies of two proformas (prewritten templates), indicating a high level of public interest in the policy.³²⁹ Industry representatives expressed strong support for the legislation, noting the considerable risk, financial cost, and emotional impact of trespass on farming communities.³³⁰ However, the NSW Bar Association raised concerns that the Bill was too broad and would capture any protest activities on enclosed public land.³³¹ The Committee ultimately recommended that the Legislative Council proceed to debate the Bill and the government address the concerns raised by stakeholders.

³²² https://www.dpi.nsw.gov.au/_data/assets/pdf_file/0006/587184/NSW-Right-to-farm-policy.pdf

³²³ https://www.parliament.nsw.gov.au/researchpapers/Documents/Right%20to%20farm%20laws_an%20update.pdf

³²⁴ <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-107151>, page 1483

³²⁵ <https://www.parliament.nsw.gov.au/bill/files/3670/Passed%20by%20both%20Houses.pdf>

³²⁶ <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-107151> page 1484

³²⁷ Ibid.

³²⁸ <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-107610>, page 1487

³²⁹ <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2553/Right%20to%20Farm%20Bill%202019%20-%20Report%20No%2041.pdf>, page ix

³³⁰ Ibid, page 11

³³¹ <https://www.smh.com.au/politics/nsw/lawyers-say-animal-activist-crackdown-is-harsh-and-disproportionate-20191002-p52wxx.html>

The Coalition introduced two successful amendments in the Legislative Assembly to clarify that the Bill only applied to trespass on agricultural lands. A total of eighteen amendments were moved in the Legislative Council by Labor, the Greens, the Animal Justice Party, Independent MP Justin Field and the Shooters, Farmers and Fishers Party.³³² Only three amendments were agreed to. These clarified the definition of 'agricultural practice', broadened the scope of the incitement offence, and ensured the Bill did not apply to industrial action on agricultural land.³³³ The amendments were agreed to by the Legislative Assembly and the Bill received Assent on 21 November 2019.

The Right to Farm legislation complements changes made to NSW biosecurity laws which allowed on-the-spot fines for people who fail to comply with biosecurity management plans on farms, and federal legislation passed in September 2019 which created a new offence of using a carriage service to incite trespass on agricultural land.³³⁴ On 4 August 2020 it was announced that the newly appointed NSW Agricultural Commissioner would be conducting a review of the Right to Farm policy, focussing on land use conflicts in primary industries.³³⁵

Policy process

1 Need

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

No. The policy was aimed at protecting farmers from trespass by animal right's activists, however the Committee heard evidence that the leading cause of on-farm trespass is illegal hunting, not protest. Furthermore, there have only been three nuisance cases against farmers in NSW since 1999, which raises questions about the need for a 'nuisance shield'.³³⁶

2 Objectives

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

Yes. An argument was made that farmers' rights are in the public interest as they 'provide food and fibre to feed and clothe the people of this State'.³³⁷

3 Options

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

Yes. A Parliamentary research brief included examples of different forms of 'right to farm' policies in different jurisdictions.³³⁸

³³² <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-80781>, see pages 12-15 and 47-85.

³³³ <https://www.parliament.nsw.gov.au/bill/files/3670/LC%20Schedule%20of%20amendments%20-%20Right%20to%20Farm%20Bill%202019.pdf>

³³⁴ <https://www.abc.net.au/news/rural/2019-07-22/nsw-beefs-up-farm-trespass-laws/11330674>, <https://www.attorneygeneral.gov.au/media/media-releases/morrison-government-delivers-farm-trespass-laws-12-september-2019>

³³⁵ <https://www.abc.net.au/news/2020-08-04/new-agriculture-commissioner-to-focus-on-coffs-blueberries/12521888>

³³⁶ <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-80633>, page 52

³³⁷ <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-107151>, page 1483

³³⁸ <https://www.parliament.nsw.gov.au/researchpapers/Documents/right-to-farm-laws/The%20right%20to%20farm.pdf>

4 Mechanisms

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

Yes. Alternative mechanisms were considered through the Committee process and in Parliamentary debate. For example, the Bill was amended as a result of the Committee process so that it applied to agricultural lands only.

5 Analysis

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 evidence that alternative policy options were considered and therefore no published analysis of the pros/cons or benefits/costs. There is discussion of the policy mechanisms in the Committee report, but no clear analysis of alternative options.

6 Pathway

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

No. There is no evidence of a comprehensive project management plan for the policy's rollout. The opposition moved an amendment in the Legislative Assembly to insert a review clause into the Act, but it was negated.

7 Consultation

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

Yes. The legislation was sent to Committee which facilitated further stakeholder consultation and resulted in significant changes to the Bill.

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?

No. There was no green/white paper process, or a published equivalent.

9 Legislation

Was the policy initiative based on new or existing legislation that enabled comprehensive Parliamentary debate and public discussion?

