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FIGHTING INEQUALITY IN AUSTRALIA

EVIDENCE BASED
ANALYSIS 2022: 20

POLICY
CASE STUDIES

A report commissioned by the Evidence Based Policy Research Project

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About Per Capita

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

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

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

Introduction

Evidence-based policy

The Evidence Based Policy project highlights how policy design frequently fails to incorporate the best available evidence, or policy development practices. Far too often the news cycle, or narrow party politics determines what policies are enacted by state and federal politicians. 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”.¹ 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 those criteria, finding that only eight satisfied these standards for policymaking.

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

The 2022 Project is the fifth in the series. For the first time, Per Capita has been joined by the Blueprint Institute to complete the analysis. The selected policies are outlined in the table below.

Federal and State Policies Under Review

Federal	New South Wales	Victoria	Queensland
Foreign Intelligence Legislation Amendment Bill 2021	Roads and Crimes Legislation Amendment Bill 2022 (NSW)	Public Health and Wellbeing Amendment (Pandemic Management) Act 2021	Voluntary Assisted Dying Act 2021
Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Bill 2021	Voluntary Assisted Dying Bill 2021 (NSW)	Sex Work Decriminalisation Bill 2021	Youth Justice and Other Legislation Amendment Act 2021
Customs Tariff/Excise Tariff Amendment (Cost of Living Support) Bill 2021	Mandatory Disease Testing Bill 2020	Zero and Low Emission Vehicle Distance- Based Charge Act 2021	Housing Legislation Amendment Act 2021
Aged Care and other Legislation Amendment (Royal Commission Response No 1) Act 2021	Electric Vehicles (Revenue Arrangements) Act 2021	Windfall Gains Tax and State Taxation and Other Acts Further Amendment Act 2021	Defamation (Model Provisions) and Other Legislation Amendment Act 2021

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

Narcotic Drugs Amendment (Medicinal Cannabis)

Act 2021

Autonomous Sanctions Amendment

(Magnitsky-style and Other Thematic Sanctions)

Act 2021

Electoral

Legislation

Amendment (Party Registration Integrity) Act

2021

Parliamentary Workplace Reform (Set the

Standard Measures No. 1) Act 2022

Methodology

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

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

Although we aimed to put ideology completely to one side, total objectivity is, of course, impossible. Broad ideas like 'the public interest' and 'key affected stakeholders' are open to interpretation. To make the assessment of the policies against the Wiltshire criteria more objective, Per Capita and the Blueprint Institute were also provided with a set of guiding questions, where a 'Yes' answer would indicate the policy had met the corresponding criterion, and a 'No' answer would mean it had not. These questions are listed below:

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

- 9) Was there legislation and adequate Parliamentary debate on the proposed policy initiative?
- 10) Is there an online official media release that explains the final policy in simple, clear and factual terms?

In 2022, we are continuing to take a ‘wide’ rather than a ‘narrow’ view to answering these questions and to be more thorough in justifying how and why policies did or did not meet the criteria, rather than using the questions as a tick box exercise. With this in mind, we have explicitly and specifically addressed each criterion in turn throughout our analysis.

Disclaimer

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

Findings

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

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

Summary of findings

Think Tanks’ Rating Scores on 20 Government Case Studies, 2022

Policy	Criteria										Total Score
	Establish Need	Set Goals	Identify Options	Consider Methods	Brainstorm Alternatives	Design Pathway	Consult Further	G & W Paper Process	Debate & Legislate	Convey Decision	
Federal											
Foreign Intelligence	Yes	Yes	Yes	Yes	No	No	No	No	No	Yes	5

Fair Work Amendment	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	9
Customs/excise tariff (fuel)	No	Yes	No	No	No	Yes	No	No	Yes	Yes	4
Aged Care and other Legislation Amendment	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	8
Narcotic Drugs Amendment	Yes	Yes	Yes	No	No	Yes	No	Yes	Yes	Yes	7
Autonomous Sanctions Amendment	Yes	Yes	Yes	Yes	No	Yes	No	No	Yes	Yes	7
Electoral Legislation (Party Registration)	No	Yes	No	No	No	No	No	No	No	Yes	2
Parliamentary Workplace Reforms	Yes	Yes	Yes	No	No	Yes	No	No	Yes	Yes	6
New South Wales											
Roads and Crimes	No	Yes	No	No	No	Yes	No	No	No	Yes	3
Voluntary Assisted Dying	Yes	Yes	No	No	No	No	Yes	Yes	Yes	Yes	6
Mandatory Disease Testing	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	9

Electric Vehicles (Revenue Arrangements)	Yes	Yes	No	No	No	Yes	No	No	No	Yes	4
Victoria											
Public Health (Pandemic Management)	Yes	Yes	Yes	No	No	Yes	Yes	No	No	Yes	6
Sex Work Decriminalisation	Yes	Yes	No	No	No	No	Yes	Yes	Yes	Yes	6
ZLEV Charge	No	Yes	No	No	No	Yes	Yes	No	Yes	Yes	5
Windfall Gains Tax	No	Yes	No	No	No	No	Yes	No	Yes	Yes	4
Queensland											
Voluntary Assisted Dying	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes	Yes	7
Youth Justice and Other Legi	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes	Yes	7
Housing Legislation	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	9
Defamation (Model Provisi	Yes	Yes	No	No	No	No	Yes	Yes	Yes	No	5

Federal

Foreign Intelligence Legislation Amendment Bill 2021

Policy Background

ASIO has long had the power to intercept telecommunications in order to gain intelligence relating to possible threats to national security. Previous legislation prohibited interception of domestic communications, including in circumstances when officials are unsure whether communications are domestic or international, such as when software is used to obscure its destination or origin.²

The 2019 *Report of the Comprehensive Review of the Legal Framework of the National Intelligence Community (Richardson Review)*, conducted by Dennis Richardson AC, outlined the case for the legislative framework for information gathering to be updated to reflect technological changes, including in cases of uncertainty relating to the origin or destination of a communication.³

The *Richardson Review* also highlighted potential flaws within existing legislation that allowed for the use of 'intrusive powers' when gathering intelligence on individuals suspected to be working for foreign powers operating offshore, whilst prohibiting the use of these powers if this individual was operating onshore. The *Richardson Review* recommended that warrants be permitted to be issued by the Attorney-General for the collection of intelligence on an Australian person operating for, or on the behalf of, a foreign power.⁴

The Foreign Intelligence Legislation Amendment Bill 2021 was introduced to the House of Representatives on 25 August 2021.⁵ The Bill's explanatory memorandum states that the legislation aims to 'address critical gaps in Australia's foreign intelligence warrant framework'⁶ through the following component

- Schedule 1, which amends *Telecommunications (Interception and Access) Act 1979 (Cth) (TIA Act)*, enables the Director-General of Security to give notice in writing requesting that the Attorney-General issue a warrant that authorises the interception of communications in order to obtain foreign intelligence. This removes the strict prohibition on intercepting domestic communications.⁷
- Schedule 1 also includes safeguards to protect domestic communications such as a 'mandatory procedure' to be followed by the Attorney-General when intercepting communications with an unknown destination or origin. This procedure includes a stipulation that any domestic communications intercepted as part of foreign intelligence gathering be destroyed unless these communications present a significant risk to a person's life.⁸
- Schedule 2 amends the *Australian Security Intelligence Organisation Act 1979 (Cth) (ASIO Act)* to permit the Director-General of Security to apply for a foreign intelligence warrant from the Attorney-General to collect information on an Australian citizen or permanent resident reasonably suspected to be acting for, or on behalf of a 'foreign power'.⁹ The *ASIO Act* defines a *foreign power* as a 'foreign government, an entity that is directed or controlled by a foreign government or governments, or a foreign political organisation'.¹⁰

² Explanatory Memorandum, Foreign Intelligence Legislation Amendment Bill 2021 (Cth) 3-4.

³ Ibid 10; Dennis Richardson, *Comprehensive Review of the Legal Framework of the National Intelligence Community* (Report, December 2019) Vol 1, 217-8.

⁴ Ibid 242.

⁵ Commonwealth, *Parliamentary Debates*, House of Representatives, 25 August 2021, 8517; Foreign Intelligence Legislation Amendment Bill 2021 (Cth).

⁶ Explanatory Memorandum, Foreign Intelligence Legislation Amendment Bill 2021 (Cth) 2.

⁷ Ibid 2.

⁸ Foreign Intelligence Legislation Amendment Bill 2021 (Cth) sch 1 item 10.

⁹ Ibid sch2 item 2.

¹⁰ *Australian Security Intelligence Organisation Act 1979 (Cth) s 4* (definition of 'foreign power').

The Bill was referred to the Parliamentary Joint Committee on Intelligence and Security (PJCIS) on 20 August 2021. The review was conducted expeditiously and in private. The Bill and explanatory memorandum had not yet been tabled in Parliament. The PJCIS held a classified briefing with relevant agencies on 23 of August.¹¹

The PJCIS report recommended the following amendments:

- to require that the PJCIS be notified should the Attorney-General issue a mandatory written procedure to screen for and/or destroy any domestic communications, and
- to include a requirement for the PJCIS to review its amendments within a maximum of five years' time.¹²

The Bill was debated in the House of Representatives on 25 August 2021. It received bipartisan support from the Labor party and Coalition, with government and opposition MP's praising co-operation and bipartisanship within the PJCIS.¹³

Certain members of the crossbench recorded their discontent with the Bill and the PJCIS process. Greens Senator, Lidia Thorpe, criticised the absence of any crossbenchers within the PJCIS, stating that the crossbench had been 'locked out' of a 'secret' review process.¹⁴ Thorpe described the process as showing 'contempt for democracy' and told the Senate that the Greens would not be voting for the Bill until the government allowed proper debate and scrutiny.¹⁵

In response to Thorpe's criticism, PJCIS chair Senator James Paterson, told the Senate that whilst the PJCIS preferred to conduct its inquiries in public, this was not possible due to the 'sensitive nature' of the legislation considered and due to the COVID-19 outbreak that was currently occurring in multiple states. Paterson stated that the PJCIS did not wish to delay the passage of this legislation should Parliament be interrupted by COVID-19 outbreaks and therefore chose to expedite the inquiry process.¹⁶

The Bill was also criticised by Independent Senator Rex Patrick.¹⁷ Patrick raised concerns that the Bill would not be examined in committee, leaving himself with unanswered questions related to the legislation. Patrick also voiced suspicions that the legislation was being expedited in order to aid an ongoing operation.¹⁸ Patrick moved an amendment calling on the PJCIS to review intelligence services including ASIO, which was not passed.¹⁹

The Bill, with government amendments,²⁰ passed the House of Representatives on 25 August 2021 and the Senate the following day. It received assent on 2 September 2021.

The Bill was reviewed by the Parliamentary Joint Committee on Human Rights (PJCHR) after having passed both Houses. The PJCHR noted that:

- interception of communications limits the right to privacy and therefore stated that 'questions remain as to whether the measures are a proportionate means of achieving the [Bill's] stated objectives';²¹
- whilst judicial authorisation of surveillance is generally considered to be best practice in international human rights law, the Bill assigns authority to the executive;²² and
- they had concerns related to the fast passage of the Bill through Parliament and the lack of PJCHR scrutiny before its assent into law.²³

¹¹ Parliamentary Joint Committee on Intelligence and Security, Parliament of Australia, *Advisory Report on the Foreign Intelligence Legislation Amendment Bill 2021* (Report, August 2021) 1.

¹² *ibid* ix.

¹³ Commonwealth, *Parliamentary Debates*, House of Representatives, 25 August 2021, 8644-8.

¹⁴ Commonwealth, *Parliamentary Debates*, Senate, 26 August 2021, 5369.

¹⁵ *Ibid*.

¹⁶ *Ibid* 5370-4.

¹⁷ *Ibid* 5374.

¹⁸ *Ibid*.

¹⁹ *Ibid* 5428-9.

²⁰ Commonwealth, *Parliamentary Debates*, House of Representatives, 25 August 2021, 8684.

²¹ Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Human Rights Scrutiny Report* (Report No 11 of 2021, 16 September 2021) 37 [1.89].

²² *Ibid* [1.90].

²³ *ibid* 37-8 [1.91].

The Bill was also reviewed by the Senate Standing Committee for the Scrutiny of Bills (SSCSB). In a report tabled on 16 September, the SSCSB noted that more time should have been afforded to scrutinise the legislation before the Bill was passed.²⁴ The SSCSB raised concerns relating to the broadness of terms used in the Bill such as *foreign power* and *foreign political organisation*, stating these terms could be ‘broadly construed’.²⁵

Additionally, the Bill does not outline how it will be determined that an individual is working for a foreign power. The SSCSB warned that such inadequately defined powers could be applied inconsistently or arbitrarily.²⁶

²⁴ Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, Scrutiny Digest (Digest No 15 of 2021, 16 September 2021) 21 [1.66].

²⁵ *Ibid* 21 [1.65].

²⁶ *Ibid*.

Policy Process

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

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

Yes. The *Richardson Review* suggested that the legislative framework be updated to 'reflect the modern communications environment' and that prohibitions on intelligence gathering on Australian citizens suspected to be working for foreign powers be removed.²⁷

During the review process, public submissions were received from civil society organisations, government officials, legal professionals and academics as well as other interested members of the public. The CEO of Telstra was also consulted regarding electronic surveillance issues. Consultation with key officials from the United Kingdom, France, Canada and the Netherlands, also occurred during the Review.²⁸

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

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

Yes. The Bill's explanatory memorandum couches the amendments to the *TIA Act* and the *ASIO Act* in terms of national security. The memorandum states that the changes will 'improve intelligence agencies' ability to collect intelligence about foreign threats to Australia, and keep Australia safe and prosperous'.²⁹

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

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

Yes. The *Richardson Review* discusses different considerations made when considering the need to amend the *TIA Act* and *ASIO Act*. For example, the *Richardson Review* addresses suggestions by the Home Affairs Office that 'tools available to law enforcement should not be... weakened based on the geographic location of the threat'.³⁰ The *Richardson Review* disagrees with this suggestion, recommending the minimum necessary adjustments to the *TIA Act* in regards to intercepting communications from an unknown location.³¹

The *Richardson Review* also considers international approaches to intelligence collection as a means of evaluating possible policy options.³²

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

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

Yes. The *Richardson Review* explores a variety of implementation choices to address electronic surveillance reform. This includes the longer-term option of integrating the *TIA Act* and *ASIO Act* together, as well as separate, more minor

²⁷ Richardson (n 2) 218.

²⁸ Ibid 26-8.

²⁹ Explanatory Memorandum, Foreign Intelligence Legislation Amendment Bill 2021 (Cth) 2.

³⁰ Dennis Richardson, *Comprehensive Review of the Legal Framework of the National Intelligence Community* (Report, December 2019) Vol 1, 211.

³¹ Ibid 219.

³² Ibid 213-8, 234-7.

reform of the *TIA Act* to address recent technological changes, which have been adopted by the Parliament through this legislation.³³

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

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

No. Within the publicly available version of the *Richardson Report* there is little in-depth discussion of the pros and cons of alternative policy options. There is no cost benefit analysis.

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

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

No. The Bill's Explanatory Memorandum explains that the legislation aims to 'address critical gaps in Australia's foreign intelligence legislation' through the proposed changes to the *TIA Act* and *ASIO Act*.³⁴ The Memorandum also outlines the responsibilities of the Director-General of Security, Inspector-General of Intelligence and Security, and the Attorney-General when authorising surveillance, including the *mandatory written procedure* to be issued by the Attorney-General when intercepting unknown communications.³⁵

Government amendments enhance oversight and scrutiny of the Bill's rollout. The first amendment states that the PJCIS must be notified when a mandatory written procedure is issued, an amendment Paterson has claimed will enhance scrutiny of intelligence-collecting procedures. Additionally, the second amendment allows the PJCIS to conduct a review of the legislative changes five years after Royal Assent.³⁶ This indicates a process is in place to monitor the legislation's application.

However, a clear timeline for rollout and performance measures are missing from the legislation or any related documents.

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

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

No. The government published a response to the *Richardson Review* in which they indicated their support for the relevant recommendations. Within this response, the government stated their intention to consult with the public, stakeholder groups and state and territory agencies when drafting legislation.³⁷ Evidence of this consultation is not available.

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

³³ Dennis Richardson, *Comprehensive Review of the Legal Framework of the National Intelligence Community* (Report, December 2019) Vol 2, 262-4; Explanatory Memorandum, Foreign Intelligence Legislation Amendment Bill 2021 (Cth) 2.

³⁴ Explanatory Memorandum, Foreign Intelligence Legislation Amendment Bill 2021 (Cth) 2.

³⁵ *Ibid* 4.

³⁶ Foreign Intelligence Legislation Amendment Bill 2021 (Cth) cl 4, sch 1 item 10, inserting *Telecommunications (Interception and Access) Act 1979* (Cth) s 11C(10A).

³⁷ Attorney-General's Department, Parliament of Australia, *Commonwealth Government Response to the Comprehensive Review of the Legal Framework of the National Intelligence Community* (Government Response, December 2020) 23-4.

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

No. Aside from the government's response to the *Richardson Review*, no draft proposals of the legislation are available online. The Bill passed both houses within two days, preventing any stakeholder feedback after the legislation was initially introduced to Parliament.

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

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

No. The Bill was referred to on an embargoed basis until it was tabled in Parliament on 25 August 2021. The second reading in the House of Representatives occurred on the same afternoon, and in the Senate on 26 August 2021. As a consequence, no scrutiny of the Bill occurred before or between the its first reading in the House and passage through the senate, except than by the PJCIS. This extremely quick turnaround meant Parliament was unable to effectively scrutinise the contents of the Bill.

Additionally, the Bill was not scrutinised in the PJCHR or SSCSB until after its Royal Assent. The various issues raised by the two scrutinising committees were therefore not addressed in Parliamentary debate.

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

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

Yes. The Minister for Home Affairs, Karen Andrews, released a short media release on 26 August 2021 informing readers that the Bill had passed parliament. This release included a brief summary of the key elements and aims of the legislation.³⁸

Final scores

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

³⁸ Karen Andrews, 'Passage of the Foreign Intelligence Legislation Amendment Bill 2021' (Media Release, Minister for Home Affairs, 26 August 2021).

	(policy design framework)	
7	Consult Further (further consultation after policy announcement)	No
8	Publish Proposals (produce Green then White paper, or equivalents)	No
9	Introduce Legislation (comprehensive parliamentary debate)	No
10	Communicate Decision (information not propaganda)	Yes
		5 /10

Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2021

Policy Background

During its time in office over the past decade, the Coalition have signalled a willingness to undertake industrial relations reform. In 2019, a review of Australia's industrial relations system was launched by Industrial Relations Minister Christian Porter, in which the minister considered issues including the definition of a casual employee in order to explore reforms that would benefit both employers and employees.³⁹

The COVID-19 pandemic saw widespread disruption to industries and workplaces, with many businesses being forced to close and employers being stood down from their positions. The Coalition announced reforms to Australia's industrial relations system as part of the government's broader response to the pandemic in 2020. Prime Minister Scott Morrison emphasised the need to repair 'systemic issues' within the industrial relations system in order to 'get people back to work'.⁴⁰ He also announced that five working groups, combining employer organisations and unions, to assist in the development of an industrial relations reform agenda.⁴¹

On 9 December 2020, Christian Porter introduced the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020. Mr Porter told the House of Representatives that the proposed changes would provide 'practical, incremental solutions to key issues that are known barriers to creating jobs'.⁴² The Bill contained numerous amendments to the *Fair Work Act 2009* (FW Act) and related legislation. The changes are summarised below:

Casual Employment Changes

- Introducing a statutory definition of casual employee to avoid situations in which both casual and permanent employee entitlements are paid to the same employee.
- Introducing a statutory obligation for employers to offer permanent positions to regular casual employees 'unless there are reasonable business grounds not to do so'.⁴³

Award reform

- Allowing employees employed under certain awards, including the *General Retail Award* and *Hospitality Industry Award*, the ability to take on additional hours to those set out in their Award.
- Eligible part-time employees can enter into a 'simplified hours agreement' if their ordinary hours of work are at least 16 hours per week. Additional work would be carried out at ordinary rates of pay.⁴⁴

Agreement Making

- Removing requirements within the enterprise bargaining process under which the Fair Work Commission (FWC) must include entitlements prescribed by the National Employment Standards (NES).⁴⁵
- Permitting the FWC to approve an enterprise agreement which does not pass the Better Off Overall Test (BOOT) in limited circumstances for the two years after the legislation's commencement.⁴⁶

Greenfields Agreements

- Enable the FWC to approve longer term greenfield agreements (agreements for new projects made at a time when nobody is employed by an enterprise) for major projects with an expiry date of up to eight years.⁴⁷

Compliance and enforcement measures

- Introducing a new criminal offence for 'dishonest and systematic wage underpayments',⁴⁸ often referred to as 'wage theft', with a maximum penalty of four years' imprisonment.⁴⁹

³⁹ Dana McCauley, 'Christian Porter Launches Review of Industrial Relations System' *The Sydney Morning Herald* (Online, 27 June 2019) <<https://www.smh.com.au/politics/federal/christian-porter-launches-review-of-industrial-relations-system-20190626-p521gr.html>>.

⁴⁰ Department of Parliamentary Services (Cth) *Bills Digest* (Digest No 53 of 2020-21, 16 March 2021) 9.

⁴¹ *Ibid.*

⁴² Commonwealth, *Parliamentary Debates*, House of Representatives, 9 December 2020, 11015 (Christian Porter).

⁴³ Explanatory Memorandum, Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 (Cth) i-ii.

⁴⁴ *Ibid.* 22.

⁴⁵ *Ibid.* 43.

⁴⁶ *Ibid.*

⁴⁷ Department of Parliamentary Services (Cth) *Bills Digest* (Digest No 53 of 2020-21, 16 March 2021) 54.

⁴⁸ Explanatory Memorandum, Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 (Cth) i-ii, iv.

⁴⁹ *Ibid.* cxvii.

- Increasing civil penalties and orders for instances of non-compliance with the *FW Act*.⁵⁰
- Increasing the cap on the amount of money involved in cases addressed by the small claims process from \$20,000 to \$50,000.⁵¹

Overall, these amendments were said to provide flexibility for employers and employees during the period of economic recovery.⁵²

Before the Bill's second reading debate in the House of Representatives, the proposed legislation was scrutinised by the Senate Standing Committee for the Scrutiny of Bills (SSCSB). The SSCSB raised several concerns, including concerns that retrospective application of the new definition of 'casual employee' was counter to 'a basic value of the rule of law that...laws should only operate prospectively'.⁵³

Before the Bill reached its second reading in the senate, the government agreed to remove provisions relating to the BOOT at the request of crossbenchers. Changes related to the BOOT were unpopular with many stakeholders, particularly union groups based on a belief that changes would reduce wages and entitlements.⁵⁴ Upon announcing this change, the Minister for Industrial Relations conceded that while the BOOT proposal was 'sensible and proportionate', the government understood that it did have the potential to distract from their broader legislative agenda.⁵⁵

The Bill was debated in the House of Representatives from 17- 23 February 2021.

From the outset of the House second reading debate, Labor signalled that they would be strongly opposing the Bill. Opposition leader Anthony Albanese, told the House that the Bill would overall 'make work less secure', failing a crucial test of whether workers would be better off.⁵⁶

A variety of issues was raised by Labor MPs in the House and Senate, including:

- Concerns that casual employees are not allowed compulsory arbitration if their request to be made permanent after 12 months is denied.⁵⁷
- Concerns that wage theft laws dilute existing state legislation. For example, Queensland provides a maximum sentence of 10 years for deliberately underpaying workers. This would be reduced to four years under the legislation.⁵⁸
- Opposition to enterprise agreement bargaining changes, including a provision that employers do not need to tell employees for a month they have started bargaining.⁵⁹

Labor Senator Don Farrell argued that the changes included in the Bill did not represent the viewpoints shared by unions in the working groups set up by the Prime Minister. Farrell read an extract from the Australian Council of Trade Unions' (ACTU) submission to the Senate that stated '[t]his Bill... will cut the wages, conditions and rights of Australian workers'.⁶⁰

The Bill was also opposed by the Greens, with Member for Melbourne Adam Bandt telling the House; 'If this bill passes, insecure work will spread like wildfire across the country'.⁶¹ As well as raising several concerns addressed above by Labor, Bandt warned that the introduction of 'simplified employment contracts' in certain industries would discourage employers from hiring full-time workers.⁶² Moreover, Bandt criticised new provisions that would remove the NES minimum conditions, arguing that this would remove legal minimum standards for enterprise agreements.⁶³ Greens

⁵⁰ Ibid civ.

