

# FINANCIAL REVIEW

PLATINUM 70 YEAR

## There is a way of making better laws

The NSW parliament has new rules that demand a detailed business case for most legislative bills that are put before it. The aim is to weed out partisan spending and bad policy.

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While the federal election was gripping everyone's attention, something of historical importance occurred in NSW.

For the first time, a parliament told a government to adopt a business case approach to formulating all public policies that require legislation.



The NSW parliament's upper house. State laws now have a new stamp of governance approval. **Andy Baker**

This is a transformation in law-making that should be taken up by all parliaments in Australia. It resonates with a [recent opinion poll](#) – and clear evidence from the results of the federal election – that government accountability is now one of the top four issues for voters.

The breakthrough was that the NSW upper house unanimously decided that for every government bill (other than a budget bill), the Selection of Bills committee must report

whether the bill is accompanied by a Statement of Public Interest that answers these questions:

- Need: Why is the policy needed based on factual evidence and stakeholder input?
- Objectives: What is the policy's objective couched in terms of the public interest?
- Options: What alternative policies and mechanisms were considered in advance of the bill?
- Analysis: What were the pros and cons and benefits and costs of each option considered?
- Pathway: What are the timetable and steps for the policy's rollout, and who will administer it?
- Consultation: Were the views of affected stakeholders sought and considered in making the policy?

Also, a minister introducing a bill must state whether a SPI has been prepared. If not, a motion may be moved without notice that the bill lapse until the statement is tabled, or that the bill be referred to a standing or select committee for inquiry and report

The misuse of federal and state grants for [political pork barrelling](#) of sports clubs, car parks, and marginal seats has ignited a public furore over how politically partisan government spending can be.

But it doesn't stop there. Poor governance also extends to decisions that require parliamentary legislation, not just cabinet or ministerial ticks.

Two philosophically opposed think tanks – the conservative [Institute of Public Affairs](#) and the progressive [Per Capita](#) – have each found that Australian federal and state governments fall short of basic standards of evidence and consultation-based policymaking. Their work was commissioned by the Evidence-Based Policy Research Project and funded by the Susan McKinnon Foundation.

**Having auditors-general, integrity bodies and select committees of inquiry rake over failed policies does not fix the underlying problem.**

The think tanks found that of 80 pieces of federal and state legislation, only 27 followed an acceptable decision-making process in terms of answering the basic questions of good policymaking.

In 19 cases, the ratings were well below par. In the balance of cases, the quality of the bills was mediocre. On average, the 80 bills scored just 5.7 out of a possible 10.

The average score per jurisdiction was 5.4 (federal), 5.5 (NSW), 6.1 (Victoria), and 6.2 (Queensland). Anything below 7 is considered unsatisfactory.

In the private sector, any business case that did not address at least 70 per cent of its evaluation criteria would be rejected, yet two-thirds of government bills that fare worse than this on public case criteria get approved.

Having auditors-general, integrity bodies and select committees of inquiry rake over failed policies and processes does not fix the underlying problem, which is that no government in Australia consistently addresses the above questions when making policy. An SPI for each major government decision, including discretionary grants, would do that.

The ability of two ideologically opposed think tanks to broadly agree on what policies were done well and which were done poorly, suggests that standardising public policymaking to accord with recognised best practice could remove much of the distrust and discord in Australian politics.

Indeed, adhering to an evidence-based consultative process could make government decisions more widely accepted.

In Australia, we pride ourselves on being better governed than most countries. But research from the two think tanks shows we should not be smug about our representative democracy because policymaking at federal and state level is far from recognised best practice.

After campaigning for an SPI for three years, the Evidence-Based Policy Research Project finally achieved a breakthrough in the NSW upper house. Most credit must go to Penny Sharpe, Labor's leader in the upper house who moved the motion.

Plaudits also to [Mark Latham](#) (One Nation) who moved, and [David Shoebridge](#) (Greens) who seconded an earlier motion in June 2019 that gave the issue traction. And Damien Tudehope, government leader in the upper house, who reversed the Coalition's long-standing opposition and endorsed the latest motion as a template not only for bills, but also for other policy proposals to cabinet.

This outcome shows that if a group of citizens campaigns hard enough for a sensible governance change with compelling research findings and media coverage, our politicians will listen and act, even though the parliamentary approval process is painstakingly slow.

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