Yes. Legislation was introduced which allowed for comprehensive Parliamentary debate, including consideration of a number of amendments.

10 Communication

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

Yes. Both the NSW Liberals and Nationals made an official press release once the Bill was introduced to parliament.³³⁹ However, we would point out that neither contain detailed information, nor are they easily accessible.

Final scores

	Criterion	Yes/No
1	Need	No
2	Objectives	Yes
3	Options	Yes
4	Mechanisms	Yes
5	Analysis	No
6	Pathway	No
7	Consultation	Yes
8	Papers	No
9	Legislation	Yes
10	Communication	Yes
		6/10

³³⁹ [https://nsw.liberal.org.au/Shared-Content/News/2019/LEGISLATION-TO-PROTECT-FARMERS-RIGHT-TO-FARM#:~:text=LEGISLATION%20TO%20PROTECT%20FARMERS'%20RIGHT%20TO%20FARM,-Tuesday%2C%2020%20August&text=Farm%20trespassers%20will%20face%20the,the%20NSW%20Nationals%20in%20Government%2C%2020%20August&text=Farm%20trespassers%20will%20face%20the,the%20NSW%20Nationals%20in%20Government](https://nsw.liberal.org.au/Shared-Content/News/2019/LEGISLATION-TO-PROTECT-FARMERS-RIGHT-TO-FARM#:~:text=LEGISLATION%20TO%20PROTECT%20FARMERS'%20RIGHT%20TO%20FARM,-Tuesday%2C%2020%20August&text=Farm%20trespassers%20will%20face%20the,the%20NSW%20Nationals%20in%20Government%2C%2020%20August&text=Farm%20trespassers%20will%20face%20the,the%20NSW%20Nationals%20in%20Government%2C%2020%20August&text=Farm%20trespassers%20will%20face%20the,the%20NSW%20Nationals%20in%20Government), <https://www.nswnationals.org.au/tough-new-laws-to-protect-the-right-to-farm/#:~:text=%E2%80%9CThe%20Right%20to%20Farm%20Bill,met%2C%E2%80%9D%20Mr%20Johnsen%20said.&text=Penalties%20for%20farm%20trespass%20will,up%20to%20%2422%2C000%20in%20fines.>

Abortion Law Reform Act 2019

Policy background

In August 2019, Independent MP Alex Greenwich introduced the Reproductive Health Care Reform Bill 2019 to the NSW Parliament. The Bill sought to remove abortion from the criminal code and establish a new legal framework for terminations in NSW.³⁴⁰ Up until that point, the legality of abortions in NSW hinged on case law which distinguished between 'lawful' and 'unlawful' abortion, the former narrowly defined as "necessary to preserve the woman involved from serious danger to her life or physical or mental health".³⁴¹

The new Bill was heavily based on Queensland's Termination of Pregnancy Act 2019 and sought to legalise abortion on request up to 22 weeks, and after 22 with consent of two doctors. It also proposed a new criminal offence for an unqualified person to perform or assist in a termination, with the proviso that a woman could not be prosecuted for procuring an abortion for herself. Finally, the Bill stipulated that doctors with a conscientious objection must refer patients to a doctor such an objection. It was co-sponsored by 15 MPs, including the Minister for Health and representatives from the Liberals, the Nationals, Labor, and the Greens.

Debate in the lower house took place over three days from 6 to 8 August 2019 and was covered extensively in the media. Members who opposed the Bill argued that abortion is morally wrong and that removing it from the criminal code would lead to an increase in late term abortions.³⁴² Those who supported the Bill argued that abortion should be treated as a health issue rather than a criminal matter.³⁴³

Several amendments were adopted in the lower house including a requirement that terminations after 22 weeks are performed by a "specialist medical practitioner" at "approved public health facilities".³⁴⁴ Other successful amendments related to informed consent, counselling, conscientious objection, and a review into sex-selection.³⁴⁵ All MPs were granted a conscience vote and the Bill passed 59 – 31.

On 6 August 2019 the Bill had been referred to the Standing Committee on Social Issues. The Committee received over 13,000 submissions and held 15 hours of hearings over three days.³⁴⁶ It heard from senior religious figures, women's groups, lawyers, medical professionals, and right to life and right to choose activists. The final report considered the provisions of the Bill in detail and described stakeholder concerns over gestation periods, conscientious objection, requirements for information about counselling, informed consent, and sex selection. The Committee also noted that a number of parties believed the consultation process had been rushed. MLCs Greg Donnelly and Fred Nile also raised this issue in their dissenting

³⁴⁰ <https://www.parliament.nsw.gov.au/bill/files/3654/Passed%20by%20both%20Houses.pdf>

³⁴¹ <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2547/Final%20report%20-%20Reproductive%20Health%20Care%20Reform%20Bill%202019.pdf>, page 5

³⁴² For example see Ms Tanya Davies' speech:

<https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-106556>, page 1350

³⁴³ <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-106529>, page 1303

³⁴⁴ <https://www.parliament.nsw.gov.au/bill/files/3654/c2019-031-HE%20-%20Speakman%20-%20Agreed%20to.pdf>,

<https://www.parliament.nsw.gov.au/bill/files/3654/c2019-036J%20-%20Williams%20-%20Agreed%20to.pdf>

³⁴⁵ <https://www.theguardian.com/australia-news/2019/aug/19/nsw-abortion-law-the-decriminalisation-reform-bill-explained>

³⁴⁶ <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2547/Final%20report%20-%20Reproductive%20Health%20Care%20Reform%20Bill%202019.pdf>, page vii

statements.³⁴⁷ The final report was tabled in Parliament on 27 August and recommended the Legislative Council consider any amendments which addressed the concerns raised in the report.³⁴⁸

The contentious debate over these key issues continued in the upper house. On 16 September three Liberal backbenchers release a statement threatening to call a leadership spill after learning that key amendments had been rejected again in the upper house.³⁴⁹ However, the statement was quickly withdrawn after the Premier promised significant concessions on the Bill. After more than 30 hours in Committee, the Bill passed 16 votes to 14. Amendments adopted in the Council included:

- changing the name of the Act to the Abortion Law Reform Act
- mandating medical care for a child born alive
- requiring doctors to provide information about counselling for terminations after 22 weeks
- requiring anonymous data to be collected about abortions in NSW
- ensuring the inquiry into sex selection results in new professional standards³⁵⁰

The amendments were agreed to by the Legislative Assembly on 26 September and the Bill received Assent on 2 October 2019.

Policy process

1 Need

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

Yes. Alex Greenwich MP argued the policy was necessary to provide certainty to women and medical practitioners about the legality of abortion in NSW, and to remove the threat of prosecution.³⁵¹ He also stated that the Australian Medical Association were consulted directly on provisions of the Bill.³⁵²

2 Objectives

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

Yes. The second reading speech explicitly connected the removal of abortion from the criminal code to public health outcomes.

3 Options

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

Yes. In a Parliamentary Research issues backgrounder published in association with the Bill, there is a comparison of different abortion laws across Australia.³⁵³

³⁴⁷ Ibid, pages 53, 78-80

³⁴⁸ Ibid, page ix

³⁴⁹ <https://www.abc.net.au/news/2019-09-16/gladys-berejiklian-spill-motion-mps-plan/11518622>

³⁵⁰ <https://www1.racgp.org.au/newsgp/clinical/nsw-decriminalises-abortion>

³⁵¹ <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-106443>

³⁵² Ibid.

³⁵³ <https://www.parliament.nsw.gov.au/researchpapers/Documents/Abortion%20law%20and%20the%20Reproductive%20Health%20Care%20Reform%20Bill%202019.pdf>

4 Mechanisms

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

Yes. Alternative mechanisms were considered in the Committee process and Parliamentary debate. One example is the debate over mandatory counselling for a woman seeking an abortion.

5 Analysis

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

No. Alternative mechanisms are published in the Committee report and in Parliamentary debate in Hansard, however there is no systematic analysis of the pros and cons. Additionally, there is no evidence that alternative policy options were considered.

6 Pathway

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

No. There is no evidence of a comprehensive project management plan, however the legislation does include a statutory five-year review and a 12-month review into sex selection.

7 Consultation

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

Yes. Various stakeholders were consulted through the Committee process.

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?

No. There was no green/white paper process, or a published equivalent.

9 Legislation

Was the policy initiative based on new or existing legislation that enabled comprehensive Parliamentary debate and public discussion?

Yes. Legislation was introduced which allowed for comprehensive Parliamentary debate, including consideration of a number of amendments.

10 Communication

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

Yes. There is a dedicated page on the Health NSW website which provides a clear summary of the Act.³⁵⁴

³⁵⁴ <https://www.health.nsw.gov.au/women/pregnancyoptions/Pages/aborton-bill-summary.aspx>

PER CAPITA REPORT

Final scores

	Criterion	Yes/No
1	Need	Yes
2	Objectives	Yes
3	Options	Yes
4	Mechanisms	Yes
5	Analysis	No
6	Pathway	No
7	Consultation	Yes
8	Papers	No
9	Legislation	Yes
10	Communication	Yes
		7/10

State case studies: Queensland

Child Death Review Legislation Amendment Act 2020

Policy background

In June 2016, 21-month old toddler Mason Jet Lee was found dead at his home in Caboolture, north Brisbane, days after being assaulted by his stepfather.³⁵⁵ Following his death, the Department of Child Safety and Queensland Health both initiated formal reviews of the services provided to Mason before he died. The Premier requested that the Queensland Family and Child Commission (QFCC) oversee these review processes and analyse them for a systems review of the child protection system and child death review mechanisms.³⁵⁶