⁵¹ Ibid.

⁵² Ibid i.

⁵³ Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Scrutiny Digest* (Digest No 2 of 2021, 3 February 2021) 8.

⁵⁴ Senate Education and Employment Legislation Committee, Parliament of Australia, *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 [Provisions]* (Report, March 2021).

⁵⁵ Department of Parliamentary Services (Cth) *Bills Digest* (Digest No 53 of 2020-21, 16 March 2021) 72.

⁵⁶ Commonwealth, *Parliamentary Debates*, House of Representatives, 17 February 2021, 1119 (Anthony Albanese)

⁵⁷ Commonwealth, *Parliamentary Debates*, House of Representatives, 17 February 2021, 1046 (Tony Burke)

⁵⁸ Ibid 1049.

⁵⁹ Ibid 1120.

⁶⁰ Commonwealth, *Parliamentary Debates*, Senate, 16 March 2021, 1876 (Don Farrell).

⁶¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 18 February 2021, 1229 (Andrew Wallace).

⁶² Commonwealth, *Parliamentary Debates*, House of Representatives, 18 February 2021, 1030 (Adam Bandt).

⁶³ Ibid 1231.

Senator Mehreen Faruqi also argued that the Bill was 'racist and sexist' due to disproportionate impacts on women and migrants, who are more likely to be part-time or casual workers.⁶⁴

In the Senate, it became apparent that the deciding votes for the legislation would rest with Pauline Hanson's One Nation Senators and Centre Alliance Senator Sterling Griff.⁶⁵ One Nation Senator Malcolm Roberts told the Senate that One Nation could not support the Bill in its current form, and would be passing many amendments to be considered before they would support the Bill.⁶⁶ Griff similarly told the Senate that the Centre Alliance would support only the 'most important elements' of the Bill, including supporting provisions related to wage theft and provisions related to casual employment definitions.

Several amendments were moved in the Senate, leading to the omissions of schs 2-6 and the insertion of a clause requiring the amendments to be reviewed within 12 months.⁶⁷ Overall, 15 amendments were made by the government, two by the opposition, 11 by One Nation, four by Senator Rex Patrick, and one by Jackie Lambie. This resulted in the scope of the final text of the Bill being severely narrowed, with almost all provisions now relating to workforce casualisation.⁶⁸

While Scott Morrison re-committed to the rest of the industrial relations reforms included in the Bill during the 2022 election campaign,⁶⁹ the Coalition's election defeat meant that the majority of the proposed changes were not made.

Policy Process

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

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

Yes. The Bill's explanatory note outlines the need for all policy changes separately. The views of stakeholders are briefly addressed, although little detail is provided in certain cases.⁷⁰

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

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

Yes. The Bill's explanatory memorandum states that the legislative changes aim to 'improve the operation and usability of the national industrial relations system'.⁷¹ By doing so, the Bill aims to improve productivity and promote economic growth and 'ensure that employees also receive their share of benefits that flow from (post-COVID-19 pandemic) economic recovery'.⁷²

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

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

⁶⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 16 February 2021, 1881. (Mehreen Faruqi)

⁶⁵ Commonwealth, *Parliamentary Debates*, Senate, 17 March 2021, 2173 (Rex Patrick).

⁶⁶ Commonwealth, *Parliamentary Debates*, Senate, 18 March 2021, 2193 (Malcolm Roberts).

⁶⁷ Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2021, Schedule of the amendments made by the Senate.

⁶⁸ Ibid.

⁶⁹ David Adams, 'Morrison Flags Return to 2021's Industrial Relations Reforms as Labor, Unions say Tweaks will Cut Wages', *Smart Company*, (Online, 19 April 2022) <<https://www.smartcompany.com.au/people-human-resources/industrial-relations/industrial-relations-reform-bill-revitalises-morrison-opposition/>>.

⁷⁰ Explanatory Memorandum, Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 (Cth) i.

⁷¹ Ibid.

⁷² Ibid.

Yes. The Bill's explanatory memorandum contains a summary of at least two policy options considered for each issue addressed by the legislation initially introduced to the House. For example, for the issue of casual employment reforms, the explanatory memorandum details two different ways that the *FW Act* could be amended to better define entitlements owed to casual workers. The option of maintaining the status quo is also included.⁷³

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

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

Yes. Differences between specific legislative amendments are detailed for most issues addressed by the initial legislation. For example, consideration of the definition of casual employment includes a discussion of different definitions to be included within the *FW Act*.⁷⁴

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

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

Yes. The explanatory memorandum includes a cost-estimate for all options considered. The net benefits of all options considered are also outlined.

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

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

Yes. Each element of the original Bill outlines the problem to be addressed, the chosen delivery mechanisms, implementation and transitional arrangements, and a brief summary of monitoring and evaluation measures.⁷⁵ The amendments made to the final text of the Bill (regarding casual employment) also include a requirement to review the changes made by the amendments within two years.⁷⁶

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

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

No. The Senate Education and Employment Legislation Committee invited submissions from stakeholders during their scrutiny of the Bill.

However, it should be noted that various stakeholders, especially unions, expressed their strong dissatisfaction with the Bill. For example, the ACTU's submission stated that the Bill; 'should be rejected by Parliament unless it can be substantially amended to ensure there are no cuts to workers pay, conditions and rights, and working people's jobs are more secure'.⁷⁷

⁷³ Ibid vi-xiii.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2021, Schedule of the amendments made by the Senate, 3.

⁷⁷ Australian Council of Trade Unions, Submission No 16 to Senate Education and Employment Legislation Committee, *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 [Provisions]* (5 February 2021) 2.

Criticisms were also brought by the Victorian and Queensland governments based on the Bill's four-year maximum prison sentence for wage theft. The governments noted that this would dilute current legislation in both states and called on the Commonwealth to increase the penalty in line with existing legislation.⁷⁸⁷⁹

Criticisms brought by stakeholders were not addressed by the government. Given that the government emphasised the role of employee and employer organisation working groups in the development of the Bill,⁸⁰ the strong opposition to the legislation amongst many members of the working groups calls into question the extent to which all stakeholder perspectives were taken into account when deciding upon amendments.

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

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

Yes. The Bill's explanatory memorandum and the Senate Education and Employment Legislation Committee Report may be seen as Green and White Paper equivalents. As noted above, however, it does not appear that the government took on board much of the stakeholder input given during the SEELC review.

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

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

Yes. Legislation was introduced to the House of Representatives on 9 December 2020 and was debated in both houses of Parliament. Dozens of speakers from major and minor parties, as well as independents, spoke on the Bill. The Bill was also considered in committee, and many amendments were passed by major parties and crossbenchers.

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

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

Yes. The Department of Employment and Workplace Relations released a fact sheet summarising the legislative changes, including employer obligations and employee entitlements.⁸¹

Final scores

	Criterion	Yes/No
1	Establish Need (demonstrable, evidence-based need)	Yes
2	Set Objectives (public interest parameters)	Yes
3	Identify Options (consideration of alternatives)	Yes
4	Consider Mechanisms (implementation choices)	Yes

⁷⁸ Queensland Government, Submission No 20 to Senate Education and Employment Legislation Committee, *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 [Provisions]* (January 2021) 3.

⁷⁹ Victorian Government, Submission No 7 to Senate Education and Employment Legislation Committee, *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 [Provisions]* (4 February 2021) 3.

⁸⁰ Senate Education and Employment Legislation Committee, Parliament of Australia, *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 [Provisions]* (Report, March 2021) 45.

⁸¹ Department of Employment and Workplace Relations (Cth), 'Changes to Casual Employment', (Fact Sheet) <<https://www.ag.gov.au/industrial-relations/changes-casual-employment>>.

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

Customs Tariff/Excise Tariff Amendment (Cost of Living Support) Bill 2022

Policy Background

The February 2022 invasion of Ukraine by Russian forces led to extreme spikes in petrol prices. By late March 2022 unleaded petrol prices in Melbourne and Sydney had risen to an average of 212.3 cpl (cents per litre) and 211.4 cpl respectively.⁸² This is contrasted with late December 2021, where unleaded petrol could be purchased for an average of 149.6 cpl in Melbourne and 166.8cpl in Sydney.⁸³

Under the existing *Excise Tariff Act 1921* (Cth) (*ETA*), excise duties are imposed on the manufacture and production of fuels such as petrol and diesel and other petroleum-based products. Additionally, the *Customs Tariff Act 1995* (Cth) (*CT Act*) imposes customs duty rates equivalent to the domestic excise on imported fuels and petroleum-based products.⁸⁴

News outlets reported that Prime Minister Scott Morrison began to receive requests from State Premiers and Coalition MPs to reduce the fuel excise in March 2022.⁸⁵ Later in the month Morrison began suggesting that the upcoming Federal Budget would include fuel price relief.⁸⁶

Fuel excess rate cuts were announced as part of the *2022-2023 Federal Budget*⁸⁷. In his Budget Speech, Treasurer Josh Frydenberg stated that Australians would save 22 cents on each litre of fuel purchased, a saving which could amount to \$700 for a two-car family over a six month period.⁸⁸ The Excise Tariff (Cost of Living Support) Bill 2022 (ET Bill) and the Customs Tariff 2022 Amendment (Cost of Living Support) Bill 2022 (ET Bill) were both introduced to the House of Representatives on 30 of March 2022.⁸⁹

The ET Bill amends the *ET Act* to halve excise duty rates on fuels for six months, until 28 September 2022. The CT Bill amends the *CT Act* to halve customs duties until the same date. Both customs and excise duties are subject to indexation twice yearly. The changes do not affect this indexation schedule.⁹⁰ These cuts also do not apply to aviation fuels.⁹¹

Debate for both bills was combined, with the Bills' second and third readings taking place on 30 March.

The Bills were supported by the Labor Party, although several Labor MPs used the Bills' Second Reading debate to criticise the government's response to cost-of-living pressures. Senator Murray Watt told the Parliament that it was a shame the government had not addressed cost-of-living pressures until shortly before the federal election.⁹² Similarly, Senator Tony Sheldon also told the Senate that the government had no plan to address cost-of-living pressures including wage stagnation.⁹³

Both Bills passed the House of Representatives and Senate on 30 March 2022 and received Royal Assent the following day.

⁸² 'Fuel Price Update 23 March 2022', WEX inc (Web Page, 23 March 2022) <<https://www.wexinc.com/motorpass/news-insights/fuel-price-update-23-march-2022/>>.

⁸³ 'Fuel Price Update 22 December 2022', WEX inc (Web Page, 22 December 2022) <<https://www.wexinc.com/motorpass/news-insights/fuel-price-update-22-december-2021/>>.

⁸⁴ Explanatory Memorandum Treasury Laws Amendment (Cost of Living Support and Other Measures) Bill 2022 (Cth); Excise Tariff Amendment (Cost of Living Support) Bill 2022 (Cth); Customs Tariff Amendment (Cost of Living Support) Bill 2022 (Cth), 98-9.

⁸⁵ Tom Lowrey and Stephanie Borys, 'Federal Government Faces Calls from Within to Cut Fuel Excise as Petrol prices Soar during Ukraine War', ABC News, (Online, 14 March 2022) <<https://www.abc.net.au/news/2022-03-14/fuel-excise-tax-calls-to-be-cut-within-federal-government-petrol/100907104>>.

⁸⁶ Paul Karp, 'Scott Morrison Leaves Open Possibility of Petrol Excise Cut in Budget', *The Guardian* (Online, 13 March 2022) <<https://www.theguardian.com/australia-news/2022/mar/13/scott-morrison-leaves-open-possibility-of-petrol-excise-cut-in-budget>>.

⁸⁷ Phillip Coorey, 'Fuel Tax Cut, \$18b Extra for Roads, Rail in pre-Election Budget', *Australian Financial Review*, (Online, 27 March 2022) <<https://www.afr.com/politics/federal/fuel-tax-cut-18b-extra-for-roads-rail-in-pre-election-budget-20220327-p5a8ag>>.

⁸⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 29 March 2022, 1157 (Josh Frydenberg).

⁸⁹ Customs Tariff Amendment (Cost of Living Support) Bill 2022 (Cth); Excise Tariff Amendment (Cost of Living Support) Bill.

⁹⁰ Explanatory Memorandum Treasury Laws Amendment (Cost of Living Support and Other Measures) Bill 2022 (Cth); Excise Tariff Amendment (Cost of Living Support) Bill 2022 (Cth); Customs Tariff Amendment (Cost of Living Support) Bill 2022 (Cth).

⁹¹ Ibid

⁹² Commonwealth, *Parliamentary Debates*, Senate, 30 March 2022, 547 (Murray Watt).

⁹³ ibid 550 (Tony Sheldon).

Policy Process

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

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

No. Whilst Coalition MPs noted that fuel prices had risen due to international market pressures created by the Russian invasion of Ukraine and that legislative intervention was therefore required to limit fuel price increases,⁹⁴ this explanation is not elaborated on and no evidence of stakeholder input is publicly available.

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

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

Yes. The Bills' explanatory memorandum states that the Bill aims to 'temporarily assist in easing cost of living pressures by providing a temporary reduction in fuel excise and customs duties'.⁹⁵ The government estimated that these cuts would save households up to \$700 over the six-month period they are in place.⁹⁶

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

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

No. The Government did not publish any alternative policy options before introducing the fuel excise and customs tariff cuts.

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

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

No. The Bills explanatory memorandum explains the manner in which the planned policy will be implemented but does not discuss alternative options.

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

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

No. While the financial effect of the proposed cuts is outlined in the Bills' explanatory memorandum,⁹⁷ no alternative costings or evaluation of any other options are available.

⁹⁴ *ibid* 547 (Jane Hume).

⁹⁵ Explanatory Memorandum Treasury Laws Amendment (Cost of Living Support and Other Measures) Bill 2022 (Cth); Excise Tariff Amendment (Cost of Living Support) Bill 2022 (Cth); Customs Tariff Amendment (Cost of Living Support) Bill 2022 (Cth), 10.

⁹⁶ Commonwealth, *Parliamentary Debates*, Senate, 30 March 2022, 551 (Amanda Stoker).

⁹⁷ Explanatory Memorandum Treasury Laws Amendment (Cost of Living Support and Other Measures) Bill 2022 (Cth); Excise Tariff Amendment (Cost of Living Support) Bill 2022 (Cth); Customs Tariff Amendment (Cost of Living Support) Bill 2022 (Cth), 10.

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

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

Yes. The Bills' explanatory memorandum establishes an end date for the tax cuts as well as a schedule for indexation of duty rates.⁹⁸ In his 2022-2023 budget speech, Treasurer Josh Frydenberg announced that the consumer watchdog (ACCC) would be monitoring fuel prices to ensure savings brought by tax cuts would be passed onto consumers.⁹⁹

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

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

No. The legislation was passed one day after the treasurer's budget speech, indicating little consultation occurred before the Bills were voted on in Parliament.

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

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

No. While the Government did publish a fact sheet explaining the cuts published on 30 of March.¹⁰⁰, no papers were published seeking public feedback.

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

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

Yes. Legislation was introduced to the House of Representatives on 30 of March, with members from multiple parties speaking on the proposed changes.

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

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

Yes. The Government released a fact sheet explaining the changes, including a table showing the new tax rates for various materials: petroleum, diesel and various petroleum-based oils, lubricants and greases.¹⁰¹ Additionally, the ATO and the ACCC updated the public on the changes.¹⁰²¹⁰³

⁹⁸ Ibid.

⁹⁹ 'Monitoring Fuel Prices Following the Excise Cut', *Australian Competition & Consumer Commission*, (Web Page) <<https://www.accc.gov.au/consumers/petrol-diesel-lpg/monitoring-fuel-prices-following-the-excise-cut>>.

¹⁰⁰ Australian Treasury, 'Budget 2022-2023: Fuel Excise Fact Sheet', (Fact Sheet, 30 March 2022) <https://budget.gov.au/2022-23/content/factsheets/download/factsheet_excise.pdf>.

¹⁰¹ Australian Treasury, *Budget 2022-2023: Fuel Excise Fact Sheet*, https://budget.gov.au/2022-23/content/factsheets/download/factsheet_excise.pdf

¹⁰² 'Fuel Tax Credit Rates have changed', *Australian Taxation Office* (Web Page, 11 April 2022) <<https://www.ato.gov.au/Newsroom/smallbusiness/GST-and-excise/Fuel-tax-credit-rates-have-changed/#:~:text=11%20April%202022,March%20until%2028%20September%202022>>.

¹⁰³ 'Monitoring Fuel Prices Following the Excise Cut', *Australian Competition & Consumer Commission* (Web Page, 2022) <<https://www.accc.gov.au/consumers/petrol-diesel-lpg/monitoring-fuel-prices-following-the-excise-cut>>.

Final scores

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

Aged Care and Other Legislation Amendment (Royal Commission Response No. 1) Act 2021

Policy Background

In September 2018 a *Royal Commission into Aged Care Quality and Safety* was announced by Prime Minister Scott Morrison. The establishment of the *Royal Commission* followed several instances of abuse and non-compliance in the aged care system¹⁰⁴. Prior to the *Royal Commission*, smaller-scale inquiries had found systemic failings within the system caused by factors such as insufficient quality standards and inadequate staff-to-patient ratios.¹⁰⁵

The *Royal Commission* released an *Interim Report* titled *Neglect* on 31 October 2019. The *Interim Report* emphasised the need for systemic reform within the aged care system. In particular, The *Interim Report* highlighted the need to urgently respond to the sector's current over-reliance on chemical restraints, stopping the flows of young people with disabilities into aged care, and working to provide higher-level care to elderly individuals at home.¹⁰⁶

The *Royal Commission's Final Report* was tabled on 1 March 2021. The *Final Report* estimated that over 30% of recipients of residential and home care services were receiving 'substandard care'.¹⁰⁷ The *Final Report* states that previous Australian governments have 'brought a level of ambivalence, timidity and detachment to their approach to aged care',¹⁰⁸ and identifies a range of systemic problems relating to funding, government policy, operational and cultural issues.¹⁰⁹

Key recommendations made by the *Final Report* included:

¹⁰⁴ Gareth Hutchens, 'Scott Morrison Announces Royal Commission into Aged Care after String of Scandals', *The Guardian* (Online, 16 September 2018) <<https://www.theguardian.com/australia-news/2018/sep/16/morrison-to-announce-royal-commission-into-aged-care-after-string-of-scandals>>.

¹⁰⁵ Amy Remeikis, 'Shorten Wants More Aged Care Spending but Won't Back Royal Commission', *The Guardian*, (Online, 12 June, 2018) <https://www.theguardian.com/australia-news/2018/jun/12/shorten-wants-more-aged-care-spending-but-wont-back-royal-commission>

¹⁰⁶ Royal Commission into Aged Care Quality and Safety, 'About the Interim Report' (Fact Sheet, 31 October 2019) <<https://agedcare.royalcommission.gov.au/sites/default/files/2019-12/about-the-interim-report.pdf>>.

¹⁰⁷ *Royal Commission into Aged Care Quality and Safety*, (Final Report, 1 March 2021) Vol 1, 72.

¹⁰⁸ *Ibid* 73.

¹⁰⁹ *Ibid*.

- limiting the use of restrictive practices, including chemical and physical restraints except when recommended by experts or in emergency situations as a last resort;¹¹⁰
- the establishment of a national registration scheme for personal care workers, ensuring these employees have at least a Certificate III in Aged Care as well as various other training and skill requirements;¹¹¹
- creating minimum staff time standards, including the presence of at least one registered nurse on all shifts in aged care facilities by mid-2024;¹¹² and
- immediately addressing waiting lists for Home Care support.¹¹³

The government posted their response to the *Final Report's* recommendations in May 2021. The government pledged 'generational reforms' through new aged care legislation as well as a \$17.7 billion aged care reform package as part of the 2021-2022 budget.¹¹⁴

The government introduced the Aged Care and Other Legislation Amendment (Royal Commission Response No.1) Bill 2021 to the House of Representatives on 27 May 2021. The legislative amendments included within this Bill are described as the 'first stage' of reform in response to the *Royal Commission*.¹¹⁵

The Bill implements three measures in response to the *Royal Commission* and the *Independent Review of Legislation Provisions Governing the use of Restraint in Residential Aged Care* undertaken by the Australian Healthcare Associates in 2020.¹¹⁶

These measures are:

- Strengthening obligations under the *Aged Care Act 1997 (Cth) (AC Act)* of approved providers regarding the use of restrictive practices. These new obligations include requirements that chemical or physical restraints are only used as a last resort, with informed consent or in an emergency situation. These obligations are in line with the *Quality of Care Principles 2014 (Cth)*.¹¹⁷ Civil penalties apply for providers who do not comply with these obligations.¹¹⁸
- Amending the *AC Act* to allow the Secretary of the Department of Health to request information from home-care providers and their employees as part of assurance reviews. Failure to comply with assurance reviews will incur civil penalties.¹¹⁹
- Removing the requirement for the Minister to establish the Aged Care Financing Authority (ACFA), with a new advisory body to be established in its place.

The Bill was referred to the Senate Community Affairs Legislation Committee (SCALC) on 27 May 2021. The SCALC recommended the changes be passed, calling the legislation a 'significant first step' towards structural change within the aged care system.¹²⁰ Stakeholder participants in the inquiry were largely supportive of changes including those relating to the use of restrictive practices, however it was noted that additional funding for staff training and education would be required in order to implement them.¹²¹

The Bill was also reviewed by the Parliamentary Joint Committee on Human Rights (PJCHR). The PJCHR noted that the Bill may assist in protecting human rights within aged care through its restrictions on the use of restrictive practices.¹²² However, they raised several questions relating to the operation of these restrictions. For example, the PJCHR asked

¹¹⁰Royal Commission into Aged Care Quality and Safety, (Final Report, 1 March 2021) Vol 1, 221.

¹¹¹ Ibid 260.

¹¹² Ibid 264.

¹¹³ Ibid 236.

¹¹⁴ Department of Health (Cth), *Australian Government Response to the Final Report of the Royal Commission into Aged Care Quality and Safety* (Report, May 2021) i.

¹¹⁵ Commonwealth, *Parliamentary Debates*, House of Representatives, 27 May 2021, 4931 (Greg Hunt).

¹¹⁶ Explanatory Memorandum, Aged Care and Other Legislation Amendment (Royal Commission Response No.1) Bill 2021, 1.

¹¹⁷ Ibid 11.

¹¹⁸ Ibid 3.

¹¹⁹ Ibid.

¹²⁰ Senate Community Affairs Legislation Committee, Parliament of Australia, *Aged Care and Other Legislation Amendment (Royal Commission Response No.1) Bill 2021 [Provisions]* (Report, November 2021) 5.

¹²¹ Ibid.

¹²² Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Human Rights Scrutiny Report* (Report 7 of 2021, 16 June 2021) 5.

for clarification relating to how an emergency would be defined, and whether informed consent would be sought every time restrictive practices were used, or if consent could be given for future uses of a restraint.¹²³

The Senate Standing Committee for the Scrutiny of Bills (SSCSB) also raised questions relating to the use of restrictive practices. The SSCSB noted that the legislation did not clearly determine who would be responsible for reviewing whether the use of a restrictive practice was proportionate.¹²⁴ The SSCSB also raised concerns about the absence of a definition of ‘emergency situations’ within the legislation, recommending the Bill could be amended to include this.¹²⁵

The government stated that adopting a prescriptive definition of ‘emergency’ was not favourable due to the wide range of situations that could arise in aged care. The government also noted that emergency practices could not be used after threats of harm had disappeared.¹²⁶

The Bill’s second reading debate in the House of Representatives occurred on 21 June 2021.