The QFCC's final report, *A systems review of individual agency findings following the death of a child*, was handed down in June 2017.³⁵⁷ The report found that while the internal reviews were effective at an agency level, they were not delivering whole-of-system changes, and Queensland was still lacking a contemporary best practice child death review model. The QFCC highlighted that there was at that time no requirement for other government agencies that may have also provided services to a child who subsequently died to conduct reviews. Of particular concern in the Mason Jet Lee case was the lack of information sharing and collaboration between agencies. The report made a single recommendation: to "consider a revised external and independent model for reviewing the deaths of children known to the child protection system".³⁵⁸

The government accepted the QFCC's recommendation and publicly committed to introducing new legislation to expand requirements for conducting internal reviews in child death cases. Over the next two years, the Department of Justice and Attorney-General (DJAG) collaborated with the Department of Child Safety, the QFCC, and other relevant agencies to establish a new child death review model based on the recommendations from the QFCC report.³⁵⁹ This process included consultation across government and with counterparts in other jurisdictions such as New South Wales, Victoria, and Western Australia.

The Child Death Review Legislation Amendment Bill was introduced in September 2019 to fulfil the government's commitment and legislate the new child death review model.³⁶⁰ Under the new model, the existing internal agency review process was to be expanded to require all relevant government agencies – including Queensland Health, the Department of Education, the Queensland Police Service, and the Department of Youth Justice – to conduct internal systems reviews when a child known to the Department of Child Safety died or suffered serious physical injury. The Bill also sought to set up a new, external, independent Child Death Review Board to carry out whole-of-system reviews following child deaths

³⁵⁵ <https://www.abc.net.au/news/2020-06-09/mason-jet-lee-report-child-death-report-queensland-government/12333258>

³⁵⁶ <https://www.qfcc.qld.gov.au/kids/monitoring-reviewing-systems/following-death-child-known-child-safety>

³⁵⁷ <https://www.qfcc.qld.gov.au/sites/default/files/For%20professionals/death-of-a-child-report-march-2017.pdf>

³⁵⁸ Ibid, page 8-9

³⁵⁹ See Attorney-General Yvette D'ath MP's second reading speech here, page 76:

https://www.parliament.qld.gov.au/documents/hansard/2020/2020_02_04_WEEKLY.pdf

³⁶⁰ <https://www.parliament.qld.gov.au/documents/tableOffice/BillMaterial/190918/Child.pdf>

connected to the child protection system. The Bill was referred to the Education, Employment and Small Business Committee.³⁶¹

The Committee received six submissions, held a public briefing with the DJAG, and a public hearing in October 2019. It tabled its final report in November 2019 and recommended the Bill be passed, although the LNP members raised a Statement of Reservation querying why it had taken the government two and a half years since the QFCC's report to hand down the Bill.³⁶²

In February 2020, nearly three years after Mason Jet Lee's death, the Bill was reintroduced to Parliament for debate, which took place across two days. The government faced criticism during the debate for taking three years to pass the legislation, but the Bill received support from all parties, and passed on 5 February 2020.³⁶³

Policy process

1 Need

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

Yes. The government stated that the policy was needed to improve the child death review process in Queensland after the QFCC's report had presented factual evidence and stakeholder input to support that policy objective.

2 Objectives

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

Yes. The Attorney-General on introducing the Bill to Parliament made a public interest argument relating to the government's responsibility to "safeguard our most vulnerable children".³⁶⁴

3 Options

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

Yes. The QFCC made a single recommendation for addressing the policy objective but did also consider best practice options in other jurisdictions.

4 Mechanisms

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

Yes. The QFCC report and the Committee Inquiry considered other mechanisms for implementing the policy, particularly those raised by submitters. For example, the QFCC report considered whether

³⁶¹ <https://www.parliament.qld.gov.au/work-of-committees/committees/EESBC/inquiries/past-inquiries/Child-Death-Review-Legislation-Amendment-Bill-2019>

³⁶² <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2019/5619T2001.pdf>

³⁶³ See https://www.parliament.qld.gov.au/documents/hansard/2020/2020_02_04_WEEKLY.pdf, pages 74-84, and https://www.parliament.qld.gov.au/documents/hansard/2020/2020_02_05_WEEKLY.pdf#page=43, pages 144-163.

³⁶⁴ <https://www.parliament.qld.gov.au/documents/tableOffice/BillMaterial/190918/Child.pdf>, page 2912

other organisations (such as service organisations and non-government organisations) than government agencies should also be required to conduct internal reviews in the event of a child death.

5 Analysis

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

No. Although the QFCC and the Committee both considered other mechanisms in their reports, there is no explanation of how they selected some but not others for their ultimate recommendations.

6 Pathway

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

No. There does not appear to have been a clear timeline or project management plan for the legislation or for the policy's rollout. This led to criticisms over the government's timeline from the Opposition in Parliament.

7 Consultation

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

Yes. Further consultation took place following the QFCC's recommendations, both cross-government and with other governments, and again during the Committee Inquiry process.