Despite the Labor’s support for the Bill, its scope was criticised by many Labor MPs. The Bill was described as the ‘bare minimum’ by Senator Marielle Smith.¹²⁷ Several Labor MPs, including opposition leader Anthony Albanese questioned why the Government had not yet implemented additional recommendations from the *Royal Commission*, such as a requirement for registered nurses to be on every shift at aged care facilities.¹²⁸ Ged Kearney argued that workplace reforms, such as wage increases for aged care workers and measures to ensure transparency in funding to aged care providers had not been addressed by the proposed legislation.¹²⁹

Kearney also moved an amendment requesting that the House note the systemic failures in the aged care system, the inadequacy of the government’s response to the *Royal Commission* and the government’s poor management of the coronavirus pandemic and vaccination rollout¹³⁰. This amendment did not pass the House.¹³¹

Similarly, Murray Watt moved an amendment requesting the Senate note systemic failings in aged care and the inadequacy of the government’s response to the *Royal Commission*, including failures to act against the malnutrition crisis in aged care, the large waitlist for Home Care Packages and the need to increase wages for aged care workers¹³². Watt’s amendment was agreed to by the Senate.¹³³

The Greens also supported the Bill, however similarly expressed certain criticisms. Rachel Siewart raised concerns about the ‘broad and subjective’ nature of the legislation’s provisions for emergency use of restrictive practices, arguing that a maximum period for which the practices can be used in emergency situations should be established. Siewart also called on the government to ensure that there would be no gap between the disbanding of the ACFA and the establishment of the new aged care advisory body.¹³⁴

Independent Zali Steggall noted concerns raised by the Law Council of Australia that the Bill’s definition of a ‘restrictive practice’ may not clearly apply to the use of chemical restraints. Steggall requested that the Bill be amended to re-define restrictive practice to refer to the use of chemical restraints.¹³⁵

The Bill passed the Senate on 24 June 2021. It received Royal Assent on 28 June, 2021.¹³⁶

Policy Process

¹²³ Ibid 8.

¹²⁴ Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Scrutiny Digest* (Digest 8 of 2021, 16 June 2021) 2.

¹²⁵ Ibid 4.

¹²⁶ Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Scrutiny Digest* (Digest 9 of 2021, 23 June 2021) 13.

¹²⁷ Commonwealth, *Parliamentary Debates*, Senate, 24 June 2021, 3776 (Marielle Smith)

¹²⁸ Commonwealth, *Parliamentary Debates*, 21 June 2021, 6372 (Ged Kearney).

¹²⁹ Ibid 6375.

¹³⁰ Ibid.

¹³¹ Aged Care and Other Legislation Amendment (Royal Commission Response No.1) Bill 2021 (Cth).

¹³² Commonwealth, *Parliamentary Debates*, Senate, 24 June 2021, 3765 (Murray Watt).

¹³³ Ibid 3779 (Marise Payne).

¹³⁴ Ibid 3770 (Rachel Siewart).

¹³⁵ Commonwealth, *Parliamentary Debates*, House of Representatives, 21 June 2021, 6458 (Zali Steggall).

¹³⁶ Aged Care and Other Legislation Amendment (Royal Commission Response No.1) Bill 2021 (Cth).

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

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

Yes. The legislation works to implement Recommendations made by the *Royal Commission into Aged Care Quality and Safety*,¹³⁷ which found systemic failures¹³⁸ across the aged care system including the over use of chemical and physical restraints.¹³⁹ The *Royal Commission* also notes that very few home care providers had undergone quality reviews or been sanctioned for malpractice.¹⁴⁰ The *Royal Commission's* extensive public engagement with over 10,000 submissions been received and over 600 witnesses presenting at hearings.¹⁴¹

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

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

Yes. The Bill's explanatory memorandum states that the Bill 'strengthens the Australian government's ongoing commitment to ensuring senior Australians get the high quality and safe aged care services they deserve'.¹⁴²

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

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

Yes. The *Interim Report* summarises future reform directions to be taken to address the use of restrictive practices. These involve targeted reviews of people taking psychotropic medication, improvement of care environments and addressing inconsistencies in the application of practices between sectors.¹⁴³

The *Royal Commission* also undertook international research in order to investigate differing approaches to aged care delivery and funding across countries, as well as to meet with experts in the aged care sector globally.¹⁴⁴

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

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

Yes. The *Final Report* discusses the differing definitions of restrictive practices to be incorporated into the legislative changes, eventually recommending those outlined in the *Quality of Care Principles*.¹⁴⁵

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

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

No. While the *Royal Commission* considers a variety of perspectives relating to possible policy directions, there is no published cost-benefit analysis included in this analysis.

¹³⁷ Explanatory Memorandum, Aged Care and Other Legislation Amendment (Royal Commission Response No.1) Bill 2021 (Cth), 1.

¹³⁸ Ibid 72.

¹³⁹ *Royal Commission into Aged Care Quality and Safety* (Final Report, 1 March 2021) Vol 1, 73.

¹⁴⁰ *Royal Commission into Aged Care Quality and Safety* (Interim Report, 31 October 2019) Vol 1, 63.

¹⁴¹ ' *Royal Commission into Aged Care Quality and Safety* (Final Report, 1 March 2021) Vol 1, 183, 190.

¹⁴² Explanatory Memorandum, Aged Care and Other Legislation Amendment (Royal Commission Response No.1) Bill 2021 (Cth) 3.

¹⁴³ *Royal Commission into Aged Care Quality and Safety* (Interim Report, 31 October 2019) Vol 1.

¹⁴⁴ *Royal Commission into Aged Care Quality and Safety* (Final Report, 1 March 2021) Vol 1, 187.

¹⁴⁵ *Royal Commission into Aged Care Quality and Safety* (Final Report, 1 March 2021) Vol 3a, 109-12.

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

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

Yes The Bill's explanatory memorandum outlines the Bill's purpose and the aims of each reform measure. The memorandum also explains the roles and responsibilities of the Secretary when conducting workplace assurance reviews within the aged care system.¹⁴⁶ The memorandum also includes a short financial impact statement.¹⁴⁷

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

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

Yes. The Bill's explanatory memorandum states that key stakeholders were consulted during the process of drafting the legislation, including representatives of residential aged care providers, the Aged Care Quality and Safety Commission and the Australian Commission on Safety and Quality on Aged Care.¹⁴⁸

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

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

Yes. The Bill was reviewed by the SCALC on 27 May 2021. The SCALC invited public submissions and released a report detailing these submissions and recommending the Bill be passed. It should be noted, however, that the time frame for making submissions was small, with submissions closing on the 4 June 2021.¹⁴⁹

The government also published responses to the SSCSB explaining certain policy decisions including the choice to not specifically define 'emergency situations' within the legislation.¹⁵⁰

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

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

Yes. Legislation was introduced to the House of Representatives on 27 May, 2021. The Bill was debated in the House of Representatives and Senate during which many speakers from the Coalition, Labor, Greens and multiple independents discussed its contents. Amendments were also moved by Labor members.

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

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

¹⁴⁶ Explanatory Memorandum, Aged Care and Other Legislation Amendment (Royal Commission Response No.1) Bill 2021 (Cth), .17

¹⁴⁷ Ibid 2.

¹⁴⁸ Ibid 12.

¹⁴⁹ Aged Care and Other Legislation Amendment (Royal Commission Response No.1) Bill 2021 (Cth).

¹⁵⁰ Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Scrutiny Digest* (Digest 9 of 2021, 23 June 2021) 12.

No. Whilst an exposure draft detailing planned legislative changes was released by the Department of Health and Aged Care on 24 June 2021,¹⁵¹ it is not written in simple or concise language and may not be clearly understood by some readers.

Final scores

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

¹⁵¹ Exposure Draft, Aged Care Legislation Amendment (Royal Commission Response No. 1) Principles 2021
<<https://www.health.gov.au/resources/publications/exposure-draft-aged-care-legislation-amendment-royal-commission-response-no-1-principles-2021>>.

Narcotic Drugs Amendment (Medical Cannabis) Act 2021

Policy Background

Medicinal cannabis has been used to relieve symptoms of medical conditions including epilepsy, multiple sclerosis, and a variety of other chronic and terminal illnesses. Research has indicated that medicinal cannabis can relieve pain, reduce nausea and vomiting and has anti-inflammatory properties.¹⁵²

Until recently, Federal legislation has not permitted the cultivation and distribution of medicinal cannabis. Until 2016, the *Narcotic Drugs Act 1967* (Cth) (*ND Act*) only provided licensing provisions to the manufacture of narcotic drugs derived from the opium poppy. Cannabis production was only permitted for industrial and horticultural uses under state and territory laws, with the plant treated as an illegal narcotic in the majority of legal circumstances.¹⁵³

2016 amendments to the *ND Act* established a national regime for cannabis and cannabis resin cultivation and production. Under this regime, separate licences could be granted for medicinal cannabis research, cultivation and production, and manufacture. The 2016 medicinal cannabis scheme is regulated by the Health Department's Office of Drug Control as well as the Therapeutic Goods Administration (TGA).¹⁵⁴

The 2016 amendments to the *ND Act* were reviewed in 2019. The *Review of the Narcotic Drugs Act 1967* was overseen by Professor John McMillan AO, Emeritus Professor at the Australian National University.¹⁵⁵ It aimed to evaluate whether the 2016 amendments were working effectively and identify any possible improvements to the medicinal cannabis regime. The review did not evaluate issues relating to patient access to medicinal cannabis or cannabis decriminalisation¹⁵⁶.

McMillan tabled his report (*McMillian Report*) in Parliament in September 2021. The *McMillian Report* found that interest in medicinal cannabis production had been higher than expected, with 246 licence applications received by the Office of Drug Control between 2016 and mid-2019 with the scheme being labelled 'resoundingly successful' as a whole.¹⁵⁷ However, the report noted several administrative challenges encountered when operating the scheme, including long wait times for licences, ambiguous phrasing of legislative standards, and frustrations faced by organisations engaging with separate licence categories at once. The *McMillian Report* made 26 recommendations, the most prominent being a recommendation to replace the current 'three licence' structure with a single licence covering cannabis cultivation and production, manufacture and research.¹⁵⁸

The Narcotic Drugs Amendment (Medical Cannabis) Bill 2021 was introduced to the House of Representatives by then Minister for Trade, Tourism and Investment Dan Tehan. The Bill primarily gives effect to several of recommendations in the *McMillian Report*.¹⁵⁹

The Bill makes several amendments to the *ND Act*. These include:

- replacing the current three-licence structure in the *ND Act* with a single licence for all permitted activities (medicinal cannabis cultivation, production, manufacture and research);¹⁶⁰
- creating a framework for the granting of perpetual single medicinal cannabis licences,¹⁶¹ by updating a previous practice of granting shorter term, one and three year licences;¹⁶² and
- including a statement of purpose within the *ND Act* assuring that medicinal cannabis products are available to patients who require them for therapeutic purposes.¹⁶³

The Bill's explanatory memorandum notes that additional recommendations from the *McMillian Report* not requiring legislative amendment were being implemented administratively by the Department of Health¹⁶⁴.

¹⁵² 'Medicinal Cannabis', Health Direct (Web Page, May 2022) <<https://www.healthdirect.gov.au/medicinal-cannabis>>.

¹⁵³ John McMillan, *Review of the Narcotic Drugs Act 1967*, (Final Report, 10 July 2019).

¹⁵⁴ Ibid 5.

¹⁵⁵ Ibid 12.

¹⁵⁶ Ibid 13.

¹⁵⁷ Ibid 7.

¹⁵⁸ Ibid 10.

¹⁵⁹ Commonwealth, *Parliamentary Debates*, House of Representatives, 3 February 2021, 168 (Dan Tehan)

¹⁶⁰ Explanatory Memorandum, Narcotic Drugs Amendment (Medical Cannabis) Bill 2021 (Cth), 1.

¹⁶¹ Ibid.

¹⁶² John McMillan, *Review of the Narcotic Drugs Act 1967*, (Final Report, 10 July 2019), 12.

¹⁶³ Explanatory Memorandum, Narcotic Drugs Amendment (Medical Cannabis) Bill 2021 (Cth), 6.

¹⁶⁴ Ibid 1.

While Labor supported the content and aims of the Bill, during the Bill's parliamentary debates Labor MPs expressed concerns that the government had not developed adequate policy to improve patient access to medicinal cannabis. For example, Labor's Susan Templeman described the legislation as a 'tiny step' towards improving accessibility and affordability for potential producers of medicinal cannabis, yet stated the need for a 'comprehensive' reform of patient access channels.¹⁶⁵

The Greens also highlighted the need to improve patient access alongside the legislative changes introduced by the Bill. Adam Bandt noted that the Government had not yet responded to a 2020 Senate Community Affairs Committee Inquiry (SCAC) *Into Barriers to Patient Access to Medicinal Cannabis* and called on the government to implement SCAC's recommendations. In the Senate, Greens Senator Rachel Siewart questioned whether a reduction in costs for manufacturers would be sufficient to reduce prices for patients, calling for government action to improve affordability and accessibility of medicinal cannabis products. Siewart also noted that if the TGA could not sufficiently address barriers to access, an independent regulator should be established by the Government.¹⁶⁶

The Bill passed the Senate on 17 June 2021. It received Royal Assent on the 24th of June.¹⁶⁷

Policy Process

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

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

Yes. The Bill's contents are based on recommendations put forward by the 2019 *McMillian Report*. During the review process a Discussion Paper outlining key issues relating to the *ND Act* and medical cannabis regulation was published, three public hearings occurred, and 25 submissions by actors in the public health, public policy and patient advocacy fields and medicinal cannabis industry were received. Additional consultation during the review process included meetings with federal, state and territory government officials, industry bodies, and public health officials.¹⁶⁸

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

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

Yes: The Bill's explanatory memorandum states that it aims to 'reduce regulatory burden' for participants in the medicinal cannabis industry.¹⁶⁹ The memorandum states that streamlining the medical cannabis regulatory system promotes the universal right to health under the International Covenant on Economic, Social and Cultural Rights (ICESCR) by better supporting medicinal cannabis supply and delivery.¹⁷⁰

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

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

Yes. The *McMillian Report* discusses the matter of reforming the three-licence structure in depth. Options discussed included the establishment of a fourth licence structure authorising multiple licence categories at one time (while retaining the option to apply for a licence for a single category), or leaving the regulation of medicinal cannabis

¹⁶⁵ Commonwealth, *Parliamentary Debates*, House of Representatives 24 February 2021, 1909 (Susan Templeman).

¹⁶⁶ Commonwealth, *Parliamentary Debates*, Senate, 17 June 2021, 3163 (Rachel Siewart).

¹⁶⁷ *Narcotic Drugs Amendment (Medical Cannabis) Act 2021* (Cth).

¹⁶⁸ John McMillan, *Review of the Narcotic Drugs Act 1967*, (Final Report, 10 July 2019), 15.

¹⁶⁹ Explanatory Memorandum, *Narcotic Drugs Amendment (Medicinal Cannabis) Bill 2021* (Cth), 1.

¹⁷⁰ *Ibid* 3.

manufacturing to State and Territory regulators.¹⁷¹ The review ultimately recommends the policy of adopting a single licence structure due to its ability to streamline the regulation process.¹⁷²

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

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

No. The *McMillian Report* only discusses the option of revising the *ND Act* to create a single licence structure.¹⁷³ Further legislative or non-legislative options relating to this issue are not discussed.

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

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

No. While pros and cons of policy options are addressed, no cost benefit analysis was undertaken.

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

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

Yes. Schedule 2 of the Bill provides guidelines relating to the transition from one licence structure to another. Schedule 2 also provides for the review of pre-transition decisions.

Oversight of the medicinal cannabis scheme remains the responsibility of the Office of Drug Control (ODC).¹⁷⁴

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

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

No. The ODC invited submissions on proposed changes to medicinal cannabis regulation in December 2020. Additionally, Coalition Senator Jonathon Dunaim told the senate that the Health Department has 'sought feedback through public consultation papers... conducted industry forums...and... information sessions'¹⁷⁵. However, the timeline of these events is not clear and evidence of further consultation is therefore not publicly available.

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

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

Yes. The ODC released a 2020 Discussion Paper outlining the *McMillian Report's* recommendation and proposed changes to medicinal cannabis regulation, including the option of transitioning to a single-licence system. The ODC

¹⁷¹ John McMillan, *Review of the Narcotic Drugs Act 1967*, (Final Report, 10 July 2019), 57-8.

¹⁷² *Ibid* 9.

¹⁷³ *Ibid* 14.

¹⁷⁴ Department of Health and Aged Care, 'Medicinal Cannabis' *Office of Drug Control* (Web Page) <<https://www.odc.gov.au/medicinal-cannabis>>.

¹⁷⁵ Commonwealth, *Parliamentary Debates*, Senate, 25 February 2021, 1622 (Jonathan Duniam).

invited stakeholders to provide submissions on the proposed changes.¹⁷⁶ There was no white paper or equivalent published, however the ODC’s news feed updated readers on the introduction of the Bill to Parliament.¹⁷⁷

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

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

Yes. Legislation was introduced to the House of Representatives on 3 February 2021. The Bill was debated in the house on 24 February 2021. Speakers from major and minor parties expressed their views on the legislation as well as issues adjacent to the Bill itself.

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

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

Yes. The ODC introduced a fact sheet advising readers that the *Narcotic Drugs Amendment (Medical Cannabis) Act 2021* had received Royal Assent. The fact sheet includes a short summary of the changes to the Act and directs readers to the ODC’s *frequently asked questions* page, which includes further information explained in simple language.¹⁷⁸

Final Scores

	Criterion	Yes/no
1	Establish Need (demonstrable, evidence-based need)	Yes
2	Set Objectives (public interest parameters)	Yes
3	Identify Options (consideration of alternatives)	Yes
4	Consider Mechanisms (implementation choices)	No
5	Brainstorm Alternatives (cost-benefit analysis)	No
6	Design Pathway (policy design framework)	Yes
7	Consult Further (further consultation after policy announcement)	No

¹⁷⁶ Department of Health (Cth), Office of Drug Control, *Medicinal Cannabis Permit Reform* (Consultation Paper, 9 November 2020).

¹⁷⁷ Department of Health and Aged Care, 'Introduction of the Narcotic Drugs Amendment (Medicinal Cannabis) Bill 2021', *Office of Drug Control* (Web Page, 4 February 2021) <<https://www.odc.gov.au/news-media/news/tabling-report-review-2016-medicinal-cannabis-amendments-narcotic-drugs-act-1967#report>>.

¹⁷⁸ Department of Health and Aged Care, 'Enactment of the Narcotic Drugs Amendment (Medicinal Cannabis) Act 2021', *Office of Drug Control* (Web Page, 7 July 2021) <<https://www.odc.gov.au/news-media/news/enactment-narcotic-drugs-amendment-medicinal-cannabis-act-2021>>.

8	Publish Proposals (produce Green then White paper, or equivalents)	Yes
9	Introduce Legislation (comprehensive parliamentary debate)	Yes
10	Communicate Decision (information not propaganda)	Yes
	Final Score	7/10

Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Act 2021

Policy Background

In recent years, numerous countries including the US, UK and Canada have introduced legislation amending their sanctions frameworks to facilitate the targeted sanctioning of perpetrators of human rights abuses.¹⁷⁹ These legislative changes have widely been referred to as *Magnitsky Laws*, in honour of Sergei Magnitsky, a Russian lawyer who died in Russian police custody after uncovering wide-reaching fraud committed by Russian Government officials in 2009. Campaigning by Bill Browder, Magnitsky's employer, led to the introduction of the 2012 *Sergei Magnitsky Accountability Act* in the United States, which allowed sanctions to be introduced in cases of gross violations of human rights targeting those seeking to expose illegal activity or human rights abuses. Further legislation introduced by the US enabled the government to implement sanctions, asset freezes and travel bans against individuals responsible for human rights abuses.¹⁸⁰ Similar legislative changes referencing Magnitsky have since been implemented in the UK, Canada and the European Union.¹⁸¹

In December 2019, the Minister for Foreign Affairs Marise Payne requested that the House of Representatives Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT) inquire into the use of targeted sanctions addressing human rights abuses.¹⁸² An inquiry was undertaken by the JSCFADT's Human Rights Sub-Committee, resulting in the publication of a December 2020 report titled *Criminality, corruption and impunity: Should Australia join the Global Magnitsky movement? (Magnitsky Report)*. The *Magnitsky Report* evaluates the advantages and disadvantages of human rights sanctions as a foreign policy instrument, the use of Magnitsky-style sanctions in other jurisdictions, as well as the advisability of introducing new thematic sanctions regulations within the existing legal framework.¹⁸³

Many experts consulted during the inquiry found that the current Australian sanctions regulations overly focused on state-based sanctions rather than targeted sanctions against individuals and lacked specificity and flexibility when determining the situations in which individuals could be sanctioned¹⁸⁴. The *Magnitsky Report* makes 33 recommendations, including the recommendation that Australia enact 'targeted sanctions legislation' to address human rights violations and corruption in line with the US's 2012 legislation.¹⁸⁵

In August 2021, the government announced its intention to 'undertake a wide range of reforms' to existing sanctions frameworks with the aim of more effectively responding to international situations including human rights violations and threats to national security.¹⁸⁶

The Autonomous Sanctions Amendment (Thematic Sanctions) Bill 2021 (Cth) was introduced to the Senate on 24 November 2021. This Bill relates to 'autonomous' sanctions, which are applied independently from sanctions established by United Nations Security Council (UNSC) decisions. The Bill establishes a non-exhaustive list of matters that may be addressed by autonomous sanctions to the existing *Autonomous Sanctions Act 2011* (Cth) (AS Act). These matters include but are not limited to the proliferation of weapons of mass destruction, the abuse of human rights and malicious cyber activity.

The Bill amends the AS Act to make clear that autonomous sanctions regimes may be either thematic, relating to particular types of conduct, or country-specific, allowing for the use of autonomous sanctions against individuals or

¹⁷⁹ Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Criminality, Corruption and Impunity: Should Australia Join the Global Magnitsky Movement? An Inquiry into Targeted Sanctions to Address Human Rights Abuses* (Report, December 2020) 29.

¹⁸⁰ Ibid 2-3

¹⁸¹ Commonwealth, *Parliamentary Debates*, Senate, 1 December 2021, 6997 (Penny Wong).

¹⁸² Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Criminality, Corruption and Impunity: Should Australia Join the Global Magnitsky Movement? An Inquiry into Targeted Sanctions to Address Human Rights Abuses* (Report, December 2020) 1.

¹⁸³ Ibid xvii.

¹⁸⁴ Ibid 22-27.

¹⁸⁵ Ibid. xxii-xxv.

¹⁸⁶ Parliament of Australia, *Australian Government response to the Joint Standing Committee on Foreign Affairs, Defence and Trade - Human Rights Sub-Committee report: Criminality, corruption and impunity: Should Australia join the Global Magnitsky movement* (Report, 5 August 2021) 2.

entities regardless of the country in which they are operating.¹⁸⁷ The Bill's explanatory memorandum states that the new legislation aims to modernise Australia's autonomous sanctions regime by creating a framework to facilitate the establishment of new thematic sanctions regimes.¹⁸⁸

The Bill establishes that while the Minister for Foreign Affairs alone will have power to impose, remove or alter thematic sanctions, the Minister must first gain approval from the Attorney-General and consult with any other relevant Ministers.¹⁸⁹

This legislation was debated in the Senate on 1 December 2021.¹⁹⁰

Then Shadow Minister for Foreign Affairs Penny Wong described the Bill as an 'important addition' to Australia's sanctions regime,¹⁹¹ however, criticised the speed at which the government responded to the JSCFAT's recommendations, noting that the government did not introduce this legislation for close to a year after the *Magnitsky Report* was tabled.¹⁹² Wong also criticised the government's decision to omit 'violations of international humanitarian law' in the list of matters that may be addressed by autonomous sanctions, moving an amendment to correct this purported omission. Wong also moved an amendment to include Magnitsky's name in the Act title in order to synchronise Australia's legislative changes with similar changes amongst allies worldwide.¹⁹³ Both amendments were agreed to by the Senate.

The Greens also supported the Bill, however Greens Senator Janet Rice noted that the legislation failed to create an 'established and transparent pathway' for nominating a person to the Minister for sanctions, as was recommended by the JSCFAT's report.¹⁹⁴ In response to this, Rice moved an amendment to allow various bodies, including the JSCFAT, to nominate a person for sanctioning to the Minister. Under the Greens' proposed amendment, the Minister would be required to provide a statement in Parliament explaining whether a nominated person would be sanctioned.¹⁹⁵ While Rice argued that this amendment would improve transparency and public understanding of the reasons why sanctions were, or were not, applied, Payne argued that parliamentary scrutiny relating to sanctions was already permitted, as decisions made by the Minister were disallowable by Parliament.¹⁹⁶

Rice also moved an amendment requiring that the JSCFACT review the application of sanctions every three years. This amendment was supported by the government. Rice moved a further amendment requiring further consultation with civil society during the process of applying sanctions, including a requirement for the Minister to consider any credible information provided by civil society organisations relating to serious human rights and international law violations. This amendment was not supported by the government on the grounds that consultation with civil society groups on such matters was already occurring.¹⁹⁷

The Bill, now titled *Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Bill 2021 (Cth)*, was read in the House of Representatives on the 2 December 2021. The Bill passed the House without amendment and received Royal Assent on 7 of December 2021.¹⁹⁸

Policy Process

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

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

¹⁸⁷Explanatory Memorandum, *Autonomous Sanctions Amendment (Thematic Sanctions) Bill 2021 (Cth)*.

¹⁸⁸*Ibid* 2.

¹⁸⁹ Commonwealth, *Parliamentary Debates, Senate*, 24 November 2021, 6643 (Jonathon Duniam).

¹⁹⁰ *Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Act 2021 (Cth)*.

¹⁹¹ Commonwealth, *Parliamentary Debates, Senate*, 1 December 2021, 6997 (Penny Wong).

¹⁹² *Ibid* 6998.

¹⁹³ Commonwealth, *Parliamentary Debates, Senate*, 1 December 2021, 7003 (Kimberly Kitching).

¹⁹⁴ *Ibid* 7003 (Janet Rice).

¹⁹⁵ *Ibid* 7009.

¹⁹⁶ *Ibid* 7011.

¹⁹⁷ *Ibid* 7013 (Penny Wong).

¹⁹⁸ *Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Act 2021 (Cth)*.

Yes. The JSCFAT'S inquiry into the use of targeted sanctions invited submissions from various stakeholders and held numerous public hearings in which recommendations were made by, legal organisations, diaspora groups and human rights advocates and other civil society organisations¹⁹⁹. Key recommendations of the *Magnitsky Report* are included in the Bill, as outlined in its explanatory memorandum.²⁰⁰

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

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

Yes. The Bill's explanatory memorandum states that new sanctions regimes will help Australia to respond 'flexibly' to concerning situations overseas, by allowing the application of sanctions against individuals regardless of the country in which they operate.²⁰¹

The explanatory memorandum states that the expansion of thematic sanctions regimes will allow Australia to 'define [and] defend' its values while protecting 'the international rules-based order'.²⁰² Similarly, as stated in Parliament by Senator James Patterson, the legislation aims to protect Australian national security from cyberattacks by sanctioning malicious cyber activity.²⁰³

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

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

Yes. The *Magnitsky Report* discusses the use of non-legislative measures to address international human rights violations including increased annual dialogues between Australia, countries of concern, and concerned civil society groups, as well as providing aid to non-government affiliated civil society groups. The *Magnitsky Report* also outlines the issue of whether new legislation focusing on targeted sanctions for human rights abuses and corruption should be developed in favour of amending existing legislation.²⁰⁴ Costings of alternative policy options are not listed.

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

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

Yes. The *Magnitsky Report* discusses the details of possible models for a targeted sanctions regime. This includes discussions related to the threshold for conduct requiring sanctioning, differing definitions of 'human rights abuses', and whether targeted sanctions should be retrospective.²⁰⁵ The *Magnitsky Report* also includes a comparative analysis of international models of Magnitsky-style legislation.²⁰⁶

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

¹⁹⁹ Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Criminality, Corruption and Impunity: Should Australia Join the Global Magnitsky Movement? An Inquiry into Targeted Sanctions to Address Human Rights Abuses* (Report, December 2020).

²⁰⁰ Explanatory Memorandum, Autonomous Sanctions Amendment (Thematic Sanctions) Bill 2021 (Cth). :

²⁰¹ Ibid 1.

²⁰² Ibid.

²⁰³ Commonwealth, *Parliamentary Debates*, Senate, 1 December 2021, 7006 (James Paterson).

²⁰⁴ Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Criminality, Corruption and Impunity: Should Australia Join the Global Magnitsky Movement? An Inquiry into Targeted Sanctions to Address Human Rights Abuses* (Report, December 2020) 27.

²⁰⁵ Ibid 65-87.

²⁰⁶ Ibid 44.

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

No. The *Magnitsky Report* provides a summary of opposing viewpoints relating to different policy and implementation options, many from legal professionals and non-government organisations. However, no cost-benefit analysis was included.

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

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

Yes. The Bills' explanatory memorandum outlines the key elements and aims of the project. It also outlines the processes to be followed by the Foreign Minister when implementing sanctions under the new legislative changes. The original draft of the Bill did not establish a system for reviewing the use of sanctions, however this was added to the Bill through amendments supported by the government.

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

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

No. The Bill's explanatory notes state that the Department of Foreign Affairs undertook consultation with affected government departments while finalising the legislation.²⁰⁷ The extent to which consultation with additional stakeholders occurred outside the human rights sub-committee inquiry is not clear.

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

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

No. While the government released a response to the *Magnitsky Report* in August 2021, outlining its intention to reform the autonomous sanctions regime, it did not appear to seek public input on this policy option.

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

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

Yes. Legislation was introduced to the senate in December 2021. Whilst the government was criticised in parliament for leaving debate on the Bill until the last sitting day of the year,²⁰⁸ the Bill was debated in both houses of Parliament, with various MPs contributing to the debate and multiple amendments being moved and passed. The legislation was also reviewed by the Parliamentary Joint Committee on Human Rights.²⁰⁹

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

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

²⁰⁷ Explanatory Memorandum, Autonomous Sanctions Amendment (Thematic Sanctions) Bill 2021 (Cth).

²⁰⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 2 December 2021, 1137 (Julian Hill).

²⁰⁹ *Parliamentary Joint Committee on Human Rights, Human Rights Scrutiny Report (Report 15 of 2021, 8 December 2021); Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Act 2021 (Cth).*

Yes. Press releases on the Foreign Minister’s and the Department of Foreign Affairs’ websites outline the legislative changes, the rationale for these changes and direct readers to a copy of the new regulations.²¹⁰

Final Scores

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

²¹⁰ Maris Payne, ‘Australia’s First Magnitsky-Style Sanctions’ (Media Release, 29 March 2022); *Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Regulations 2021 (Cth)*.

Electoral Legislation Amendment (Party Registration Integrity) Act 2021

Policy Background

The Joint Standing Committee on Electoral Matters (JSECM) has reviewed every Federal Election since 1987, welcoming submissions and preparing recommendations on a variety of issues including voter accessibility, electoral integrity and party membership and registration.²¹¹ In December 2020, the JSECM tabled their Review of the 2019 Federal Election (*JSECM Report*). The JSECM noted that Australia continues to be one of the world's 'most successful democracies', however provided 27 recommendations to fine tune Australia's electoral process in line with societal changes.²¹²

The JSECM recommended amending the *Commonwealth Electoral Act 1918* (Cth) (*CE Act*) to allow the Electoral Commissioner to remove the name or part of the name of a party that replicates a key word in the name of a party established at an earlier time.²¹³ The *JSECM Report* raised concerns that certain parties are 'freeloading' off larger parties that they share key words of their names with.²¹⁴

An additional comment included at the end of the *JSECM Report* noted that the *CE Act* allowed parties with a minimum of 500 members to be registered. The Committee noted that this permitted parties with 'little community support' to 'create instability' within the electoral process.²¹⁵ While no formal recommendation was included on this issue, the JSECM did suggest that the minimum number of members for party registration be increased to 1,000.²¹⁶

Registration of political parties brings significant benefits, with registered parties being granted the ability to run candidates in all 151 House of Representatives seats, to have their name printed underneath candidates on a ballot paper, and having their name appear above the line on Senate ballots.

In the months following the release of the *JSECM Report*, the Liberal Party stated their intention to seek a review of the registration of the *New Liberals Party* based on similarities between the two parties' names.²¹⁷

The Electoral Legislation Amendment (Party Registration Integrity) Bill 2021 was introduced to the House of Representatives on the 12 August 2021. During his second reading speech, Bill Morton told the House that the Bill would 'strengthen the integrity of party registration' by implementing the following changes to the *CE Act* that:

- increase the minimum membership requirements for the registration of a political party from 500 to 1,500 members (this amendment relates to non-Parliamentary parties who do not already have a member in Parliament);²¹⁸
- require the Electoral Commissioner to refuse an application for the registration of a political party should the party's name or logo replicate a word or abbreviation of an existing political party,²¹⁹ so that if two existing parties share a name, the party that is registered first must provide written consent for the usage of that name;²²⁰ and
- preventing the registration of parties with 'frivolous or vexatious' names.²²¹

The Bill was reviewed by the Senate Standing Committee for the Scrutiny of Bills (SSCSB) in August 2021. The SSCSB raised concerns relating to the provision prohibiting 'vexatious' and 'frivolous' party names. They argued that these terms lacked a precise definition within the legislation, which may lead to arbitrary application of the new powers by

²¹¹ Joint Standing Committee on Electoral Matters, Parliament of Australia, *Report on the Conduct of the 2019 Election and Matters Related Thereto* (Report, December 2020).

²¹² *Ibid* iii.

²¹³ *Ibid* xx.

²¹⁴ *Ibid* 114.

²¹⁵ *Ibid* 205.

²¹⁶ *Ibid* 206.

²¹⁷ Paul Karp, 'New Liberals' Party Registration Approved Despite Liberal Party Objection Over Voter Confusion', *The Sydney Morning Herald*, (Online, 3 June 2021) <<https://www.theguardian.com/australia-news/2021/jun/03/new-liberals-registration-approved-despite-liberal-party-objection-over-voter-confusion>>.

²¹⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 12 August 2021, 8109 (Ben Morton).

²¹⁹ *Ibid*.

²²⁰ Explanatory Memorandum, Electoral Legislation Amendment (Party Registration Integrity) Bill 2021 (Cth).

²²¹ *Ibid* 7.

the AEC. The SSCSB recommended replacing these terms with alternate, more precise terms such as *misleading* or *malicious*.²²² This recommendation was not adopted by the government.²²³

The Bill was debated in the House of Representatives on 25 August 2021. The Bill was presented in cognate with two other electoral reform Bills: the Electoral Legislation Amendment (Counting, Scrutiny and Operational Efficiencies) Bill 2021 and the Electoral Legislation Amendment (Electoral Offences and Preventing Multiple Voting) Bill 2021.²²⁴

The legislation received support from Labor. Milton Dick stated that the three cognate Bills would ‘support and enhance’ Australia’s electoral system. He told the House that allowing parties with a small number of members to register allowed ‘wealthy stakeholders’ to launch political campaigns ‘based entirely on their own interests’ rather than community support.²²⁵ Additionally, Patrick Gorman told the House that party name and logo restrictions would prevent parties being elected due to ‘counterfeit’ names designed to ‘fool voters’.²²⁶

Several members of the crossbench, both in the House and the Senate, expressed their opposition to the legislation.

In the House, Independent Zali Steggall argued that increasing barriers for entry for minor parties would encroach on individuals’ right to politically organise.²²⁷

United Australia Party’s Craig Kelly, moved an amendment to change the minimum number of members required for registration to 1,000 rather than 1,500.²²⁸

An ideologically diverse range of Senate crossbenchers expressed their disappointment with the legislation. Greens Senator Larissa Waters described the legislative process surrounding the three electoral Bills as ‘disgusting’²²⁹. She told the Senate that the Bills were exempted from a cut-off order the previous day, meaning that time usually granted to consider the legislation would not be allotted, instead ensuring the Bill would pass through both Houses in less than 24 hours. Greens Senator Sarah Hanson-Young moved an amendment calling for a cap on political donations and electoral spending, which was not passed.²³⁰

The word ‘disgusting’ was also used to describe the fast passage of the legislation through parliament by Independent Senator Jacqui Lambie. She did not support the Bill and argued that party registration changes would lock ‘normal people’ out of parliament.²³¹

The Bill passed the Senate on the 26 August 2021 and received Royal Assent on 2 September 2021.

The changes were reviewed by the Parliamentary Joint Committee on Human Rights (PJCHR) after the Bill’s Royal Assent. The PJCHR expressed their concern that the legislation passed both houses of Parliament four sitting days after its introduction and highlighted that the PJCHR had asked for additional information to complete its scrutiny just one day before the Bill passed the Senate. They also stated that the Bill may limit the right to participate in public affairs and noted that the relevant Minister had not provided sufficient information to prove that the increased membership requirements would not harm minority groups.²³²

Policy Process

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

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

²²² Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Scrutiny Digest* (Digest 13 of 2021, 25 August 2021) 17.

²²³ Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Scrutiny Digest* (Digest 1 of 2021, 1 September 2021).

²²⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 25 August 2021, 8536 (Andrew Wallace).

²²⁵ Ibid 8549 (Milton Oxley).

²²⁶ Ibid 8554 (Patrick Stewart).

²²⁷ Ibid 8551 (Zali Steggall).

²²⁸ Ibid 8555 (Craig Kelly).

²²⁹ Commonwealth, *Parliamentary Debates*, Senate, 26 August 2021, 5319 (Larissa Waters).

²³⁰ Ibid 5338.

²³¹ Ibid.

²³² Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Human Rights Scrutiny Report* (Report 12 of 2021, 20 October 2021) 58.

No. The legislation is drawn from a recommendation and an additional comment within the *JSCEM Report* on the 2019 Federal election. The *JSCEM Report* covers insights from the JSCEM's inquiry, which held nine public hearings and invited submissions from a variety of stakeholders including political parties, government agencies, academics and civil society organisations. It received 172 submissions in total.²³³

However, there is little evidence supporting the JSCEM's recommendations, and it is unclear why the two recommendations were chosen to be implemented amongst the many other recommendations made by the JSCEM.

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

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

Yes. The Bill's explanatory memorandum states that the legislation will '[safeguard] against voter confusion'²³⁴ and '[ensure] that any political party on the federal Register of Political Parties has a genuine foundation of national community support'.²³⁵

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

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

No.

The JSCEM's analysis of the registration of political parties is extremely limited. While the *JSCEM Report* indicates that action should be taken to limit the influence of 'minor parties with little community support' within politics, no alternative legislative changes aside from raising minimum member numbers is given.²³⁶ There is also no explanation as to why the JSCEM chose to recommend the 1,000 as a new minimum number of members for party registration, with no other numbers considered. Similarly, the Bill's explanatory memorandum does not explain why this number was increased to 1,500 in final legislation.

The JSCEM's recommendation relating to the registration of party names is also very brief, with no other strategies to address the presence of parties with similar names on electoral ballots addressed.²³⁷

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

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

No. The recommendations given by the JSCEM are the only options given.

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

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

No.

²³³ Joint Standing Committee on Electoral Matters, Parliament of Australia, *Report on the Conduct of the 2019 Election and Matters Related Thereto* (Report, December 2020) 7.

²³⁴ Explanatory Memorandum, Electoral Legislation Amendment (Party Registration Integrity) Bill 2021 (Cth) 3. .

²³⁵ Ibid.

²³⁶ Joint Standing Committee on Electoral Matters, Parliament of Australia, *Report on the Conduct of the 2019 Election and Matters Related Thereto* (Report, December 2020) 206.

²³⁷ Ibid 144.

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

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

No. Principles and goals of the legislation are established in the explanatory memorandum and Minister's second reading speech.²³⁸

Costings are not included in the Bill's explanatory memorandum. The memorandum states that this is because the AEC is not able to calculate the costs of an election in advance.

In his second reading speech, then Assistant Minister for Electoral Matters Bill Morton told the House that Electoral Committee decisions in relation to party name registration would be reviewable by the Administrative Appeals Tribunal, a body which already reviews certain decisions made by the Electoral Commission, as permitted by the CE Act²³⁹. The AEC also monitors its own performance through annual reporting²⁴⁰. This information is not included in the Bill's explanatory memorandum.

However, specific review processes and performance measurements were not included in any publicly published documents. It is also unclear whether any other bodies would be reviewing the changes.

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

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

No. The government does not appear to have undertaken further consultation with stakeholders.

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

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

No. Public consultation was not sought while drafting this legislation. The introduction of the Bill to Parliament appears to be the first public announcement of the policy decisions. The Bill passed through both Houses of Parliament shortly after its introduction, limiting opportunities for public and stakeholder feedback.

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

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

No. Legislation was introduced to Parliament, and debate, albeit in cognate with two other Bills, took place in both Houses of Parliament, with many MPs, including numerous crossbenchers speaking on the Bill.

It should be noted that the decision to exempt this legislation from a cut-off order may have limited opportunities for scrutiny, discussion or amendment among members of Parliament, a concern raised by Waters and Lambie (see above).

²³⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 12 August 2021, 8109 (Ben Morton).

²³⁹ *Commonwealth Electoral Act 1918* (Cth) s 121.

²⁴⁰ 'About AEC', *Australian Electoral Commission* (Web Page, 2022) <https://www.aec.gov.au/About_AEC/>.

Additionally, while the Bill was examined by the SSCSB before its passage of Parliament, the SSCSB's comments were only made publicly available on 25 August 2021,²⁴¹ the day before the Bill passed the Senate. This quick turnaround may have similarly impacted the Senate's ability to respond to the Bill.

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

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

Yes. The AEC published a factsheet on their website outlining key changes to the CE Act.²⁴² The AEC also published a page outlining answers to *frequently asked questions* relating to the new party registration laws.²⁴³ This page is very user-friendly and would be easily understood by many readers.

Final scores

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

²⁴¹ Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Scrutiny Digest* (Digest 13 of 2021, 25 August 2021).

²⁴² 'Party Registration Guidance', *Australian Electoral Commission* (Web Page, 2022)

<https://www.aec.gov.au/parties_and_representatives/party_registration/guide/>.

²⁴³ 'FAQs- Party Registration: Recent Changes to the Electoral Act', *Australian Electoral Commission* (Web Page, 2022)

<<https://www.aec.gov.au/FAQs/party-reg-changes.htm>>.

Parliamentary Workplace Reform (Set the Standard Measures No. 1) Act 2022

Policy Background

Parliament House became the focus of national conversations regarding workplace behaviour when a series of allegations of sexual misconduct and bullying were made by former ministerial staffers. One such staffer was Brittany Higgins, who shared her experiences of allegedly being sexually assaulted inside Parliament by another staffer in 2019 and subsequent difficulties in having her alleged assault investigated and addressed by more senior members of the Coalition.²⁴⁴

Ms. Higgins' testimony intensified scrutiny of parliamentary workplace standards. The government initially announced that an internal review of Liberal Party standards would be undertaken by MP Celia Hammond. However, various MPs called for an independent review of workplace culture and standards within Commonwealth Parliament, which was established in March 2021²⁴⁵. The Independent Review into Commonwealth Parliamentary Workplaces (*Jenkins Review*), was led by Sex Discrimination Commissioner, Kate Jenkins,²⁴⁶ and was conducted by the Australian Human Rights Commission (AHRC)²⁴⁷

In a report titled *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces (Jenkins Report)* tabled in November 2021, the AHRC detailed findings from hundreds of interviews and surveys of employees of Commonwealth parliamentary workplaces (CPWs). The *Jenkins Report* found that 37% of people working in CPWs have experienced some form of bullying while working there, while 33% of current CPW employees have experienced some form of sexual harassment at work. Additionally, over two-thirds of current CPW employees have witnessed, experienced or heard about bullying, sexual harassment and assault²⁴⁸.

The *Jenkins Report* identifies a variety of contributing factors to workplace bullying and sexual misconduct. This included inconsistently applied standards of behaviour, a culture of sexism and a 'leadership deficit'²⁴⁹ that fails to adequately act against misconduct. Strong ideas of party loyalty and the temporary nature of employment in politics were also identified as factors limiting the likelihood employees spoke out against misconduct.²⁵⁰

The *Jenkins Report* made 28 recommendations, relating to diversity in CPWs, alcohol usage guidelines, clearer termination practices, mandatory best practice training for CPW employees and protection against age and disability discrimination.²⁵¹

On the day that the *Jenkins Report* was released, Prime Minister Scott Morrison, Senate Leader Simon Birmingham and Minister for Women Marise Payne held a press conference in which they committed to a 'multi-party process' of implementing the *Jenkins Report's* recommendation, beginning with consultations with the opposition and minor parties on their preferred responses.²⁵²

Recommendation 1 of the *Jenkins Report* was that party leaders and the heads of parliamentary departments should deliver a Joint statement acknowledging the harm done by bullying, sexual harassment, and sexual assault in CPWs, and commit to 'action and shared accountability'.²⁵³ This statement was made in both chambers of Parliament in February 2022.²⁵⁴

²⁴⁴ David Crowe, 'Dispute Erupts Over Timing of PM's Office's Knowledge of Parliament Rape Claim', *The Sydney Morning Herald* (Online, 16 February 2021) <<https://www.smh.com.au/politics/federal/dispute-erupts-over-timing-of-pm-s-knowledge-of-parliament-rape-claim-20210216-p5730i.html>>.

²⁴⁵ Staff Writers, 'Kate Jenkins to Lead Independent Inquiry into Parliament House Culture Following Brittany Higgins Allegations', ABC News (Online, 5 March 2021) <<https://www.abc.net.au/news/2021-03-05/independent-inquiry-established-kate-jenkins-brittany-higgins/13191250>>.

²⁴⁶ Ibid.

²⁴⁷ Australian Human Rights Commission, *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces* (Report, November 2021) 11 (*Jenkins Report*).

²⁴⁸ Ibid 17.

²⁴⁹ Ibid 16.

²⁵⁰ Ibid 15-6.

²⁵¹ Ibid 18-27.

²⁵² Simon Birmingham, Marise Payne and Scott Morrison, 'Press Conference- Parliament House, Canberra ACT- Jenkins Report' (Transcript, 30 November 2021).

²⁵³ *Jenkins Report* 19.

²⁵⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 15 February 2022, 734, (Nicolle Flint).

The Parliamentary Workplace Reform (Set the Standard Measures No. 1) Bill 2022 was introduced to the Senate on 9 February 2022. The Bill makes initial changes to several pieces of legislation in order to implement recs 17 and 24 of the *Jenkins Report*.

This is done by:

- amending the *Members of Parliament (Staff) Act 1984 (MoP(S) Act)* to 'strengthen and clarify' the employment rights of MoP(S) Act employees (Parliamentary staffers). This includes a requirement for parliamentarians to provide the reasons for terminating a MoP(S) Act employee. Present applicable grounds for dismissal, including office restructuring and a loss of trust in an employee continue to exist.²⁵⁵;
- amending the *Work Health and Safety Act 2011 (WHS Act)* to clarify the workplace health and safety obligations owed by Parliamentarians in their capacity as employers;
- Amending the *Age Discrimination Act 2004 (AD Act)* and *Disability Discrimination Act 1992 (DD Act)* to make clear that these laws apply to MoP(S) Act staff.²⁵⁶

During the Bill's second reading, Coalition Senator Jonathon Dunaim told the Senate that the Bill would 'provide additional protections to MoP(S) Act employees and provides a clear intent that the Government is committed to implementing the recommendations of the *Jenkins Report*'.²⁵⁷ Senator Simon Birmingham stated that he hoped the reforms would turn Parliament into a 'model workplace' that is 'safe and respectful'.²⁵⁸

The Bill was supported by the opposition and crossbench. Labor MP Graham Perrett praised the 'constructive, bipartisan efforts' that went into the drafting of the Bill, telling the Parliament that they should be proud of the legacy left by the legislation.²⁵⁹ Then Shadow Minister for Industrial Relations Tony Burke, noted that the opposition and government had agreed to revise the Bill's explanatory memorandum to make clear that office-holders terminating the employment of employees must provide written notice explaining the reasons for termination. Burke told Parliament that this would prevent dismissals based on unsubstantiated claims.²⁶⁰

Greens Senator Larissa Waters emphasised that while her party would be supporting the measures, they were a 'tiny step' towards broader reform. She told the Senate that a necessary 'cultural shift' in workplace behaviour would require full implementation of the *Jenkins Report's* recommendations, such as the establishment of a robust independent claims process, trauma-informed workplace training and a code of conduct with options to sanction abusers and those who ignore instances of workplace abuse. Waters also emphasised the need for the establishment of a 'positive duty' on employers to ensure that their staff are safe at work, a reform recommended by the *Jenkins Report*.²⁶¹

Waters also reminded the Senate of the importance of protecting women of colour against harassment, citing important work done by former NSW parliamentary staffer Dhanya Mani in raising awareness of the experiences of survivors of sexual harassment and abuse within the political system.²⁶²

The Bill passed the Senate on the 10 February 2022 and the House on the 15 February 2022. It received Royal Assent 22 of February 2022.²⁶³

Policy Process

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

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

²⁵⁵ Commonwealth, *Parliamentary Debates*, House of Representatives, 10 February 2022, 240, (Simon Birmingham).