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?

No. The QFCC report and Committee report cannot be interpreted as equivalents of the green/white paper process.

9 Legislation

Was the policy initiative based on new or existing legislation that enabled comprehensive Parliamentary debate and public discussion?

Yes. The Bill amended a number of pieces of existing legislation and comprehensive debate was enabled.

10 Communication

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

Yes. There is a media release,³⁶⁵ as well as a section on the QFCC's website³⁶⁶ and a dedicated government web page for the Child Death Review Board.³⁶⁷

Final scores

	Criterion	Yes/No
1	Need	Yes
2	Objectives	Yes
3	Options	Yes
4	Mechanisms	Yes
5	Analysis	No
6	Pathway	No
7	Consultation	Yes
8	Papers	No
9	Legislation	Yes
10	Communication	Yes
		7/10

³⁶⁵ <https://statements.qld.gov.au/statements/89273#:~:text=State%20Parliament%20has%20passed%20laws,child%20death%20case%20in%20Queensland.&text=%E2%80%9CThe%20requirement%20will%20now%20be.support%20vulnerable%20children%20and%20families.>

³⁶⁶ https://www.qfcc.qld.gov.au/kids/agency_reviews

³⁶⁷ <https://www.cdreb.qld.gov.au/>

Police Service Administration (Discipline Reform) and Other Legislation Amendment Act 2019

Policy background

Queensland's police discipline system has been the subject of numerous reviews by the Queensland Police Service (QPS), the Crime and Corruption Commission (CCC), and its predecessors the Crime and Misconduct Commission and the Criminal Justice Commission. Many of these reviews have recommended improvement and modernisation of a number of aspects of the system, which had been identified as contributing to a lack of public and officer confidence in the system. Despite these reviews, very few policy changes were made to the system, leaving it "functionally unchanged" since 1990.³⁶⁸

During its campaign for the 2015 state election, the Queensland ALP under Annastacia Palaszczuk promised to review the police discipline system if elected.³⁶⁹ The ALP won that election, and in June 2016 the Chair of the CCC Alan MacSporran set up a bipartisan forum to initiate a cooperative approach to reviewing and reforming the police discipline system.³⁷⁰ The forum included the QPS, both police unions, government representatives, legal experts, and members of the Opposition.

After a series of roundtable discussions and negotiations, in October 2017 all key represented parties signed a memorandum of understanding on the principles of a new police discipline system, upon which the subsequent Bill was based.³⁷¹ A consultation draft of the Bill was prepared and circulated to a number of key community stakeholders for a confidential stakeholder feedback process, with a number of amendments made to the Bill based on their comments.³⁷²

The Police Service Administration (Discipline Reform) and Other Legislation Amendment Bill 2019 was introduced to Parliament in February 2019 and referred to the Economics and Governance Committee.³⁷³ The final draft of the Bill sought to reduce delays in finalising discipline investigations by limiting consideration of proceedings to 12 months, to "modernise" the discipline sanctions that can be imposed upon an officer, to implement new "management strategies" to replace sanctions as part of the discipline process, and to strengthen the CCC's review powers.³⁷⁴ The new sanctions would exclude the ability to reduce an officer's pay and introduce new options for suspension without pay and demotion for a specific period.³⁷⁵ The management strategies would include "educational activities", "development opportunities", and "professional development strategies".³⁷⁶

The Economics and Governance Committee was publicly briefed by the QPS and the CCC, and opened for submissions. The Committee had planned to hold a public hearing, but having received only four

³⁶⁸ <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2019/5619T153.pdf>, page 2

³⁶⁹ Ibid.

³⁷⁰ <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2019/5619T559.pdf>, page 2

³⁷¹ <https://www.parliament.qld.gov.au/documents/committees/EGC/2019/PoliceSADROLA2019/trns-pb-25Feb2019.pdf>, page 3

³⁷² <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2019/5619T153.pdf>, page 20-1

³⁷³ <https://www.parliament.qld.gov.au/documents/tableOffice/BillMaterial/190213/Police.pdf>

³⁷⁴ <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2019/5619T153.pdf>, page 3

³⁷⁵ Ibid, page 4

³⁷⁶ Ibid.

submissions, determined not to proceed with the hearing.³⁷⁷ The Committee's final report in April 2019 recommended passing the Bill.³⁷⁸

Around this time, concerns began to emerge from civil liberties experts that the proposed changes had "fundamental" flaws including that it was designed to "only address police union complaints" and that using "management strategies" rather than formal sanctions, removing the option to reduce officer salaries, and "streamlining" the process to limit proceedings to 12 months would not solve the issue of community dissatisfaction with the police discipline process or give reason to trust that police would now be able to "investigate themselves impartially".³⁷⁹

The Bill was reintroduced to Parliament on 15 October 2019 and debated over the course of three days. As throughout the process, it enjoyed bipartisan support, although the Opposition took the opportunity of the debate to raise their concerns regarding the level of police resources. A number of amendments were passed in the consideration in detail stage of the debate to add provisions relating to the process for disciplinary declarations against former officers, at the further advice of Alan MacSporran.³⁸⁰ The Bill passed on 17 October 2019.