²⁵⁶ Explanatory Memorandum, Parliamentary Workplace Reform (Set the Standard Measures No. 1) Bill 2022 (Cth) 2.

²⁵⁷ Commonwealth, *Parliamentary Debates*, House of Representatives, 9 February 2022, 160 (Jonathon Duniam)

²⁵⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 10 February 2022, 240 (Simon Birmingham).

²⁵⁹ Commonwealth, *Parliamentary Debates*, House of Representatives, 15 February 2022, 732 (Graham Perrett).

²⁶⁰ Ibid 737 (Tony Burke).

²⁶¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 10 February 2022, 238 (Larissa Waters).

²⁶² Ibid.

²⁶³ Parliamentary Workplace Reform (Set the Standard Measures No. 1) Bill 2022 (Cth) 2.

Yes. The Bill's explanatory memorandum outlines that the legislative changes are based on recommendations given by the *Jenkins Report*.²⁶⁴

The *Jenkins Report* clearly outlines the prevalence of bullying and sexual misconduct in Parliamentary workplaces based on extensive consultation with stakeholders. The *Jenkins Review* received 935 survey responses and 302 written submissions from individuals, organisations and collectives. 490 interviews and 11 focus groups were also held with employees and other stakeholders.²⁶⁵

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

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

Yes. The Bill's second reading speech states that the Bill will 'progress...important reforms to help ensure that [CPW's] are workplaces where expected standards of behaviour are modelled, championed and enforced. where respectful behaviour is standard, and in which any Australian, no matter their sex, sexual orientation, gender identity, race, disability or age, feels safe and welcome to contribute'.²⁶⁶

Multiple MPs emphasised that the reforms would help make Parliament house a 'model' workplace for the nation in which best practice in workplace safety is exhibited.²⁶⁷

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

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

Yes. A variety of policy options and recommendations are given within the *Jenkins Report*, some based on international examples. For example, Chapter 5.3 considers options for human resources reform such as the creation of a centralised people and culture unit, a model provided by South Australia's Parliament and the establishment of a shared human resources group, as has been done in New Zealand. The chapter highlights certain insufficiencies in these approaches, recommending that human resources reform be supplemented with legislative reforms such as those featured in the Bill.²⁶⁸

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

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

No. Alternatives to amending the *MoP(s) Act*, *WHS Act* and *AD Act* are not given in the *Jenkins Report* once the need for policy change is established. Most alternative policy approaches are discussed in broad terms and do not address the specific legislative changes needed.

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

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

No. There is no cost-benefit analysis of different recommendations or policy options within the *Jenkins Report* or other documentation. Aside from chosen recommendations, many policy options are discussed relatively briefly within the *Jenkins Report*.

²⁶⁵ *Jenkins Report* 11.

²⁶⁶ Commonwealth, *Parliamentary Debates*, House of Representatives, 9 February 2022, 160 (Jonathon Duniam).

²⁶⁷ *Ibid*; Commonwealth, *Parliamentary Debates*, House of Representatives, 15 February 2022, 734 (Nicolle Flint).

²⁶⁸ *Jenkins Report* 182.

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

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

Yes. The *Jenkins Report* includes a *Framework for Action* which includes summaries of organisational responsibility, phases of implementation and specific targets to be set in order to improve parliamentary workplace conduct and culture.²⁶⁹

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

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

No. There is no public record of further consultation with affected stakeholders after the policy was announced.

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

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

No. Whilst Birmingham announced his intention to implement the legislative changes in December,²⁷⁰ no Green or White paper, or equivalent, was published publicly and public feedback was not sought.

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

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

Yes. Legislation was debated in Parliament despite having support from all major and minor parties. MP’s from all parties were able to share their views on the legislation and the broader issue of workplace conduct.

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

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

Yes. Birmingham and Special Minister of State Ben Morton released a Joint statement on 15 February 2022 announcing that the Act had passed Parliament. The statement outlines the key components of the Act and details the next steps the Government would be taking in CPW conduct and culture.²⁷¹

Final scores

	Criterion	Yes/No
1	Establish Need (demonstrable, evidence-based need)	Yes
2	Set Objectives (public interest parameters)	Yes

²⁶⁹ *Jenkins Report* 20.

²⁷⁰ Katherine Murphy, ‘Government Poised to Act on Findings of Landmark Jenkins Review’, *The Guardian*, (Online, 4 February 2022) <<https://www.theguardian.com/australia-news/2022/feb/04/government-poised-to-act-on-findings-of-landmark-jenkins-review>>.

²⁷¹ Simon Birmingham and Ben Morton, ‘Parliament Passes Legislation Recommended by Jenkins Report’ (Joint Media Release, 15 February 2022).

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

New South Wales

Roads and Crimes Legislation Amendment Bill 2022

Policy Background

Since 1910 the average annual temperature in NSW/ACT has increased 1.4 degrees. Under a high emissions scenario it is estimated that the temperature will increase a further 1.4-2.3 degrees by 2050.²⁷² NSW experienced its hottest recorded decade in 2010-2019, record-breaking droughts between 2017 and 2020,²⁷³ and in recent years, has experience compounding natural disasters: 2019-2022 bush fires, 2021 floods, and 2022 floods.²⁷⁴ In response to the increasing frequency of natural disaster events, activist groups have been conducting organised disruptive actions around Australia. In March 2022, a number of non-violent protests were held in Sydney by climate activist groups: Fireproof Australia, Floodproof Australia and Blockade Australia.²⁷⁵

On 30 March 2022, the Roads and Crimes Legislation Amendment Bill 2022 (NSW) was introduced into the Legislative Assembly by Attorney-General Mark Speakman.²⁷⁶ It passed through the Assembly on 30 March 2022 with no amendments, and through the Legislative Council with amendments from the Labor Party and PHON. The Bill received Assent and commenced on 1 April 2022.²⁷⁷

The object of the Bill was to amend the *Roads Act 1993* (NSW) ('*Roads Act*') and the *Crimes Act 1900* (NSW) ('*Crimes Act*'), to create offences for certain behaviours that cause damage or disruption to major roads or major public facilities.²⁷⁸ The Bill creates two new offences, carrying a maximum penalty of 200 penalty units (\$22,000) and/or two years' imprisonment.²⁷⁹

- The first offence is created by amending s 144G of the *Roads Act*. This extends the current offences applicable to certain conduct in relation to major bridges and tunnels, to apply to the same conduct in relation to roads.²⁸⁰

²⁷² 'New South Wales and Act's Changing Climate' *Climate change in Australia* (Web Page, 14 March 2021) <<https://www.climatechangeinaustralia.gov.au/en/changing-climate/state-climate-statements/new-south-wales-act/>>.

²⁷³ 'Climate Change in NSW' *New South Wales Government* (Web Page, 2022) <<https://www.nsw.gov.au/environment-land-and-water/climate-change-nsw>>.

²⁷⁴ Michael Fuller and Mary O'Kane, *2022 Flood Inquiry Volume One* (Summary Report, 29 July 2022) 2.

²⁷⁵ David Wu, 'Blockade Australia Climate Protesters Return to Port Botany for Fourth Day Despite New Laws Against Activists' *Sky News* (Online, 25 March 2022) <<https://www.skynews.com.au/australia-news/blockade-australia-climate-protesters-return-to-port-botany-for-fourth-day-despite-new-laws-against-activists/news-story/b16576842d8fddeaeac6e920e740c8ce>>.

²⁷⁶ New South Wales, *Parliamentary Debates*, Legislative Assembly, 30 March 2022, 76 (Mark Speakman, Attorney-General).

²⁷⁷ *Roads and Crimes Legislation Amendment Act 2022* (NSW).

²⁷⁸ *Roads and Crimes Legislation Amendment Bill 2022* (NSW).

²⁷⁹ *Ibid.*

²⁸⁰ *Ibid* sch 1.

- The second offence is created by inserting pt 4AF into the *Crimes Act*. This prohibits certain damaging and disruptive conduct in relation to major facilities, including railway stations, ports, or any infrastructure facility prescribed by regulations.²⁸¹
- Amendments under both instruments, require the minister responsible to undertake a review two years after the commencement of the *Roads and Crimes Legislation Amendment Act 2022 (NSW)*.²⁸²

In the Bill's second reading, Speakman referred specifically to actions organised by Blockade Australia on 22-23 March:

*in which men suspended themselves from structures in order to block access to Port Botany, resulted in major traffic delays around Port Botany and the Sydney Airport area, with road closures and traffic diversions.*²⁸³

That week, Deputy Premier, Paul Toole and Transport Minister, David Elliot responded on 2GB radio, with Elliot calling the protests 'nothing short of economic vandalism' and Toole expressing a need for stronger penalties.²⁸⁴ On 24 March 2022, the NSW Government signalled that it would urgently introduce legislative amendments, further expanding the law to include roads, and industrial and transport facilities.²⁸⁵

The government acted swiftly to implement stronger penalties where it was possible to do so without legislative amendments. On March 22 the Minister for Metropolitan Roads, Natalie Ward, tabled the *Roads Amendment (Major Bridges and Tunnels) Regulations 2022 (NSW)*, pursuant to the *Roads Act* ss 144G and 264. This regulation expands the meaning of 'major bridge or tunnel' to include any bridge or tunnel within the Greater Sydney Region, and in doing so, extends the existing penalty under s 144G to any bridge or tunnel within the Greater Sydney Region. As regulations are subordinate legislation, they do not require consideration or debate in Parliament.

There was no public consultation, nor any formal stakeholder consultation prior to the Bill's assent. However, the contentious nature of the proposed legislation prompted responses from industrial, legal, and environmental groups.

- Mark Morey, secretary of Unions NSW, expressed concern regarding the risk of the proposed laws in potentially criminalising industrial campaigns flagged on 24 March.²⁸⁶
- 39 environmentalist and human rights organisations, including Amnesty International, Community Legal Centres NSW and the Human Rights Law Centre, published an open letter which called 'on the NSW government to cease the introduction of draconian penalties for protests' and urged 'all members of parliament to uphold our democratic rights by voting against the legislation'.²⁸⁷ This letter was referred to by Emma Hurst MLC for the Animal Justice Party during debate in the Legislative Council on 31 March 2022.²⁸⁸

Alex Greenwich, the member for Sydney, accused the government in the Legislative Assembly of creating policy influenced by talk back radio, stating '[f]or those new members in the Chamber, tonight is New South Wales Parliament at its worst. It is when *The Daily Telegraph* and 2GB form our policy—policy that we will regret down the track'.²⁸⁹

The Bill was reviewed by the Legislative Review Committee and published in the Legislative Review Digest no 42/57 on 10 May 2022. The Bill received royal assent prior to the tabling of Digest no 42/57. Parliament was, therefore, unable to take into account the comments made by the committee during their consideration of the Bill. The committee referred two matters to Parliament for its consideration. These were, that the Bill:

- potentially trespasses on personal rights and liberties; and
- insufficiently subjects the exercise of legislative power to parliamentary scrutiny.²⁹⁰

Both the Opposition, Independents, and the Greens, all commented that the time to consider this Bill was insufficient.

²⁸¹ Ibid sch 2.

²⁸² Ibid schs 1-2.

²⁸³ New South Wales, *Parliamentary Debates*, Legislative Assembly, 30 March 2022, 76 (Mark Speakman, Attorney-General).

²⁸⁴ Ben Fordham, 'Ministers Tear Shreds Off Climate Activists Blocking Routes to Port Botany' 2BG 873AM (Online, 22 March 2022) <<https://www.2gb.com/breaking-climate-activists-block-routes-to-port-botany/>>.

²⁸⁵ Lucy Cormack, Sarah Keoghan and Tom Rabe, 'Tougher Laws Introduced for "Economic Vandals" after Third Day of Climate Protests' *The Sydney Morning Herald* (Online, 24 March 2022) <<https://www.smh.com.au/national/nsw/appalling-protesters-create-chaos-at-port-botany-for-a-third-consecutive-day-20220324-p5a7fe.html>>.

²⁸⁶ Michael McGowan, 'NSW Government Urged to Halt New Bill Targeting Road-Blocking Protesters' *The Guardian* (Online, 30 March 2022) <<https://www.theguardian.com/australia-news/2022/mar/30/nsw-government-urged-to-halt-new-bill-targeting-road-blocking-protesters>>.

²⁸⁷ 'Threat of 2 Years Jail for Road Disruption and Visa Cancellations an Unconscionable Attack on Protest Rights' *Counter Act* (Open letter) <<https://counteract.org.au/wp-content/uploads/2022/03/Open-Letter-Anti-Protest-Laws-2.pdf>>.

²⁸⁸ New South Wales, *Parliamentary Debates*, Legislative Council, 31 March 2022, 55-7 (Emma Hurst).

²⁸⁹ New South Wales, *Parliamentary Debates*, Legislative Assembly, 30 March 2022, 77-8.

²⁹⁰ Legislative Review Committee, Parliament of New South Wales, *Legislation Review Digest* (Digest No 42/57, 10 May 2022) 22.

Labor's Yasmin Catley, noted that the Bill was 'moved with such haste and certainly not with the usual amount of consultation or process that we go through'.²⁹¹

Independent member Jamie Parker, commented that:

*...this is an absolutely unsatisfactory way for laws to be created. It is unbelievable that this afternoon we got an email saying, "By the way, here's a bill that we want to introduce. We're going to bring it on through Standing Order 188 and Standing Order 189 and take it through all stages, and it won't lay on the table." The Attorney General knows this is not the way we make good laws. Like my colleague the member for Newtown, I am disappointed.*²⁹²

Greens MP Jenny Leong, commented that 'this is the first time in my memory that Standing Order 189 has been used in this Chamber to pass an urgent bill'.²⁹³

Further protest by Blockade Australia were scheduled for late June, but Speakman denied that the urgency was related to this, rather stating that urgency was related to the 'Government's desire to protect ordinary people—not something that may or may not happen on 27 June'.²⁹⁴

²⁹¹ New South Wales, *Parliamentary Debates*, Legislative Assembly, 30 March 2022, 82.

²⁹² *Ibid* 84.

²⁹³ *Ibid* 97.

²⁹⁴ *Ibid* 97.

The Right to Peaceful Assembly

At international law, the right to peaceful assembly and movement are provided for pursuant to arts 21 and 22 of the *International Covenant of Civil and Political Rights (ICCPR)*.²⁹⁵ Australia became a signatory to the ICCPR in 1972 and ratified on 13 August 1980 and thus is required to take necessary steps to adopt law and measures necessary to give effect to rights recognised in the ICCPR.²⁹⁶

State Parliaments may legislate contrary to international rights in situations where the Commonwealth has not incorporated such rights into domestic law. As affirmed by Keane J in *Taijour v NSW*:²⁹⁷

*The Commonwealth's ratification of the ICCPR did not affect the ability of the States to enact legislation contrary to that Convention. The validity of State legislation is not dependent on its conformity with international agreements made by the Commonwealth where the international agreement has not been given effect by Commonwealth legislation whereby s 109 of the Constitution might be engaged.*²⁹⁸

Unlike other jurisdictions, which have enacted statutory human rights charters.²⁹⁹ The right to freedom of assembly in NSW is a common law right.

As such, it is subject to parliamentary supremacy and can be assumed, restricted or qualified if done so with clear unambiguous language by a state parliament acting within its constitutional powers.³⁰⁰

The *Summary Offence Act 1988* (NSW) pt 4 deals with public assemblies. It neither expressly grants, nor abrogates the statutory right to protest. Rather, it provides a scheme 'which encourages and rewards mutual co-operation between police and participants in public assemblies'.³⁰¹ This can be contrasted to s 5 of the *Peaceful Assemblies Act 1992* (Qld) which expressly provides for a right to assemble peacefully in a public place.³⁰²

The *Roads Act* and *Crimes Act* contain a number of safeguards which provide defences to the existing and new offences. For example, mechanical breakdowns and actions which have police authorisation.³⁰³ Exemptions for industrial action under the *Roads Act* were provided for by amendments made by the Labor party.³⁰⁴

Insufficient parliamentary scrutiny

Because the Bill adopts the definition of major roads, as contained in the *Roads Regulations 2018* cl 48A, the Minister may at any time classify roads to include them under the meaning of major roads. It is a substantive definition because areas defined as major roads in the *Roads Regulations* will be subject to the offences provided for by the Bill. However, changes will attract limited parliamentary scrutiny, because the minister may alter definitions by way of a notice in the *Gazette*, which is not subject to disallowance.³⁰⁵

Policy Process

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

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

No. Whilst the second reading in the Assembly explained the Bill was in response to recent protest activities in Sydney, there was no consultation with stakeholders to provide evidence for the policy. Whilst the government noted that incidents like these have severe financial impacts, with the cost of this economic vandalism estimated to run into the

²⁹⁵ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

²⁹⁶ *Ibid* art 2(2).

²⁹⁷ (2014) 254 CLR 508.

²⁹⁸ *Ibid* 606 [249] (Keane J).

²⁹⁹ See, eg, *Charter of Human Rights and Responsibilities Act 2006* (Vic).

³⁰⁰ *South Australia v Totani* (2010) 242 CLR 1, 31.

³⁰¹ New South Wales, *Parliamentary Debates*, Legislative Assembly, 31 March 1988, 807.

³⁰² *Peaceful Assembly Act 1992* (Qld) s 5(1).

³⁰³ See, eg, *Roads Act 1993* (NSW) s 144G(3).

³⁰⁴ *Ibid* s 144G(5A).

³⁰⁵ Legislative Review Committee, Parliament of New South Wales, *Legislation Review Digest* (Digest No 42/57, 10 May 2022) 25-6.

millions of dollars through direct economic loss and lost productivity.³⁰⁶ They did not cite any precise figures related to the economic loss or lost productivity of recent events.

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

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

Yes. The Bill's Second Reading speech states that the object is to 'deter illegal protests that disrupt the lives of the people of New South Wales.'³⁰⁷ Speakman noted that there are already offences available for such actions, but these were not successful in deterrence.³⁰⁸

The government argued that the Bill does not seek to impose a *general prohibition* on protests.

Freedom of assembly and speech have long been recognised by Australian courts as important rights that are integral to a democratic system of government; however, the right to protest must be weighed against the right of other members of the public to move freely and not be obstructed in public places.³⁰⁹

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

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

No.

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

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

No.

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

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

No.

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

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

³⁰⁶ Ibid.

³⁰⁷ Ibid 77.

³⁰⁸ Ibid 88-9.

³⁰⁹ Ibid 76.

Yes. The amendment created two offenses, both which took effect immediately upon royal assent. It also provides for Ministerial review to be conducted as possible after the period of 2 years from the commencement of the Roads and Crimes Legislation Amendment Act 2022 (NSW).³¹⁰

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

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

No. There is no formal record of further consultation with affected stakeholders. However, considering the close relationship between the Labor party and trade unions, it is likely informal conversations occurred between the two, providing a possible explanation for the Labor party's amendments regarding industrial action, introduced and accepted in the Legislative Council on 1 April 2022.³¹¹

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

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

No.

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

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

No. Debate and scrutiny of the Bill was inadequate. Legislation was introduced in Parliament and debated urgently pursuant to standing order 189 in the Assembly. The Legislative Review Committee commented that their review of the Bill was unable to be considered by either House before receiving royal assent on 1 April 2022.³¹²

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

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

Yes. On April 1 The Premier, Attorney General, Minister for Metropolitan Roads, Minister for Regional Transport and Roads issued a joint media release outlining the reason for the legislation is:

to prevent illegal protestors from causing further mayhem on prescribed major roads, bridges, tunnels, public transport and infrastructure facilities across the state.³¹³

The release explains that:

new offenses under the *Crimes Act 1900* will cover the three ports of Newcastle, Port Kembla and Port Botany' and the '[i]t is the Government's intention to prescribe additional facilities.³¹⁴

There was no information posted on the NSW Government's Facebook page between 30 March and 5 April. However, it was covered by a number of media outlets.³¹⁵

³¹⁰ Roads and Crimes Legislation Amendment Bill 2022 (NSW) schs 1-2.

³¹¹ New South Wales, *Parliamentary Debates*, Legislative Council, 1 April 2022, 17-25.

³¹² Legislative Review Committee, Parliament of New South Wales, *Legislation Review Digest* (Digest No 42/57, 10 May 2022) 22-23; New South Wales, *Parliamentary Debates*, Legislative Assembly, 30 March 2022, 79.

³¹³ The Premier, Attorney General, Minister for Metropolitan Roads, Minister for Regional Transport and Roads, 'Protecting Communities from Illegal Protestors' (Joint Media Release, New South Wales Government, 1 April 2022).

³¹⁴ *Ibid.*

³¹⁵ See, eg, Heath Parkes-Hupton, 'NSW Parliament Passes New Laws Bringing Harsher Penalties on Protesters' ABC News (Online, 1 April 2022) < <https://www.abc.net.au/news/2022-04-01/nsw-new-protest-laws-target-major-economic-disruption/100960746>>.

Final scores

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

Voluntary Assisted Dying Bill 2021

Policy Background

The Voluntary Assisted Dying Bill 2021 was passed by the Parliament of New South Wales on 19 May 2021, establishing a legal framework for voluntary assisted dying in the state. The Bill will be accessible to adults with a terminal illness that will cause death within six months, or 12 months for neurodegenerative conditions, and where suffering cannot be tolerably relieved. A person must have decision making capacity and be acting voluntarily and without coercion. The person must undergo two independent eligibility assessments by two separate doctors. There are options to self-administer or for a doctor to administer the substance. Doctors must undergo voluntary assisted dying training and will be able to conscientiously object.

This Bill is not the first attempt to introduce a voluntary assisted dying scheme in NSW. Most recently, Trevor Khan MLC introduced the Voluntary Assisted Dying Bill 2017 (NSW) to the Legislative Council; this Bill was defeated by one vote in the Legislative Council. NSW is the last state in Australia to have legislated voluntary assisted dying. Victoria was the first state to pass such legislation in 2018, with similar legislation subsequently passing in Western Australia in 2019. South Australia, Tasmania, and Queensland all passed voluntary assisted dying legislation in 2021.³¹⁶ To date, voluntary assisted dying schemes have commenced operation in Victoria and Western Australia in 2019 and 2021 respectively. All other states are in the process of completing an implementation period of approximately 18 months.³¹⁷

While Victoria was the first to pass voluntary assisted dying legislation, the Northern Territory was the first jurisdiction in the world to legalise voluntary assisted dying following passage of the *Rights of the Terminally Ill Act 1995* (NT). However, this Act was subsequently overturned by the Australian Government. The *Euthanasia Laws Act 1997* (Cth) specifies that territory parliaments do not have the power to make laws permitting 'the form of intentional killing of another called euthanasia (which includes mercy killing) or the assisting of a person to terminate his or her life'.³¹⁸

The Bill was introduced by the Independent MP Alex Greenwich on 14 October 2021. It was co-sponsored by a total of 28 Members of Parliament from various political parties, including from the Liberals, Nationals, Labor, and Greens parties as well as others from the crossbench.³¹⁹ It has the highest number of co-sponsors to any Bill in an Australian parliament. It also followed a petition with more than 100,000 signatures expressing support for such legislation.³²⁰ The NSW Liberal and Labor Members of Parliament were permitted a conscious vote on the Bill.