Policy process

1 Need

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

Yes. A number of formal reviews into the police discipline system had judged it in need of reform. The need for reform was also agreed upon by the numerous stakeholders that took part in Mr MacSporran's review.

2 Objectives

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

Yes. The Minister and the Explanatory Notes do argue that the Bill will maintain or preserve public confidence in QPS, and some provisions of the Bill do refer to the fact that one purpose of ensuring appropriate standards of discipline are maintained within the QPS is to "protect the public".³⁸¹

3 Options

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

No. The details of any other policy options that may have been discussed as part of the MacSporran do not appear to have been made public.

³⁷⁷ <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2019/5619T559.pdf>, page 1

³⁷⁸ Ibid, page 3

³⁷⁹ <https://www.theguardian.com/australia-news/2019/mar/13/queensland-to-repeal-police-discipline-system-set-up-after-fitzgerald-inquiry>

³⁸⁰ See Minister for Police Mark Ryan MP's second reading speech comments here, page 3126-7:

https://www.parliament.qld.gov.au/documents/hansard/2019/2019_10_15_WEEKLY.pdf

³⁸¹ <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2019/5619T153.pdf>, page 7

4 Mechanisms

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

Yes. The Bill's Explanatory Notes detail amendments that were made to the implementation measures of the Bill as a result of community consultation on a draft, including increasing the minimum timeframe for officers to respond to disciplinary proceedings and clarifying some review processes.³⁸²

The amendments made in the consideration of detail stage relating to the process for disciplinary declarations against former officers also show a willingness to consider alternative implementation mechanisms.

5 Analysis

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

No. Nothing appears to have been published out of the MacSporran review process.

6 Pathway

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

No. There does not appear to be evidence of a comprehensive project management plan for the policy's rollout.

7 Consultation

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

Yes. Consultation took place as part of the MacSporran review and again on a draft of the legislation.

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?

No. There was no green and white paper, or equivalent process.

9 Legislation

Was the policy initiative based on new or existing legislation that enabled comprehensive Parliamentary debate and public discussion?

Yes. The policy initiative was based on new legislation and amendments to existing legislation and was debated across three days in Parliament.

³⁸² Ibid, page 21

10 Communication

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

Yes. There is a media release³⁸³ and a web page on the CCC website.³⁸⁴

Final scores

	Criterion	Yes/No
1	Need	Yes
2	Objectives	Yes
3	Options	No
4	Mechanisms	Yes
5	Analysis	No
6	Pathway	No
7	Consultation	Yes
8	Papers	No
9	Legislation	Yes
10	Communication	Yes
		6/10

³⁸³ <https://statements.qld.gov.au/statements/88644>

³⁸⁴ <https://www.ccc.qld.gov.au/corruption/police-oversight/police-discipline-system>

Personalised Transport Ombudsman Act 2019

Policy background

In August 2016, the Palaszczuk Labor government released *Queensland's Personalised Transport Horizon: Five Year Strategic Plan for Personalised Transport Services 2016-2021*, the final report emerging from the response to the independent *Opportunities for Personalised Transport Review*. The report outlined a series of measures to reform the personalised transport industry in response to new technology and business models for personalised transport, i.e. ride-sharing apps and other disruptions.³⁸⁵

Stages 1 and 2 of these planned reforms were delivered mostly through the Transport and Other Legislation (Personalised Transport Reform) Amendment Act 2017.³⁸⁶ As part of its legislative process, that Bill had been referred to the former Public Works and Utilities Committee for inquiry. That Committee recommended the establishment of a Personalised Transport Ombudsman (PTO) or similar entity to deal with disputes in the industry.³⁸⁷ This Personalised Transport Ombudsman Bill 2019 was developed to deliver on that recommendation.

Extensive community and industry consultation had already taken place as part of the aforementioned review and Committee Inquiry. The government conducted further industry consultation as part of the policy development phase of the PTO proposal, and again during the drafting of the Bill.³⁸⁸

The Bill was introduced to Parliament in February 2019 and referred to the Transport and Public Works Committee.³⁸⁹ The Committee accepted submissions and held a public briefing and hearing across February and March before delivering final report on 29 March 2019.³⁹⁰ The report recommended that the Bill be passed, but also made seven further recommendations for amendments to be considered in response to the significant dissatisfaction with the Bill that was expressed by many of the stakeholders who had submitted to the Inquiry and presented at the hearing.