On 19 October 2021, the Bill was referred to the Legislative Council Standing Committee on Law and Justice for inquiry and report. The inquiry generated significant public interest and engagement, with the committee receiving over 39,000 responses to an online questionnaire, in addition to 3,070 submissions and three supplementary submissions, of which 107 were published. The committee also held three days of public hearings, hearing from over 75 witnesses. The final report's only recommendation was that 'the Legislative Council proceed to consider the [Bill]'.³²¹

The Bill was contentious in Parliament as it addresses the complex interaction of legal, ethical, legal, religious, medical, and duty of care considerations. MPs considered and debated almost 100 amendments; the majority of which were voted down, including the push to give aged care residential homes the power to block voluntary assisted dying taking place in their facilities.³²²

³¹⁶ NSW Parliamentary Research Service, *Voluntary Assisted Dying Bill 2021: A Comparison with Legislation in Other States* (Issues Backgrounder No 2/2021, 21 October 2021) 7..

³¹⁷ Australian Centre for Health Law Research, 'End of Life Law in Australia' *Queensland University of Technology* (Web Page, 9 November 2021),

³¹⁸ NSW Parliamentary Research Service, *Voluntary Assisted Dying Bill 2021: A Comparison with Legislation in Other States* (Issues Backgrounder No 2/2021, 21 October 2021) 7..

³¹⁹ Lucy Cormack and Tom Rabe, 'Voluntary Assisted Dying Bill Draws Multi-Party Support Across NSW Parliament', *The Sydney Morning Herald* (Online, 12 October 2021) <<https://www.smh.com.au/politics/nsw/voluntary-assisted-dying-bill-draws-multi-party-support-across-nsw-parliament-20211012-p58zba.html>>.

³²⁰ Ibid.

³²¹ Legislative Council Standing Committee on Law and Justice, Parliament of New South Wales, *Voluntary Assisted Dying Bill 2021* (Report No 79, 22 February 2022).

³²² Ashleigh Raper, Phoebe Bowden and Heath Parkes-Hupton, 'NSW's Voluntary Assisted Dying Laws Pass After Marathon Debate in Parliament' ABC News (Online, 19 May 2022) <<https://www.abc.net.au/news/2022-05-19/voluntary-assisted-dying-laws-pass/101079940>>.

At the conclusion of their consideration and debate, the Legislative Council passed the legislation, with a 23 to 15 vote, on 19 May 2022.³²³ It will take up to 18 months for the laws to come into effect as new systems and an oversight body is put in place.³²⁴

Policy Process

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

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

Yes. There was an upswell of support from 100,000 petitioners along with 28 MPs co-sponsoring the Voluntary Assisted Dying Bill 2021 (NSW).

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

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

Yes. NSW was the last remaining Australian state without voluntary assisted dying laws and the legislation was introduced to give its eligible citizens access.

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

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

No. Alternative policy options do not appear to have been publicly before the Bill was introduced to Parliament.

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

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

No. There is no public disclosure of the alternative ways considered for implementing the chosen policy.

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

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

No. There is no published analysis of the cost of the alternative options/mechanisms considered in 3 and 4.

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

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

³²³ Ibid.

³²⁴ Ibid.

No. Although there is a lot of evidence of the project management plan for developing the Bill, there is nothing for the policy rollout.

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

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

Yes. Submissions were invited and a public questionnaire was carried out during the Joint Standing Committee's inquiry into the Bill. Public engagement with these consultation initiatives was extensive, with 39,000 responses to the questionnaire recorded.³²⁵

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

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

Yes. The Bill's *Legislation Review Digest*³²⁶ clearly explains the Bill's content, while an Inquiry by the Joint Standing Committee on Law and Justice, which covers the issue of voluntary assisted dying in detail, was developed through public consultation. These documents may play similar roles to a Green and White Papers.³²⁷

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

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

Yes. Voluntary assisted dying laws have been passed in all other Australian states, and laws allowing voluntary assisted dying are now in operation in Victoria and Western Australia.

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

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

Yes. The New South Wales Government released an overview of the *Voluntary Assisted Dying Act 2022 (Cth)* along with information for both the community and health practitioners.³²⁸

³²⁵ Legislative Council Standing Committee on Law and Justice, Parliament of New South Wales, *Voluntary Assisted Dying Bill 2021* (Report No 79, 22 February 2022) ix.

³²⁶ Ibid; Legislative Review Committee, Parliament of New South Wales, *Legislation Review Digest* (Digest No 35/57, 19 October 2021).

³²⁷ Legislative Council Standing Committee on Law and Justice, Parliament of New South Wales, *Voluntary Assisted Dying Bill 2021* (Report No 79, 22 February 2022) vii.

³²⁸ 'Voluntary Assisted Dying in NSW' *NSW Health* (Web Page, 25 July 2022) <<https://www.health.nsw.gov.au/voluntary-assisted-dying/Pages/default.aspx>>.

Final Scores

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

Mandatory Disease Testing Bill 2020

Policy Background

The mandatory disease testing scheme, as provided for the Mandatory Disease Testing Bill 2020 (NSW) originated in recommendations made during the Legislative Assembly Law and Safety Committee's (LALSC) 2016-2017 *Inquiry into Violence Against Emergency Services Personnel* (LALSC Report). Agreeing with submissions made by the Police Association of NSW,³²⁹ the LALSC recommended (rec 47) that:

*the NSW Government consider introducing legislation to allow mandatory disease testing of people whose bodily fluids come into contact with police and emergency services personnel, in consultation with all affected stakeholders.*³³⁰

Accompanying this recommendation was the finding that:

*[u]nder any legislative scheme, the power to conduct mandatory testing should only be able to be enlivened in circumstances where there is a risk of transmission of listed diseases. The legislation should clearly define the factual circumstances in which there is a risk of transmission of listed diseases and this definition should be based on up to date medical evidence.*³³¹

In February 2018, Brad Hazzard, Minister for Health and Minister for Medical Research, responded to the LALSC Report, stating that the NSW Government supported recommendation 47, and announced the government's intentions to convene a cross-agency working group to draft an options paper to 'canvass the legal, ethical, operational and financial issues involved in the implementation of a mandatory disease testing regime'.³³² The response also made undertakings to consider stakeholder submissions before proceeding with reform in this area.³³³

A cross-agency working group was convened in 2018. It was comprised of senior representatives from the Department of Justice, Corrective Services NSW, NSW Health, the NSW Police Force, and the Department of Premier and Cabinet.³³⁴ The cross-agency working group produced an *Options Paper* in September 2018 and invited submissions to be made by 31 October 2018.³³⁵

The *Options Paper* proposed 4 options which included both consent, and mandatory, schemes. It outlined advantages and disadvantages of each option and included an economic and financial impact statement.³³⁶

The Bill was first introduced into the Legislative Assembly on 11 November 2020 by Minister for Police and Emergency Services, David Elliot.

The object of the Bill is to:

*establish a scheme under which a person (a third party) can be ordered to provide a blood sample for testing for blood-borne diseases if the third party's bodily fluid has come into contact with a health, emergency or public sector worker as a result of the third party's deliberate action, and the worker is at risk of contracting a blood-borne disease as a result.*³³⁷

The purpose is to make blood-borne disease testing, which had previously required patient consent, to be mandatory in circumstances where a person 'has deliberately caused their bodily fluids to come into contact with a prescribed worker'.³³⁸

The Bill:

³²⁹ Police Association of New South Wales, Submission No 21 to Legislative Assembly Committee on Law and Safety, *Inquiry into Violence Against Emergency Services Personnel* (22 July 2016) 9.

³³⁰ Legislative Assembly Committee on Law and Safety, Parliament of New South Wales, *Violence Against Emergency Service Personnel* (Report No 1/56, 8 August 2017) 81.

³³¹ Ibid.

³³² Brad Hazzard, *NSW Government Response to Recommendations from the Standing Committee on Law and Safety Report Violence Against Emergency Services Personnel* (Government Response, 8 February 2018) 14.

³³³ Ibid.

³³⁴ New South Wales Department of Justice, *Mandatory Disease Testing Options Paper* (Options Paper, September 2018).

³³⁵ Ibid 5.

³³⁶ Ibid 14-37.

³³⁷ Explanatory Note, *Mandatory Disease Testing Bill 2020* (NSW) 1.

³³⁸ New South Wales, *Parliamentary Debates*, Legislative Assembly, 11 November 2020, 4251 (David Elliott).

- Provides for mandatory testing orders (MTOs);³³⁹
- Creates an offence for non-compliance with an MTO without a reasonable excuse;³⁴⁰
- Creates an offence for providing false or misleading information to persons exercising their functions under the proposed Act;³⁴¹
- Creates an offence for disclosure of information not provided for in the proposed Act;³⁴²
- Creates a maximum penalty for all offenses of 100 penalty units and/or 12 months' imprisonment;
- Provides for oversight and reporting by the Ombudsman;³⁴³ and
- Provides for ministerial review, 'to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing the objectives'.³⁴⁴

The Bill was reviewed by the Legislation Review Committee (LRC) in the *Legislation Review Digest* No 24/57, tabled 17 November 2020 (prior to the second reading debate in the Legislative Assembly on 18 November 2020).³⁴⁵ The LRC raised concerns about the invasive nature of that procedure, in particular, its effect on vulnerable people and children, and noted concerns about the delegation of legislative powers, in particular, the provisions under cl 34 of the Bill.³⁴⁶

The Bill was also referred to the Standing Committee on Law and Justice (SCLJ) for an inquiry and report by the Legislative Council on 17 November 2020.³⁴⁷ The SCLJ's report was tabled on 30 April 2021. It received 28 submissions and held two hearings.³⁴⁸ Key stakeholders included unions representing police and correctional service workers, medical and legal professionals, and other community advocacy groups.

In the second reading debate in the Legislative Assembly on 18 November, Lynda Voltz, led debate for the Opposition. The position of the Opposition was not to oppose the Bill at that point, but rather to wait for recommendations from the Legislative Council Committee following stakeholder input. Voltz also noted that the draft Bill had already been in the community for at least six months and had received revision following feedback from the community, in particular the AIDS Council of New South Wales.³⁴⁹

The Bill was opposed in the Legislative Assembly by the Independent Alex Greenwich, who asserted the Bill was 'retrograde, irresponsible and encourages stigma and discrimination of people who live with bloodborne diseases like HIV'.³⁵⁰ He cited low levels of HIV in the community, no occurrences of occupational transmission of HIV for emergency service workers in Australia in the last 15 years, and asserted that the Bill 'transfers disease control from a health context to a punitive context while inciting fear'.³⁵¹

The Greens also opposed the Bill. Lenny Leong speaking on behalf of the Greens, expressed doubts that the Bill, as drafted, delivered its aims, instead arguing that it 'is based on flawed assumptions and outdated and, frankly, offensive views'.³⁵² Other members, including some from the Opposition, raised concerns that the Bill could increase stigma faced by people living with HIV.³⁵³ These assertions were all rebutted by the government.³⁵⁴

The Bill passed through the Legislative Assembly on 18 November with one amendment agreed to: requiring senior officers to provide demographic information about third parties so that the Ombudsman can make conclusions on whether the scheme targets marginalised groups.³⁵⁵

³³⁹ Mandatory Disease Testing Bill 2021 (NSW) cl 5.

³⁴⁰ Ibid cl 27.

³⁴¹ Ibid cl 28.

³⁴² Ibid cl 29.

³⁴³ Ibid cl 36.

³⁴⁴ Ibid cl 37.

³⁴⁵ Legislative Review Committee, Parliament of New South Wales, *Legislation Review Digest* (Digest No 24/57, November 2020).

³⁴⁶ Ibid 24-32.

³⁴⁷ New South Wales, *Parliamentary Debates*, Legislative Assembly, 11 November 2020, 1672-4.

³⁴⁸ Legislative Council Standing Committee on Law and Justice, Parliament of New South Wales, *Mandatory Disease Testing Bill 2020* (Report No 76, April 2021) ix.

³⁴⁹ New South Wales, *Parliamentary Debates*, Legislative Assembly, 18 November 2020, 4715-6. (Lydia Voltz).

³⁵⁰ Ibid 4717 (Alex Greenwich).

³⁵¹ Ibid 4718-9.

³⁵² Ibid 4725-7 (Lenny Leong).

³⁵³ See, eg, Ibid 4721-3 (Anthony Roberts).

³⁵⁴ Ibid 4734-6 (David Elliot).

³⁵⁵ Ibid 4798.

The SCLJ, in their Inquiry into the Bill, considered the opposing views of the scheme and whether it struck the right balance between protecting frontline workers and the potential unintended consequences that may impact on marginalised groups. The SCLJ noted that stakeholders 'were united in their concern for the health and wellbeing of frontline workers' but differed 'in their views as to whether a mandatory disease testing scheme is likely to achieve its intended outcomes'.³⁵⁶

The SCLJ heard evidence on the prevalence of Hepatitis B, C and HIV, and low risk of transmission, and the anxiety felt by frontline workers who may be exposed to such diseases in their line of work. The SCLJ also heard concerns related to the drafting of the Bill in relation to the definitions and scope of 'deliberate action', 'bodily fluids' and 'contact' as well as whether safeguards for vulnerable people and children were adequate and whether there was adequate oversight provided by the NSW Ombudsman. They made one recommendation arising from this inquiry:

*[t]hat the Legislative Council proceed to debate the Mandatory Disease Testing Bill 2020, and that the concerns identified by stakeholders as set out in this report be addressed during debate in the House.*³⁵⁷

After the tabling of the SCLJ's report, the Bill was read and debated in the Legislative Council between 11 and 13 May 2021.

A total of 44 amendments were debated, addressing concerns raised by stakeholders in the Standing Committee on Law and Justice's Inquiry into the Bill. Only 11 amendments were agreed to, none of those were made by the Opposition or the Greens.

The Bill passed through the legislative Council with amendments on 13 May 2021, with support from the Opposition. The Bill was opposed by members of the Greens, Animal Justice Party and an Independent Member.³⁵⁸

The Bill was returned to the Legislative Assembly, passed that house on 8 June, and received assent on 22 June 2021.

Policy Process

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

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

Yes. Stakeholder submissions were made to the SCLJ. The positions of stakeholders were cited in argument both for and against the bill during debate in the Legislative Council after the tabling of the SCLJ's report. In the Bill's second reading in the Legislative Council, the Government commented on the SCLJ's report and the need for a delicate balance of rights between the bodily autonomy and privacy of the third party, and the wellbeing of the affected workers. They considered that 'the bill strikes the right balance through a range of measures' including safeguards that 'ensure the rights and needs of workers and third parties are taken into consideration, and also looked at in the context of the medical guidelines around exposure and transmission risks'.³⁵⁹

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

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

Yes. The object clause explains the objective of the scheme as one which aims to protect and promote the health and wellbeing of health, emergency and public sector workers.

³⁵⁶ Legislative Council Standing Committee on Law and Justice, Parliament of New South Wales, *Mandatory Disease Testing Bill 2020* (Report No 76, April 2021) vii.

³⁵⁷ *Ibid* 41.

³⁵⁸ New South Wales, *Parliamentary Debates*, Legislative Council, 13 May 2021, 575.

³⁵⁹ New South Wales, *Parliamentary Debates*, Legislative Council, 11 May 2021, 5624-6 (Scott Farlow).

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

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

Yes. Alternative options were considered and published by a cross-agency working group which was convened in 2018. Submissions on the *Options Paper* produced by the working group were invited.

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

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

Yes. Four options with differing mechanisms, ranging from consent to mandatory option were considered and set out in the 2018 *Options Paper*.

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

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

No The advantages and disadvantages of all options were considered in the *Options Paper* in 2018. However, no comprehensive cost-benefit analysis is provided.

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

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

Yes. The Bill provides for oversight by the NSW Ombudsman and Review by the relevant Minister.

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

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

Yes. After the Bill was introduced into the Legislative Assembly, but prior to debate in the Legislative Council, the Bill which adopted a mandatory scheme, was referred for an inquiry and report. They invited stakeholder submissions, held two hearings and was tabled prior to debate in Legislative Council.

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

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

Yes. There was an *Options Paper* which invited public input in 2018 and another inquiry into the adopted position in 2020-21 which also invited public input.

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

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

Yes. There was adequate Parliamentary debate both before and after the SCLJ's inquiry into the Bill. The LRC also provided it's views on the Bill prior to the initial second reading debate in the Legislative Assembly.

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

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

Yes. Whilst there seems to have been no official press release from either the Department of Health or the Department Communities and Justice, there is a NSW Government webpage which provides detailed information on the scheme. This includes information on when it commenced, who can apply for an MTO, how applications are made, the decision process, the review of the decisions process, how oversight on the Bill is conducted, and a number of fact sheets for third parties, workers, officers and medical practitioners. It provides factsheets for third parties in Arabic, Greek, Chinese and Vietnamese.³⁶⁰

Final scores

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

³⁶⁰ 'Mandatory Disease Testing Scheme', New South Wales Department of Communities and Justice (Web Page, 16 September 2022) <<https://www.dcj.nsw.gov.au/justice/mandatory-disease-testing-scheme.html>>.

Electric Vehicles (Revenue Arrangements) Act 2021

Policy Background

The New South Wales Government has outlined its plans to introduce road-user charges for electric vehicles from mid-2027, to make sure petrol-free cars ‘pay their way’ in the absence of revenue from the national fuel excise. Current levies, fees and charges for road use include the fuel excise, stamp duty, license and vehicle registration fees, and in Greater Sydney, a network of tolled routes. The *Future Transport Strategy* seeks to ‘reduce congestion and improve travel choices by exploring charges that are clearer, fairer, more efficient, and more sustainable’.³⁶¹

The state government introduced the Electric Vehicles (Revenue Arrangements) Bill 2021 (NSW) to introduce a per-kilometre road user charge from 1 July 2027 – or when electric car uptake reaches 30 per cent in the state.³⁶² Under the proposed plan, electric car owners in NSW will pay a fixed rate of 2.5 cents per kilometre, while plug-in hybrid vehicles (PHEV) owners will be charged 2 cents per kilometre, in place of existing government costs such as registration, tolls and stamp duty. These fees mirror similar charges announced in Victoria. Drivers of such vehicles will be required to fill logbooks and then be charged accordingly. NSW offers a stamp duty exemption to all electric cars priced below \$78,000, while the first 25,000 cars priced below \$68,750 and purchased after 1 September 2021, receive a \$3000 rebate.³⁶³

The proposed charges in the Bill starkly contrast against stamp duty, which is a progressive tax, in that they are a flat rate. In practice, this means that if you buy an electric vehicle on the cheaper end of the market such as an MG ZS EV, which costs approx. \$44,000, stamp duty savings would be \$1,320. Once the road user tax kicks in you would be paying an average \$320 per year, erasing the stamp duty savings within four to five years. However, if you buy a Tesla Model S, stamp duty would be \$6,865. Assuming the rate remains at 2.5 cents per kilometre, it is unlikely that the average driver would pay the equivalent in road user tax over 20 years. The tax is a strong incentive for those buying luxury electric vehicles, but over time, becomes an additional cost for the average motorist looking to buy a new car.

Meanwhile, the *Future Transport Strategy Report* suggests that charges will incentivise drivers to move away from petrol and diesel-powered cars and towards electric vehicles. The development of such a roadmap for long-term reform must consider the interdependencies with all modes, the relationship with parking, and equity considerations for customers who have limited travel options. The state government’s reforms in road user charging are an attempt to support the transition to electric vehicles. The *Future Transport Strategy Report* suggests this will help provide a sustainable and efficient source of road funding into the future without acting as a brake on electric vehicle uptake.³⁶⁴

While Victoria became the first Australian state to introduce a road user charge for electric cars from 1 July 2021, the state government was criticised for forcing plug-in hybrid owners to pay the per-kilometre tax in addition to the fuel excise at the bowser. Despite Infrastructure Australia previously proposing a congestion tax, charging motorists for where and when they drive, should be introduced in the state’s capital, NSW Premier Dominic Perrottet clarified that it was not a part of the NSW Government’s strategy.³⁶⁵

In 2021, Infrastructure Victoria recommended the road user charge model should be implemented within 10 years, encompassing the costs of registration, tolls, the fuel excise, and congestion charges.³⁶⁶

Meanwhile, the Greens wholeheartedly support the abolishment of stamp duty on the purchasing of new electric vehicles but disagreed with the ‘rationale’ of the Bill. The party’s Treasury and Transport Spokesperson, Abigail Boyd, suggested that instead of a fairer approach, the scheme effectively makes every road a toll road.³⁶⁷ She went on to say:

Do not be fooled. The Electric Vehicles (Revenue Arrangements) Bill seeks to replace the stamp duty on cars in New South Wales with a road user tax for every car on the road. Drivers will not be able to escape it. I understand the desire of State and Territory treasurers to introduce the tax, which they have worked on for years to get up and running. They saw the opportunity to develop a new revenue stream

³⁶¹ Transport for NSW, *Future Transport Strategy: Our Vision for Transport in NSW* (Report, 2022).

³⁶² *Ibid.*

³⁶³ *Ibid.*

³⁶⁴ *Ibid.*

³⁶⁵ *Ibid.*

³⁶⁶ Ben Zachariah, ‘New Proposal to Axe Car Registration Fees in Victoria’ *Drive* (Online 20 August 2021)

<<https://www.drive.com.au/news/infrastructure-victoria-recommends-axing-car-rego-for-new-system/>>.

³⁶⁷ New South Wales, *Parliamentary Debates*, Legislative Council, 14 October 2021, 6116-9 (Abigail Boyd).

before the Federal Government. I have sympathy with them. A conversation needs to be had about revenue sharing arrangements in this country, but that is another story. What is more relevant now is where a new road user tax would leave the people of New South Wales, who would be faced with the current stamp duty on all cars being replaced with a flat per-kilometre charge every time they leave their driveways.³⁶⁸

During the Second Reading debate in the Legislative Council, several MPs, including John Graham and Mark Latham, acknowledged the infelicitousness of rushing the bill through with the budget.³⁶⁹ The Bill was supported by the Labour party,³⁷⁰ with the addition of an amendment to bring forward the statutory review period of two years, after which it passed both houses and was assented on 1 November 2021.

Policy Process

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

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

Yes. The second reading speech in the Legislative Council, outlines the need to remove stamp duty and remove barriers to entry for new EV buyers.³⁷¹

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

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

Yes. The Bill's second reading speech states that the proposed changes would 'reduce the up-front cost of vehicles by up to \$3,000, and... save motorists around \$200 million over the next four years.'³⁷²

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

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

No.

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

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

No.

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

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

No.

³⁶⁸ Ibid 6118.

³⁶⁹ Ibid 6119-21.

³⁷⁰ See, eg, Ibid 6112-5 (Daniel Mookhey).

³⁷¹ Ibid 6110-2 (Scott Farlow)

³⁷² Ibid.

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

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

Yes. The Bill’s explanatory notes detail the rate of the charges, the way in which Transport for NSW (TNSW) would manage the submission odometer readings, the penalties for non-compliance and option to object to the issuing invoices or registration of suspensions.³⁷³

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

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

No.

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

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

No.

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

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

No.

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

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

Yes.³⁷⁴

Final scores

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

³⁷³ Explanatory Note, Electric Vehicles (Revenue Arrangements) Bill 2021 (NSW).

³⁷⁴ New South Wales Government, NSW Electric Vehicle Strategy (Report, June 2021).

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

Victoria

Public Health and Wellbeing Amendment (Pandemic Management) Act 2021

Policy Background

The Victorian Public Health and Wellbeing Act 2008 (Vic) (*PHW Act*) allows the government to set in place a 'State of Emergency' in response to threats to public health and safety.³⁷⁵ On 16 March 2020, a state of emergency was declared in response to the COVID-19 pandemic. The state of emergency granted authorised officers the power to 'restrict or eliminate a serious threat to public health' through measures such as detaining individuals for breaches of pandemic orders, restricting movement and limiting entry to certain premises.³⁷⁶

Within the existing system under the *PHW Act*, a state of emergency could be declared for four weeks at a time, for a period of up to six months. Throughout the pandemic, the state of emergency was renewed several times. In September 2020, the government extended the state of emergency for a further six months, retaining existing requirements to justify the extension every month.³⁷⁷

2021 saw a severe growth in COVID-19 cases in Victoria as well as the emergence of the Delta COVID variant³⁷⁸. The state of emergency put in place for the Delta outbreak was due to end on 15 December 2021.³⁷⁹ This came at a time when COVID restrictions were easing, particularly for double-vaccinated people.³⁸⁰

The *Public Health and Wellbeing Amendment (Pandemic Management Bill 2021)* (Vic) was introduced to the Legislative Assembly on 26 October 2021. The Bill aimed to reform the *PHW Act* to create a new framework for the management of pandemics. This included the management of the COVID-19 pandemic as well as the management of any additional pandemics in the future. Minister for Health, Martin Foley, told the Assembly that the Bill would '[fill] the gap' left by the expiration of the state of emergency.³⁸¹

The extensive legislation:

- grants responsibility for the declaration of a pandemic to the Premier;
- allows the Health Minister to make *pandemic orders*, provided that a statement explaining these orders is published (*pandemic orders* are measures that the Minister finds necessary to protect public health, including detention powers);
- allows the Minister to take social and economic considerations into account when creating a *pandemic order*;
- establishes an Independent Pandemic Management Advisory Committee (IPMAC) to oversee ministerial powers in relation to pandemic orders;
- grants pandemic powers to 'authorised officers', including police officers, health service providers and WorkSafe inspectors (pandemic powers include the ability to give directions to a person to ensure compliance with the pandemic order, and detaining individuals for non-compliance); and
- creates new offences for breaches of *pandemic orders*, with reforms made to the fines system to ensure vulnerable people are not disproportionately affected by the pandemic fines.³⁸²

The Bill attracted a significant amount of public attention after its introduction. This included large protests at the steps of Victoria's Parliament House, and harassment of crossbench MP's signalling their possible support of the Bill.³⁸³

³⁷⁵ Victoria, *Parliamentary Debates*, Legislative Assembly, 27 October 2021, 4227 (Martin Foley).