The two key recommendations for amendment were for the government to reconsider the inability of the PTO to make binding decisions, and to reconsider the disqualification of individuals from the role of PTO who had been members of the personalised transport industry within the past five years. In particular, during the Committee process stakeholders opposed the PTO on the grounds that it was a waste of money if it could not make binding decisions and did not have real investigative powers or the power to compel.³⁹¹

The LNP members of the Committee issued a Statement of Reservation expressing concern that the constraints placed on the PTO would effectively render it a “toothless tiger”, and that the government had not adequately considered the “limited support or outright rejection” of the proposal by the stakeholders consulted as part of the Committee process.³⁹²

³⁸⁵ <https://cabinet.qld.gov.au/documents/2016/Aug/PersTrans/Attachments/Plan.PDF>

³⁸⁶ <https://www.legislation.qld.gov.au/view/pdf/asmade/act-2017-018>

³⁸⁷ <https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2017/5517T720.pdf>, recommendation 16

³⁸⁸ <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2019/5619T149.pdf>, page 8-9

³⁸⁹ <https://www.parliament.qld.gov.au/documents/tableOffice/BillMaterial/190213/Personalised.pdf>

³⁹⁰ <https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2019/5619T459.pdf>, page v

³⁹¹ Ibid, see pages 2, 11, and 13

³⁹² Ibid, page 40-1

Following the Committee's report, the Bill was reintroduced to Parliament in August 2019, but debate was adjourned. The Bill was debated in Parliament on 3 September 2019, at which point the Minister announced that in response to the Committee's recommendations, the disqualification period would be reduced from five years to three years, and the PTO would be required to issue public annual reports; however, the government remained firm on the non-binding nature of the PTO's decisions.³⁹³

The LNP announced it would oppose the Bill on the grounds of the limited stakeholder support as a result of the limited investigative powers available to the PTO and its inability to make binding decisions.³⁹⁴ They were joined in opposition by Pauline Hanson's One Nation, Katter's Australian Party, and the Queensland Parliament's two Independents, but the ALP plus the Greens member retained the majority, and the Bill passed with amendments on 3 September 2019.³⁹⁵

Policy process

1 Need

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

Yes. The independent review had drawn on factual evidence and stakeholder input to recommend the establishment of a PTO or similar entity.

2 Objectives

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

Yes. There was an argument made that the establishment of the PTO would serve the public interest.³⁹⁶

3 Options

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

Yes. The Bill's Explanatory Notes detail the other policy options that were considered, including self-regulation of complaints by industry, a complaints helpline, and an independent industry regulator with a complaints function, and explains that the previous Inquiry by the former Public Works and Utilities Committee considered establishing a PTO to be the best way to deliver the greatest net benefit when compared with other options.³⁹⁷

³⁹³ See Minister for Transport Mark Bailey's second reading speech here, page 2571-4:

https://www.parliament.qld.gov.au/documents/hansard/2019/2019_09_03_WEEKLY.pdf

³⁹⁴ See Steve Minnikin MP's second reading speech here, page 2574-6:

https://www.parliament.qld.gov.au/documents/hansard/2019/2019_09_03_WEEKLY.pdf

³⁹⁵ https://www.parliament.qld.gov.au/documents/hansard/2019/2019_09_03_WEEKLY.pdf, page 2609-12

³⁹⁶ <https://www.parliament.qld.gov.au/documents/tableOffice/BillMaterial/190213/Personalised.pdf>

³⁹⁷ <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2019/5619T149.pdf>, page 3

4 Mechanisms

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

Yes. For example, during the consultation phase of policy development, some industry representatives advocated for the establishment of an independent commission for the personalised transport industry, rather than just an Ombudsman. However, the government did not support that proposal and explains its reasoning in the Bill's Explanatory Notes.³⁹⁸

5 Analysis

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

Yes. There are explanations in the Explanatory Notes, which were also debated in Parliament, as to the government's decisions to adopt certain recommendations from stakeholders during the consultation process and reject others.

6 Pathway

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

No. There does not appear to be a published project management plan or rollout timeline. For example, the Department of Transport's website suggests that the office of the Ombudsman would be established and appointed in early 2020, but has been postponed. The Minister announced that the postponement was due to COVID-19, but also to industry dissatisfaction with the legislation, with the delay allowing the government "more time to work with industry to ensure the new Ombudsman role meets the requirements of both the industry and government following COVID-19".³⁹⁹

7 Consultation

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

Yes. Consultation took place as part of the policy development and again on the drafting of the Bill.

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?

Yes. The broader package of reforms to the personalised transport industry, of which establishing the PTO was one measure, were subject to a green/white paper process.

9 Legislation

Was the policy initiative based on new or existing legislation that enabled comprehensive Parliamentary debate and public discussion?

Yes. New legislation was introduced and there was comprehensive Parliamentary debate.