³⁷⁶ Daniel Andrews, 'State Of Emergency Declared In Victoria Over COVID-19' (Media Release, 16 March 2020) <<https://www.premier.vic.gov.au/state-emergency-declared-victoria-over-covid-19>>.

³⁷⁷ Brad Ryan and Zalika Rizmal, 'Coronavirus State of Emergency Extension Passes Victorian Parliament's Upper House' ABC News (Online, 2 September 2020) <<https://www.abc.net.au/news/2020-09-02/victorias-state-of-emergency-extension-passing-upper-house/12618442>>.

³⁷⁸ 'Why the Delta Variant Could End Australia's Pursuit of 'Covid Zero' *New York Times* (Online 4 October 2021) <<https://www.nytimes.com/2021/07/02/world/australia/delta-covid-zero.html>>.

³⁷⁹ Victoria, *Parliamentary Debates*, Legislative Assembly, 27 October 2021, 4239 (Martin Foley).

³⁸⁰ Daniel Andrews, 'More Freedoms to Come as Victoria Hits 90 Per Cent Vax Rate' (Media Release, 18 November 2021).

³⁸¹ Victoria, *Parliamentary Debates*, Legislative Assembly, 27 October 2021, 4239 (Martin Foley).

³⁸² *Ibid.*

³⁸³ Caitlin Cassidy, 'Victoria's Controversial Pandemic Bill Poised to Pass Parliament after Amendments', *The Guardian*, (Online, 16 November 2021) <<https://www.theguardian.com/australia-news/2021/nov/16/victorias-controversial-pandemic-bill-poised-to-pass-parliament-after-amendments>>.

The Bill was debated in the Legislative Assembly on 27-8 October 2021. The Bill's second reading was less than one day after the Bill was introduced to Parliament; an issue raised by multiple MP's during the debate.³⁸⁴ Suzanna Sheed told the Assembly that she doubted any members had properly read the Bill in the hours between its introduction and debate, noting that she did not fully understand its contents.³⁸⁵

The Bill was opposed by the Coalition. While the Coalition criticised numerous features of the Bill, a key common critique focused upon the declaration of a pandemic and establishment of pandemic orders. The proposed IPMAC was labelled a 'toothless tiger' by Michael O'Brien, who told Parliament that the government would not be obligated to heed any recommendations given by the IPMAC, as recommendations would be non-binding.³⁸⁶

Another point of criticism for Coalition MPs was a clause within the Bill that states that a pandemic order may 'apply to, or differentiate in its application to persons or classes of person identified by reference to, an attribute within the meaning of the *Equal Opportunity Act 2010*'³⁸⁷. Coalition MPs raised concerns that this would allow discrimination based on factors such as age, political beliefs race or disability.³⁸⁸

Moreover, Coalition MPs questioned detention powers established through the legislation. Tim Smith noted that while a person being detained for breaches of public health orders were able to request a review of their circumstances, their detention would not be considered unlawful 'if the detention of a person ceases because of a decision made on a review of the detention'. Smith argued this could lead to arbitrary detention, an overstep in the current circumstances given that most Victorians were vaccinated against COVID-19 and restrictions were beginning to ease.³⁸⁹ Many Coalition MPs also referenced a statement made by the President of the Victorian Bar Council, Christopher Bladen, who had called the measures 'draconian' based on 'extraordinary powers' of detention and restriction of movement given to the Health Minister.³⁹⁰

Government MP Danielle Green responded to criticisms regarding accountability and oversight by arguing that the Bill has more transparency than public health legislation in other states as the Health Minister, who is responsible for declaring a public health order, is responsible to Parliament. Ms Green noted that the Minister would be required to publish an explanation of any rights under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (*CHRR Act*) being limited by a pandemic order, while the Parliament's Scrutiny of Acts and Regulations Committee (SARC) would retain the ability to review public health orders.³⁹¹

Government Member Paul Edbrooke, argued that the measures were developed in conjunction with 'some of the most trusted leaders in public health administrative law, human rights and policymaking'. He also argued that the Bill would protect the right to life: the 'most fundamental' human right³⁹².

Between the two Houses' debates, the SARC released their *Alert Digest* detailing their scrutiny of the Bill. The SARC signalled their intention to write to the Minister for clarification of the Bill's provisions in relation to compatibility with right under the *CHRR Act* (*Charter rights*). For example, the SARC questioned whether it would be unlawful for the Minister to make a pandemic order in a way that was incompatible with any *Charter* rights.³⁹³ The SARC also raised concerns relating to the use of information for contract tracing purposes, asking whether this information could be used as evidence to prosecute an individual for non-pandemic related offences.³⁹⁴

In the Legislative Council, many Opposition members and crossbenchers raised concerns with the drafting and passage of the Bill through Parliament. At the commencement of debate, Attorney-General Jaclyn Symes, moved for the Bill to be declared urgent. This motion was described as an 'extraordinary... undemocratic move' by Opposition MP David

³⁸⁴ Victoria, *Parliamentary Debates*, Legislative Assembly, 28 October 2021, 4401 (Michael Obrien).

³⁸⁵ Ibid 4391 (Suzanna Sheed).

³⁸⁶ Ibid 4402 (Michael Obrien).

³⁸⁷ Victoria, *Parliamentary Debates*, Legislative Assembly, 27 October 2021, 4239 (Louise Staley)

³⁸⁸ Ibid 4311.

³⁸⁹ Victoria, *Parliamentary Debates*, Legislative Assembly, 28 October 2021, 4323 (Tim Smith)

³⁹⁰ Ibid.

³⁹¹ Ibid 4330 (Danielle Green).

³⁹² Ibid 4390 (Paul Edbrooke).

³⁹³ Scrutiny of Acts and Regulations Committee, Parliament of Victoria, *Alert Digest* (Digest No 15 of 2021, 16 November 2021) 16.

³⁹⁴ Ibid.

Davis who noted that Bills were rarely declared urgent in the Council, having only occurred nine times since 1996.³⁹⁵ Coalition MP Gordon Rich-Phillips, also criticised the SARC for failing to hold public hearings on the legislation.³⁹⁶

In addition, certain crossbenchers expressed their discontent with the process of planning the Bill, in which crossbenchers from the Greens, Animal Justice Party and Reason Party, who had previously supported the State of Emergency extension, were briefed on the upcoming legislation, while other crossbenchers were not. Derryn Hinch's Justice Party MP Stuart Grimley, argued his party was not invited to this consultation process, and did not know about the planned Bill until a colleague received an accidentally sent email about consultation with other crossbenchers.³⁹⁷ The consultation process was defended by Reason Party's Fiona Patten, who argued that the process was not a secret, and that she had mentioned her intention to work with the Premier in developing the legislation at a public press conference. Patten also argued that no other state in Australia had any parliamentary oversight of health orders, and that the legislation therefore had stronger oversight than other models.³⁹⁸

Victorian Greens Leader, Samantha Ratnam, told the Council that the Greens had been in consultation with the government regarding amendments to the Bill. This included the establishment of an 'objective threshold' that must be met before a pandemic is declared, a clarification that the compliance with the *CHRR Act* must be the basis of all decisions made possible by the Bill and removing references to the *Equal Opportunity Act 2010* (Vic) within the Bill.³⁹⁹

A series of amendments, including those referenced above, passed the Assembly on 2 December 2022. Further Amendments of note included:

- clarifying the ways in which pandemic orders can differentiate between 'classes' of people, specifically referring to vaccination status and age as determinants of risk to disease transmission or of vulnerability to disease;⁴⁰⁰
- reducing the maximum fines that can be applied for breaches of pandemic orders by close to 50%;⁴⁰¹ and
- establishing a new joint Parliamentary advisory committee (named the Pandemic Declaration Accountability and Oversight Committee) for the purpose of scrutinising Government actions relating to a pandemic, including reporting to parliament. This role was originally intended to be undertaken by the SARC.⁴⁰²

The Bill, with government amendments, passed the Assembly on 2 December 2021. The *Public Health and Wellbeing Amendment (Pandemic Response) Act 2021* (Vic) received Assent on 7 December 2021.

Policy Process

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

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

Yes. The Bill's explanatory memorandum states that the policy is required due to the expiration of the state of emergency expiration on 15 December 2021. The Bill creates an ongoing framework for the management of pandemics in place of the existing framework.⁴⁰³

The government has stated that consultation was undertaken with 'leaders in public health, human rights, law and policymaking'.⁴⁰⁴ This included the Victorian Human Rights and Equal Opportunity Commission.⁴⁰⁵ However, there is no published record of this consultation and formal parliamentary submissions were not invited during the process. The scope and depth of these consultations is therefore unclear.

³⁹⁵ Victoria, *Parliamentary Debates*, Legislative Council, 16 November 2021, 4332 (David Davis).

³⁹⁶ Ibid 4336. (Gordon Rich-Phillips).

³⁹⁷ Ibid 4369. (Stuart Grimley).

³⁹⁸ Ibid 4378. (Fiona Patten).

³⁹⁹ Ibid 4407. (Samantha Ratnam).

⁴⁰⁰ Victoria, *Parliamentary Debates*, Legislative Assembly, 2 December 2021, 5051. (Martin Foley).

⁴⁰¹ Ibid 5058.

⁴⁰² Ibid 5055.

⁴⁰³ Explanatory Memorandum, Public Health and Wellbeing Amendment (Pandemic Management) Bill 2021 (Vic).

⁴⁰⁴ Victoria, *Parliamentary Debates*, Legislative Assembly, 27 October 2021, 4230 (Martin Foley).

⁴⁰⁵ Victorian Human Rights and Equal Opportunity Commission, 'Public Health and Wellbeing Amendment (Pandemic Management) Bill 2021' (Media Release, 30 November 2021).

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

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

Yes. The Minister's second reading speech states that the Bill aims to '[enable] the Victorian Government to... continue to protect Victorians from dangerous pandemic diseases' by creating a 'targeted regulatory framework' for pandemic management.⁴⁰⁶

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

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

Yes. The Minister's second reading speech explains why the option of continuing to rely on the state of emergency framework pursuant to the *PHW Act* would be inappropriate. No international comparisons are provided, however the Health Minister noted that the legislation is the 'first... of its kind'.⁴⁰⁷

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

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

No. Aside from briefly detailing certain proposed amendments that would not be adopted by the government, such as granting VCAT the right to review decisions made under the Bill's legislative framework,⁴⁰⁸ the government did not substantially detail alternative implementation options.

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

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

No.

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

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

Yes. The Bill's explanatory memorandum details steps to be taken to declare a pandemic and implement a pandemic order, the roles of the Health Minister, Premier and Chief Health Officer, and of advisory bodies such as the IPMAC.⁴⁰⁹

Amendments added by the government on 2 December 2021, also establish a Pandemic Declaration Accountability and Oversight Committee with the power to review pandemic declarations and related decisions.⁴¹⁰

⁴⁰⁶ Victoria, *Parliamentary Debates*, Legislative Assembly, 27 October 2021, 4239 (Martin Foley).

⁴⁰⁷ Ibid.

⁴⁰⁸ Victoria, *Parliamentary Debates*, Legislative Council, 16 November 2021, 4437 (Jacqueline Symes).

⁴⁰⁹ Explanatory Memorandum, Public Health and Wellbeing Amendment (Pandemic Management) Bill 2021 (Vic).

⁴¹⁰ Victoria, *Parliamentary Debates*, Legislative Assembly, 2 December 2021, 5051 (Martin Foley).

The legislation is missing a sunset clause.

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

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

Yes. The Department of Health gave a briefing to certain stakeholder groups such as the Victorian Bar Association and Liberty Victoria after the release of the Bill. Organisations also made submissions to the Department of Health detailing recommended amendments.⁴¹¹

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

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

No. While certain news outlets began reporting on the Bill in the days before its first reading, the draft of the Bill introduced to parliament upon its first reading appears to be the first draft shown to the public.

There does not appear to have been any public feedback given on the Bill aside from interactions between MPs and concerned constituents.

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

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

No. Legislation was introduced to Parliament and debated in both Houses. However, it should be noted that the passage of the Bill through Parliament was highly contentious, with just hours between the Bill's introduction and its second reading debate. Moreover, the declaration of the Bill as 'urgent' attracted criticism from certain MPs as this accelerated the Legislative Council's consideration of the Bill.

Moreover, the process of consulting the crossbench during the development of the Bill was also criticised as only three crossbenchers participated in the drafting of the bill.

This accelerated process may have limited the ability of all MPs to properly consider the Bill, with one MP noting that she did not understand the contents of the Bill, during the second reading debate in the Assembly, due to the short turnover between first reading and second reading debate.⁴¹²

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

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

Yes. On 10 December 2021, the Premier's office published a media release titled 'Implementing Victoria's New Pandemic Framework'. It stated that a formal pandemic declaration made for Victoria until 12 January 2022, had been made possible by the passage of the Act. The statement also outlined the process to be followed for the declaration of a pandemic such as the tabling of a statement of reasons for the declaration.⁴¹³

⁴¹¹ Liberty Victoria, *Liberty Victoria Comment: Public Health and Wellbeing Amendment Pandemic Management Bill 2021*, (Comment, 03 November 2021).

⁴¹² Victoria, *Parliamentary Debates*, Legislative Assembly 28 October 2021, 4391 (Suzanna Sheed).

⁴¹³ Daniel Andrews 'Implementing Victoria's New Pandemic Framework', (Media Release, 10 December 2021).

Final scores

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

Sex Work Decriminalisation Bill 2021

Policy Background

On 22 February 2022, the Sex Work Decriminalisation Bill 2021 (Vic) was passed by the Victorian Parliament. The Bill decriminalises sex work by removing offences and criminal penalties from participating in the act of consensual sex work, including: abolishing street-based sex work offences, repealing public health offences associated with sex work, repealing the *Sex Work Act 1994* (Vic) (SW Act), and regulating the sex work industry through existing specialist responsible agencies.⁴¹⁴ Victoria will now be the third jurisdiction Australia to decriminalise sex work after New South Wales decriminalised sex work in 1995, and the Northern Territory in 2019.⁴¹⁵ Premier Daniel Andrews noted that 'the regulation of sex work has not undergone a significant review in Victoria since 1985... and given calls for sex work reform Australia and growing interest in decriminalisation... it is time to consider this reform'.⁴¹⁶

The government asked Fiona Patten to lead the 2019 decriminalisation parliamentary review, which eventually made the recommendations that shaped these laws.⁴¹⁷ Patten stated, '[w]e're not making sex work compulsory. What we are saying is sex workers should be heard, should be listened to and should be part of the solution to making their lives and their livelihoods safer and better'.⁴¹⁸

Consultation occurred both during the review and during August 2021, when the government undertook public consultation on the proposed laws.⁴¹⁹ 54 individual consultation sessions were conducted, and 64 written submissions were considered by the review. The review also engaged with the Michael Kirby Centre for Public Health and Human Rights to ensure there was input from individual sex workers.⁴²⁰ However, spokesperson from the Coalition Against Trafficking in Women Australia, Tegan Larin, said that four separate sex work 'survivor' organisations had been excluded during the consultation process.⁴²¹

The Opposition opposed the legislation with leader Matthew Guy, stating that if the Bill was passed it would 'open up every suburban street, every suburban house to be...a brothel'.⁴²²

Larin also had criticism around Patten running the review, saying that the government review lost all objectivity and independence as Patten 'has a stake in decriminalising the sex industry, which she's been advocating for decades'.⁴²³ Similarly, the Coalition's Roma Britnell, criticised the fact that the review was led by Patten instead of the Sex Work Ministerial Advisory Committee, whose role includes 'advising the minister [for Consumer Affairs, Gaming and Liquor Regulation] about issues relating to the regulation, control and general operation of the sex work industry in Victoria'.⁴²⁴ There was allegations from many members of the Coalition that Patten had been asked to lead the inquiry because the government needed her to pass the proposed pandemic legislation.⁴²⁵ Despite all this criticism, Premier Andrews stated, 'Fiona Patten is well placed to lead a review into decriminalisation and consider whether it would minimise opportunities for corruption, increase transparency and improve sex worker safety and access to protections'.⁴²⁶

⁴¹⁴ 'Decriminalisation of Sex Work in Victoria', *Victoria Police* (Web Page, 7 July 2022)

<<https://www.police.vic.gov.au/decriminalisation-sex-work-victoria>>.

⁴¹⁵ Callum Godde and Emily Woods, 'Bill to Decriminalise Sex Work Passes in Victorian Parliament' *The New Daily* (Online, 10 February 2022) <<https://thenewdaily.com.au/news/2022/02/10/bill-to-decriminalise-sex-work-passes-in-victorian-parliament/>>.

⁴¹⁶ Daniel Andrews 'Review into Decriminalisation of Sex Work', (Media Release, 27 November 2019).

⁴¹⁷ Paul Gregoire, 'Victoria Decriminalises Sex Work: A Victory for Workers', *Sydney Criminal Lawyers Blog* (Online, 25 February 2022) <<https://www.sydneycriminallawyers.com.au/blog/victoria-decriminalises-sex-work-a-victory-for-workers/>>.

⁴¹⁸ Judd Boaz, 'Victoria Plans to Decriminalise all Sex Work Within Two Years. Here's What that Means', *ABC News* (Online, 4 January 2022) <<https://www.abc.net.au/news/2022-01-04/victorian-sex-worker-decriminalisation-debate/100415174>>.

⁴¹⁹ 'Decriminalising sex work in Victoria', *Victorian Government* (Web Page, 13 July 2022) <<https://www.vic.gov.au/review-make-recommendations-decriminalisation-sex-work>>.

⁴²⁰ Victoria, *Parliamentary Debates*, Legislative Assembly, 27 October 2021, 4290 (Katie Hall).

⁴²¹ 'Decriminalising sex work in Victoria', *Victorian Government* (Web Page, 13 July 2022).

⁴²² Callum Godde and Emily Woods, 'Bill to Decriminalise Sex Work Passes in Victorian Parliament' *The New Daily* (Online, 10 February 2022) <<https://thenewdaily.com.au/news/2022/02/10/bill-to-decriminalise-sex-work-passes-in-victorian-parliament/>>.

⁴²³ Judd Boaz, 'Victoria Plans to Decriminalise all Sex Work Within Two Years. Here's What that Means', *ABC News* (Online, 4 January 2022) <<https://www.abc.net.au/news/2022-01-04/victorian-sex-worker-decriminalisation-debate/100415174>>.

⁴²⁴ Victoria, *Parliamentary Debates*, Legislative Assembly, 27 October 2021, 4273 (Roma Britnell).

⁴²⁵ Ibid.

⁴²⁶ Daniel Andrews 'Review into Decriminalisation of Sex Work', (Media Release, 27 November 2019).

There was also criticism that the report Patten produced was not being made available to the public, with Britnell saying personal information could have been ‘de-identified and redacted as required’.⁴²⁷

After a lengthy debate in the Legislative Council, the Bill was passed on a final vote of 24 to 10.. The first stage of decriminalisation commenced on 10 May 2022, and the second stage is expected to commence in December 2023.⁴²⁸

Policy Process

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

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

Yes. The benefits of the decriminalisation of sex work have been stated on the Victorian Government website. It says that ‘sex workers have lived experience that demonstrates that the system under the [SW Act] puts them at risks of harm and is not fit for purpose’.⁴²⁹ The website also states that this policy was informed by a review on sex work and the legislation already in place.

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

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

Yes. The Victorian Government’s website states that ‘decriminalisation ensures that sex work is safe work and just like any other work. It maximises sex workers’ safety, health, and human rights, while also reducing stigma and fear of criminal repercussions’.⁴³⁰

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

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

No. Although ‘the review also looked at the decriminalisation of sex work in other jurisdictions including New Zealand and other Australian states and territories’, this does not satisfy the criteria.⁴³¹

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

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

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

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

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

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

Criterion 6 – Design Pathway: Develop a complete policy design framework including principles, goals, delivery mechanisms, program or project management structure, the implementation process and phases, performance measures,

⁴²⁷ Victoria, *Parliamentary Debates*, Legislative Assembly, 27 October 2021, 4273 (Roma Britnell).

⁴²⁸ ‘Decriminalising sex work in Victoria’, *Victorian Government* (Web Page, 13 July 2022) <<https://www.vic.gov.au/review-make-recommendations-decriminalisation-sex-work>>.

⁴²⁹ *Ibid.*

⁴³⁰ *Ibid.*

⁴³¹ *Ibid.*

ongoing evaluation mechanisms and reporting requirements, oversight and audit arrangements, and a review process ideally with a sunset clause.

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

No. There has not been a policy design framework created. The government says they will create it, but details are unknown.

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

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

Yes. In November 2019, the Government asked MP Fiona Patten to lead a review into the sex work and make recommendations its decriminalisation. The review consulted with a range of stakeholders from legal, health and education support service providers, commercial operators and industry organisations, sex workers, sex worker peer organisations and workplace safety agencies, local government and federal government agencies, law enforcement agencies and other community and expert organisations.⁴³²

During August 2021, the government undertook public consultation on the proposed model for the decriminalisation of sex work in Victoria.⁴³³ There were 698 contributions made to the Engage Victoria online survey, 159 written submissions, and online consultations with key stakeholder groups comprising over 101 participants.⁴³⁴

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

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

Yes. There was a *Discussion Paper* published with the proposed changes to the law and a *Consultation Summary Paper* outlining an overview of the views expressed and issues raised by stakeholders in response to the decriminalisation of sex work.⁴³⁵

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

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

Yes. The policy was based on existing legislation, that being the *Sex Work Act 1994* (Vic). The Bill was debated from 13-28 October 2022 in the Legislative Assembly, and from 28 October 2022 -10 February 2022 in the Legislative Council.

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

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

Yes.⁴³⁶

⁴³² 'Decriminalising sex work in Victoria', *Engage Victoria* (Web Page, 22 February 2022) <<https://engage.vic.gov.au/sex-work-decriminalisation>>.

⁴³³ 'Decriminalising sex work in Victoria', *Victorian Government* (Web Page, 13 July 2022) <<https://www.vic.gov.au/review-make-recommendations-decriminalisation-sex-work>>.

⁴³⁴ 'Decriminalising sex work in Victoria', *Victorian Government* (Web Page, 22 February 2022) <<https://www.vic.gov.au/review-make-recommendations-decriminalisation-sex-work>>.

⁴³⁵ *Ibid.*

⁴³⁶ 'Decriminalising sex work in Victoria', *Victorian Government* (Web Page, 13 July 2022) <<https://www.vic.gov.au/review-make-recommendations-decriminalisation-sex-work>>.

Final Scores

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

Zero and Low Emission Vehicle Distance- Based Charge Act 2021

Policy Background

Transport emissions account for a high degree of Victoria's total greenhouse gas emissions. In order to transition to a low-carbon transport system, the Victorian Government has previously encouraged the uptake of Zero and Low Emissions Vehicles (ZLEV's), including electric vehicles, plug-in hybrid-electric vehicles and hydrogen vehicles⁴³⁷. Uptake of electric vehicles has expanded in Australia over the past decade. In 2019, electric vehicle sales increased by 200%, with 56% of consumers surveyed by the Electric Vehicle Council (EVC) stating that they would consider buying an electric vehicle as their next car⁴³⁸.