³⁹⁸ Ibid, page 8

³⁹⁹ <https://statements.qld.gov.au/statements/90658>

10 Communication

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

Yes. There was an initial media release announcing and explaining the policy,⁴⁰⁰ and the Department of Transport has a web page dedicated to the industry reforms taking place as part of *Queensland's Personalised Transport Horizon*.⁴⁰¹ In September 2020 there was a further announcement and media release relating to the delay of the PTO.⁴⁰²

Final scores

	Criterion	Yes/No
1	Need	Yes
2	Objectives	Yes
3	Options	Yes
4	Mechanisms	Yes
5	Analysis	Yes
6	Pathway	No
7	Consultation	Yes
8	Papers	Yes
9	Legislation	Yes
10	Communication	Yes
		9/10

⁴⁰⁰ <https://statements.qld.gov.au/statements/88278>

⁴⁰¹ <https://www.tmr.qld.gov.au/business-industry/Taxi-and-limousine/Queenslands-Personalised-Transport-Horizon>

⁴⁰² <https://statements.qld.gov.au/statements/90658>

Concluding thoughts

This report represents the third annual instalment of this project. As time passes, we are able to build up a series of patterns in the policymaking processes that we analyse. Last year, in this final section we reflected on the unique challenges of policymaking in an election year, which it was for every jurisdiction except Queensland. We also reflected on the differences between state and federal governments when assessed against the Wiltshire criteria, as well as the trend of more 'controversial' policies performing better than policies that enjoyed bipartisan support.

This year, our concluding thoughts include some reflections on emergency policymaking, which is new to the project. We also identify themes relating to formal processes and to public consultation.

The challenges and triumphs of emergency policymaking

Preparing for this year's project, we gave considerable thought to the process of judging the emergency policymaking that was undertaken as a result of and in response to the COVID-19 pandemic. Not only did this involve changes to the methodology (see the Methodology section for a full description of these changes), but it also required us to consider how we would step back and consider highly politicised policymaking processes from an objective standpoint when they were also in an ongoing state of flux and development.

Overall, we expected policies made under emergency circumstances to resemble classic cases of policies made "on the run" as warned against by the IPAA in the 2012 discussion paper *Public Policy Drift* that ultimately inspired this project (see the Introduction for more detail). Upon analysing the policies, however, for the most part we were impressed. Many of the emergency policies passed the Wiltshire test, and were subject to evidence-based processes to the extent that they could be under urgent conditions.

Our conclusion is that the unique conditions of the COVID-19 pandemic – a government that was willing to abandon its ideology and spend significantly to support its population, an Opposition that was willing to work productively with the government to get support to the people even where it disagreed with the substance of the policy, and a crossbench working hard to hold both to account – were also conditions that were conducive to the Wiltshire criteria.

The benefits of formal processes

Over the three years of this project we have consistently found that where formal processes are established for legislators and policymakers of a jurisdiction to follow, that jurisdiction performs better against the Wiltshire criteria. This is perhaps best represented by the government of Queensland consistently scoring well in this project. Queensland's Parliament requires all legislation to be referred to an appropriate Parliamentary Committee for Scrutiny. It also requires Explanatory Notes accompanying each Bill to include sections covering alternative policy options and consultation efforts. As a result, we often find that policies in Queensland pick up marks in these criteria.

The fact of a Committee process in general usually ensures that a policy scores more highly as consideration is often given to alternative policy options and measures as well as policy implementation and rollout strategy as part of this process, which also usually includes consultation and may publish a

report that can be seen as an equivalent of a green or white paper. This year, the policies that scored highest – My Health Record and Queensland’s Personalised Transport Ombudsman – had both been through multiple Committee processes. Formalising some of the processes that are judged by the Wiltshire criteria, particularly scrutiny by a Committee, green and white papers, consultation, and a rollout plan or implementation strategy, could improve policymaking processes considerably.

A dearth of public consultation

This year, many policies performed well against the ‘consultation’ criterion. Although only three out of eight emergency policies passed it, this is to be expected due to the nature of the COVID-19 pandemic and the urgency with which many decisions had to be made. Of the non-emergency policies, all 12 out of 12 passed this criterion.

This is to be applauded, but we offer a note of caution. The consultation efforts considered here mainly focused on consultation with influential stakeholders such as businesses, banks, or sector representatives. A trend over the last three years, particularly highlighted this year, has been a dearth of public consultation in our policymaking processes. In general we find that public consultation only formally takes place where there is a Parliamentary Committee process and even then, it may not be explicitly encouraged or sought out, and it is likely to be deprioritised in the Committee’s final report compared to consultation with more powerful stakeholders.

The state government of Victoria has consistently scored well in this criterion over the past three years and often includes public consultation in a more meaningful and significant way than other jurisdictions. Victoria’s processes for consulting the public are formalised under the Engage Victoria brand and made highly accessible online, with members of the public able to offer their thoughts in a number of different ways; for example, where other jurisdictions may require members of the public to write a full submission to a Parliamentary Inquiry, the Engage Victoria website usually offers a simpler, faster survey to complete as well as or instead of a full submission.