In Australia, a fuel excise charge is currently levied on sales of fuel for on-road use by the Commonwealth. Revenue for this excise is the largest single source of revenue brought from road use in Australia.⁴³⁹ However, revenue from the fuel excise is in relative decline due to increased fuel efficiency of internal combustion engine vehicles and the introduction of zero and low emissions vehicles (ZLEVs) including electric vehicles, plug-in hybrid-electric vehicles and hydrogen vehicles.⁴⁴⁰ As they consume little to no fuel, owners of ZLEVs faced a lower tax burden than traditional vehicles.⁴⁴¹

The transition from a fuel excise taxation model to a road user charge model has been raised in previous years. For example, the 2010 *Henry Review* into Australia's taxation system stated that road user charges would be more efficient than current fuel taxes.⁴⁴² The case for a road user charge for electric vehicles is laid out by Infrastructure Partnerships

⁴³⁷ Victoria, *Parliamentary Debates*, Legislative Council, 6 May 2021, 1713 (Gayle Tierney).

⁴³⁸ Electric Vehicle Council, *State of Electric Vehicles* (Report, August 2020).

⁴³⁹ Infrastructure Partnerships Australia, *Road User Charging for Electric Vehicles* (Report, November 2019).

⁴⁴⁰ Victoria, *Parliamentary Debates*, Legislative Council, 6 May 2021, 1713 (Gayle Tierney).

⁴⁴¹ *Ibid.*

⁴⁴² Ken Henry, *Australia's Future Tax System: Report to the Treasurer: Part One Overview* (Report December 2009).

Australia, an infrastructure industry think tank who outline a model of distance-based charges based on odometer readings to ensure both ZLEV's and combustion-engine vehicles are paying for their use of roads.⁴⁴³

As part of the 2020-2021 State Budget, the introduction of a road-user charge was announced alongside a commitment from the Government to fund electric vehicle Infrastructure and technology⁴⁴⁴.

The Zero and Low Emission Vehicle Distance-based Charge Bill 2021 (Cth) was introduced to the Legislative Assembly by Treasurer Tim Pallas on 17 March 2021. In his second reading speech, Pallas told the Assembly that reforms within the Bill would 'establish a fairer and more sustainable framework for road users to contribute to... Victoria's road network'.⁴⁴⁵

The Bill implements a road use charge to be paid by ZLEV operators by:

- establishing a charge rate of 2.5 cents per kilometre for electric and hydrogen vehicles and 2.0 cents per kilometre for plug-in hybrid vehicles starting on 1 July 2021 and subject to indexation over subsequent years;⁴⁴⁶
- providing for the required lodgement of odometer declarations in order to calculate the distance travelled by ZLEV's within a given period;⁴⁴⁷
- providing for the issue of invoices for the payment of charges, with interest to be charged for unpaid invoices;⁴⁴⁸
- allowing for the suspension or cancellation of the registration of a ZLEV for non-compliance with declaration submissions or failure to pay invoices;⁴⁴⁹
- allowing a registered operator to object to an invoice or suspension/cancellation of registration;⁴⁵⁰

Under the new system, evidence of an odometer reading would be submitted, with inspections allowed for the purpose of verifying the reading. The VicRoads online portal would generate an invoice based on odometer readings to be paid quarterly, semi-annually or annually. Owners would also be required to retain records of their declarations for five years.⁴⁵¹

The Bill was not supported by the Coalition or the Greens.

Member for Ripon Louise Staley opened the second reading debate in the Legislative Assembly by referencing an open letter published in *The Age Newspaper* by various vehicle manufacturers, think tanks, industry groups and environmental groups which described the charge as 'the worst electric vehicle policy in the world'. The letter also claimed that the proposed charge would be the 'only stand-alone electric vehicle tax' worldwide and would deter uptake on electric vehicles in Victoria.⁴⁵²

Staley also argued that owners of plug-in hybrids would be 'taxed twice', as they already pay a fuel excise and would now be required to pay the ZLEV charge. Furthermore, she criticised the 'cumbersome procedure' of lodging evidence of odometer readings via VicRoads, noting that electric vehicles have an onboard GPS, capable of transmitting odometer readings.⁴⁵³

⁴⁴³ Infrastructure Partnerships Australia, *Road User Charging for Electric Vehicles* (Report, November 2019).

⁴⁴⁴ 'What the 2020 State Budget Means for Victorians' RACV (Web Page, 25 November 2020) <<https://www.racv.com.au/royalauto/news/community/victoria-state-budget-explained.html>>.

⁴⁴⁵ Victoria, *Parliamentary Debates*, Legislative Assembly, 18 March 2021, 1185 (Tim Pallas).

⁴⁴⁶ Explanatory Memorandum, Zero and Low Emission Vehicle Distance-Based Charge Bill 2021 (Vic).

⁴⁴⁷ Ibid.

⁴⁴⁸ Ibid.

⁴⁴⁹ Ibid.

⁴⁵⁰ Ibid.

⁴⁵¹ Victoria, *Parliamentary Debates*, Legislative Assembly 18 March 2021, 1184 (Tim Pallas).

⁴⁵² Victoria, *Parliamentary Debates*, Legislative Assembly, 4 May 2021, 1296 (Louise Staley).

⁴⁵³ Ibid 1297.

Both the Greens and Coalition noted that the charge would send confusing price signals to consumers considering a switch to electric vehicles as the government was concurrently offering incentives for the purchase of electric vehicles and introducing a new levy on their use.⁴⁵⁴

Moreover, while the Government that the tax would be hypothecated towards development of the electric car network and the promotion of ZLEV uptake,⁴⁵⁵ this was called into question by the Greens. Sam Hibbins noted that hypothecation was not featured in the Bill and claimed the charges would instead contribute to general revenue.⁴⁵⁶

Support for the Bill varied amongst independent members and other minor parties. The Bill was supported by the Reason Party, with Fiona Patten noting that peak bodies including Infrastructure Australia and the Victorian Automotive Chamber of Commerce approved the proposed legislation.⁴⁵⁷ In contrast, other minor parties, including the Liberal Democrats, did not support the Bill. Liberal Democrat MP Tim Quilty, labelled the Bill as a 'cash grab'.⁴⁵⁸

Labor members addressed certain criticisms of the Bill raised in Parliament. Sonja Terpstra told the Legislative Council that the total taxes and charges paid by ZLEV owners would remain lower than those paid by conventional vehicle owners. Terpstra also noted that as more households transitioned to electric vehicles, failure to introduce a road charge framework would create inequities between households with an electric vehicle, and those without who would continue to pay a fuel excise.⁴⁵⁹

The Greens moved three amendments in the Council: firstly, to move the policy's commencement date to 2025; secondly, to restrict the charge to luxury ZLEVs; and thirdly, to reduce the charge to zero. All amendments were rejected.⁴⁶⁰

The Bill passed the Legislative Council 14 votes to 19. It received Assent on 1 June 2021.⁴⁶¹

In July 2022 Prime Minister Anthony Albanese, announced that the Commonwealth would be supporting a High Court challenge of the charge, in which two Victorian motorists have argued that the charge it is in fact an excise, which only the Commonwealth can impose.⁴⁶² The motorists are seeking to have the charge ruled unconstitutional, which would likely determine future ZLEV policy in other jurisdictions.⁴⁶³

Policy Process

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

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

No. Whilst the Bill's second reading speech outlines the need to address a decline in fuel excise revenue stakeholder input during the policy development process is not referenced by the government. When asked in the Legislative Council to name the stakeholder groups with whom the Government consulted while developing the legislation, Attorney-General Jaclyn Symes was unable to produce any specific names.⁴⁶⁴

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

⁴⁵⁴ Ibid 1303, 1311 (Peter Walsh, Sam Hibbins).

⁴⁵⁵ Ibid 1309 (Will Fowles).

⁴⁵⁶ Ibid 1311 (Sam Hibbins).

⁴⁵⁷ Victoria, *Parliamentary Debates*, Legislative Council, 25 May 2021, 1784 (Fiona Pattern).

⁴⁵⁸ Ibid 1786 (Tim Quilty).

⁴⁵⁹ Ibid 1763. (Sonja Terpstra).

⁴⁶⁰ Ibid 1811-1814 (Samantha Ratnam).

⁴⁶¹ *Zero and Low Emission Vehicle Distance-Based Charge Bill 2021* (Vic).

⁴⁶² See, *Commonwealth Constitution* s 51(ii).

⁴⁶³ Patrick Hatch, 'Albanese Government Seeks to Pull Plug on Victoria's Electric Vehicle Tax' *The Age*, (Online, 15 July 2022) <<https://www.theage.com.au/national/victoria/albanese-government-seeks-to-unplug-victoria-s-electric-vehicle-tax-20220715-p5b1xr.html>>.

⁴⁶⁴ Victoria, *Parliamentary Debates*, Legislative Council, 25 May 2021, 1798 (Jaclyn Symes).

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

Yes. The Minister's second reading speech, states that the proposed changes would 'establish a fairer and more sustainable framework for road users to contribute to the maintenance and expansion of Victoria's road network'.⁴⁶⁵

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

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

No.

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

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

No.

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

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

No.

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

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

Yes. The Bill's explanatory memorandum details the rate of the charges, the ways in which VicRoads would manage the submission of odometer readings, the penalties for non-compliance and options to object to the issuing of invoices or registration suspensions, as well as granting VCAT the ability to review decisions on objections.⁴⁶⁶

The 2020-2021 State Budget also briefly outlines estimated costings for the first three years of the policy's implementation.⁴⁶⁷

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

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

Yes. A ZLEV Expert Advisory Panel was established to inform the Government on policy and investment decisions. The Panel received submissions from stakeholders including from ALG Energy relating to the road-user charge.⁴⁶⁸

⁴⁶⁵ Victoria, *Parliamentary Debates*, Legislative Assembly, 18 March 2021, 1184 (Tim Pallas).

⁴⁶⁶ Explanatory Memorandum, Zero and Low Emission Vehicle Distance-Based Charge Bill 2021 (Vic).

⁴⁶⁷ Victorian Government, *Victorian Budget 2020/2021: Putting People First* (Budget Paper No 3, November 2020) 150.

⁴⁶⁸ AGL, *Zero Emissions Vehicles Expert Advisory Panel Consultation, September 2021* (Submission, 14 October 2021).

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

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

No. While the SARC Alert Digest did publish a summary of the policy decision which could function in a similar manner to a White paper,⁴⁶⁹ no Green paper or equivalent was published, nor was public input sought.

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

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

Yes. Proposed legislation was introduced into Parliament and debated extensively in both Houses.

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

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

No.

VicRoads has released a summary of the ZLEV charge which includes a video, a table outlining rates for different vehicle types and a 'frequently asked question' section.⁴⁷⁰

The Premier's office published a press release on 17 May 2021 detailing the proposed changes. This occurred before the Bill had passed both Houses of Parliament.⁴⁷¹

Final scores

	Criterion	Yes/No
1	Establish Need (demonstrable, evidence-based need)	No
2	Set Objectives (public interest parameters)	Yes
3	Identify Options (consideration of alternatives)	No
4	Consider Mechanisms (implementation choices)	No
5	Brainstorm Alternatives (cost-benefit analysis)	No
6	Design Pathway (policy design framework)	Yes
7	Consult Further (further consultation after policy announcement)	Yes

⁴⁶⁹ Scrutiny of Acts and Regulations Committee, Parliament of Victoria, *Alert Digest* (Digest No 5 of 2021, May 2021) 14-16.

⁴⁷⁰ 'ZLEV Road User Charge', VicRoads (Web Page) <<https://www.vicroads.vic.gov.au/registration/registration-fees/zlev-road-user-charge>>.

⁴⁷¹ Daniel Andrews, 'Ensuring Drivers Pay Their Fair Share to Use our Roads', (Media Release, 17 March 2021) <<https://www.premier.vic.gov.au/ensuring-drivers-pay-their-fair-share-use-our-roads>>.

8	Publish Proposals (produce Green then White paper, or equivalents)	No
9	Introduce Legislation (comprehensive parliamentary debate)	Yes
10	Communicate Decision (information not propaganda)	Yes
	Final Score	5/10

Windfall Gains Tax and State Taxation and Other Acts Further Amendment Act 2021

Policy Background

On Budget night 2021 a windfall gains tax was announced alongside various other financial measures, including and tax concession and absentee owner surcharge concession for build-to-rent developments⁴⁷². Reforms to the framework for a point-of-consumption tax on Keno machines was also announced.⁴⁷³

Planning decisions can greatly increase the value of land, generating large windfall gains. In recent years, landowners with land undergoing re-zoning, have been able to profit from large increases in land value as a result of land rezoning. For example, landowners of the Fisherman's Bend business received an estimated \$4.43b in windfall gains when land was rezoned from largely industrial zoning to Capital City 1 zoning.⁴⁷⁴ As a consequence, a high degree of land speculation and lobbying occurred in this area, leading to inflated land prices and accusations of corruption within the planning process.⁴⁷⁵

Build-to-rent developments have also gained increased attention over recent years. The build-to-rent model, in which residential developments, typically with a single owner, are specifically designed for long-term renters, currently has low uptake in Australia, but has experienced growth in countries such as the UK and Canada.⁴⁷⁶ Build-to-rent developments are said to increase rental housing supply and address issues of housing diversity in Australia.⁴⁷⁷

The Windfall Gains Tax and State Taxation and Other Acts Further Amendment Bill 2021 (Vic) was introduced to Parliament on 13 October 2021 by Treasurer Tim Pallas. This Omnibus Bill addresses a range of revenue and taxation measures announced in the State Budget.

Firstly, the Bill implements a new Principal Act to introduce a windfall gains tax on the increase in land value as a result of rezoning, commencing on 1 July 2023.

Regarding this new tax, the Bill:

- applies the new tax to landowners and will apply to most rezonings across Victoria causing an increase in value of over \$100,000;
- provides that the tax will be calculated on the 'taxable value uplift' in land value, being the difference between capital improved value before and after re-zoning;
- introduces uplifts, taxed at a rate of 62.5% between \$100,000 and \$500,000 and at a flat rate of 50% for uplifts of \$500,000;⁴⁷⁸ and
- provides an exemption for residential land of up to two hectares which includes a dwelling fit for occupancy at the time of rezoning;⁴⁷⁹

Secondly, the Bill introduces a land tax concession and an exemption from the absentee owner surcharge for new build-to-rent developments from 2022 to 2040. The concession will be implemented as a 50% discount on the land's taxable value. Mixed-use build-to-rent developments would be eligible for the exemption and concession on an apportioned basis.⁴⁸⁰ Rental agreements in these developments would have a duration of at least three years.⁴⁸¹

Thirdly, the Bill amends the *Gambling Regulation Act 2003* (Vic) to ensure that licenced providers of Keno games pay tax at a rate of 24.4% on earnings from games with Victorian players, no matter where the providers are located. This addresses a growth of inter-state Keno providers developing online games played by Victorians.⁴⁸²

⁴⁷² Victoria, *Parliamentary Debates*, Legislative Assembly, 13 October 2021, 3912 (Tim Pallas).

⁴⁷³ 'State Budget 2021-2022 Announcements', State Revenue Office Victoria (Web Page 2021) <<https://www.sro.vic.gov.au/state-budget-2021-22-announcements>>.

⁴⁷⁴ Emily Sims and Jesse Hermans, *The Rezoning 'Honeypot': Evidence from Fishermans Bend* (Report, July 2021) 3.

⁴⁷⁵ Ibid.

⁴⁷⁶ Department of Treasury and Finance, Parliament of Victoria, *Build To Rent Working Group: Report to the Treasurer and Minister for Planning* (Report, 15 October 2021) 5.

⁴⁷⁷ Ibid.

⁴⁷⁸ Victoria, *Parliamentary Debates*, Legislative Assembly, 13 October 2021, 3912 (Tim Pallas).

⁴⁷⁹ Victoria, *Parliamentary Debates*, Legislative Assembly, 28 October 2021, 4433 (Nick Staikos).

⁴⁸⁰ Victoria, *Parliamentary Debates*, Legislative Assembly, 13 October 2021, 3913 (Tim Pallas).

⁴⁸¹ Victoria, *Parliamentary Debates*, Legislative Council, 18 November 2021, 4593 (Samantha Ratnam).

⁴⁸² Victoria, *Parliamentary Debates*, Legislative Assembly, 13 October 2021, 3914 (Tim Pallas).

Fourthly, the Bill amends the *Land Tax Act 2005* (Vic) in order to remove an exemption on land tax for private gender-exclusive and gender-restrictive clubs. Exemptions can be granted to 'gender-specific clubs that demonstrate a community benefit'.⁴⁸³ Examples of eligible clubs include men's sheds, as they are gender-specific initiatives which provide a community benefit of supporting men's mental health.⁴⁸⁴ The Bill also amends the *Land Tax Act 2005* (Vic) to restrict the land tax exemption for land owned by charitable institutions: 'land that is both used and occupied by charities exclusively for charitable purposes'.⁴⁸⁵

Fifthly, the Bill amends the *Taxation Administration Act 1997* (Vic) to 'provide for taxation offsets in relation to emergency tax relief measures'.⁴⁸⁶

Finally, the Bill amends the *Water Industry Act 1994* (Vic), the *Essential Services Commissioner Act 2001* (Vic), and the *Water Act 1989* (Vic), to allow price regulation of water services by the Essential Services Commission under the Victorian Regulatory Pricing Framework.⁴⁸⁷

The Bill was debated in the Legislative Assembly on 28 October 2021.

The Bill was not supported by the Coalition. Tim Smith told the Assembly that it was 'not the time' to be introducing a new tax as the economy recovers from COVID-19 lockdowns.⁴⁸⁸ Smith argued that the tax would delay, or even render unviable, certain large-scale projects. He cited modelling by the Urban Development Institute of Australia which described seven case studies in which projects would become unviable as a result of the new tax, arguing that the loss of these projects would reduce housing supply by close to 7,000 dwellings.⁴⁸⁹

Smith also passed a motion to delay the Bill until 'proper consultation' with developers and prospective homeowners had occurred.⁴⁹⁰

Other Coalition MPs raised concerns relating to the lack of hypothecation in the Bill. Revenue from the windfall tax would enter consolidated revenue, rather than being directed towards communities from which it is raised. Louise Staley argued that this would create a situation in which revenue from regional communities supported infrastructure projects in Melbourne with little benefit to these communities.⁴⁹¹

Coalition MPs also expressed their discontent with the removal of land tax exemptions for private gender-specific clubs. Staley noted that the policy would disproportionately impact women's only clubs as they had smaller asset bases. She also argued that the measure violated principles of 'freedom of association'.⁴⁹²

Build-to-rent amendments and keno taxation amendments were supported by the Coalition.⁴⁹³

Labor responded to Smith's criticisms relating to consultation by telling the Assembly that the Government had met with stakeholders and experts including the Victorian Farmer's Federation, Master Builders Australia, and Prosper Australia.⁴⁹⁴ Labor's Nick Staikos also re-asserted the fact that the reforms would not impact single family homes and holiday homes, instead focusing on larger developments.⁴⁹⁵

The Bill was reviewed by the Scrutiny of Acts and Regulations Committee (SARC). SARC signalled their intention to seek clarification as to whether a removal of land tax exemptions for single-sex clubs contravened the right to freedom of association for those clubs.⁴⁹⁶ The Bill's statement of compatibility with human rights does not address this issue.⁴⁹⁷

⁴⁸³ Ibid.

⁴⁸⁴ Victoria, *Parliamentary Debates*, Legislative Council, 18 November 2021, 4581 (Sonja Terpstra)

⁴⁸⁵ Victoria, *Parliamentary Debates*, Legislative Assembly, 13 October 2021, 3914 (Tim Pallas).

⁴⁸⁶ Ibid.

⁴⁸⁷ Ibid 3915.

⁴⁸⁸ Victoria, *Parliamentary Debates*, Legislative Assembly, 28 October 2021, 4429 (Tim Smith).

⁴⁸⁹ Ibid 4431.

⁴⁹⁰ Ibid 4428.

⁴⁹¹ Ibid 4435 (Louise Staley).

⁴⁹² Ibid.

⁴⁹³ Victoria, *Parliamentary Debates*, Legislative Council, 18 November 2021, 4560 (David Davis).

⁴⁹⁴ Victoria, *Parliamentary Debates*, Legislative Assembly, 13 October 2021, 3913 (Tim Pallas).

⁴⁹⁵ Victoria, *Parliamentary Debates*, Legislative Council, 18 November 2021, 4561 (David Davis).

⁴⁹⁶ Scrutiny of Acts and Regulations Committee, Parliament of Victoria, *Alert Digest* (Digest No 14 of 2021, October 2021) 36.

⁴⁹⁷ Victoria, *Parliamentary Debates*, Legislative Assembly, 13 October 2021, 3913 (Tim Pallas).

The Bill was debated in the Legislative Council on 18 November 2021.

Shadow Treasurer David Davis, criticised the presentation of the different tax measures in an Omnibus Bill, arguing that the Coalition had been forced to vote for 'good taxes' alongside taxes they disagreed with.⁴⁹⁸

Support amongst the crossbench for the Bill was mixed. Reason Party leader, Fiona Pattern, told the Council she believed the Bill would discourage speculation and rent-seeking behaviour, while praising the build-to-rent tax concessions as a measure which would help create communities for people unable to save for a house deposit.⁴⁹⁹ In contrast, the Liberal Democrats' Tim Quilty opposed all measures in the Bill, stating that '[t]he Liberal Democrats will never vote for an increase in taxes'.⁵⁰⁰

The Greens supported the windfall gains tax provisions, with Samantha Ratanam rebutting the Coalition's assertions that measures would limit housing development. However, the Greens did not support the build-to-rent concessions, arguing that the program could create 'megalandlords', as has been seen in countries such as the US, where single landlords hold hundreds of thousands of properties. Ratanam also noted that existing build-to-rent developments had focused on luxury developments, doing little to help housing affordability.⁵⁰¹

A number of amendments were moved in the Legislative Council.

Coalition amendments included:

- applying the proceeds of the Windfall Gain tax to the district from which they originated;⁵⁰² and
- hypothecating proceeds from the Keno tax towards mental health support⁵⁰³.

All Coalition amendments were rejected.

The Greens moved amendments:

- requiring rental prices for build-to-rent developments to be set at a rate affordable to low and middle-income earners;⁵⁰⁴ and
- requiring at least 90% occupancy of a build-to-rent building before tax concessions are applicable.⁵⁰⁵

Both amendments were rejected.

The Bill passed the Legislative Council on 18 November 2021. It was received Assent on 30 November 2021.⁵⁰⁶

Policy Process

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

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

No. The combination of numerous measures within the Bill meant that while the factual basis for some measures was established, little detail was provided for others.

For example, the case for build-to-rent tax concessions is set out in the government's *Build-To-Rent Working Group Report* which recommends a land tax concession in order to encourage developers to invest in properties with minimum

⁴⁹⁸ Victoria, *Parliamentary Debates*, Legislative Council, 18 November 2021, 4561 (David Davis).

⁴⁹⁹ Ibid 4581 (Fiona Pattern)

⁵⁰⁰ Ibid 4604 (Tim Quilty).

⁵⁰¹ Ibid 4592 (Samantha Ratanam).

⁵⁰² Ibid 4621 (David Davis).

⁵⁰³ Ibid 4622.

⁵⁰⁴ Ibid 4623.

⁵⁰⁵ Ibid.

⁵⁰⁶ Windfall Gains Tax and State Taxation and Other Acts Further Amendment Bill 2021 (Vic).

rental periods. This Report was made in conjunction with many finance, construction, development and planning organisations.⁵⁰⁷

However, the fact base and stakeholder input for the Keno tax is less clear, with little information relating to the development of the policy available.

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

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

Yes. The Minister's second reading speech states that it 'makes amendments to taxation and other laws to maintain the integrity and sustainability of the State's taxation and water regulatory systems'.⁵⁰⁸

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

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

No. No alternative approaches to most policies are identified in detail, except for the build-to-rent provisions, which consider parameters for the definition of a 'build-to-rent development'.⁵⁰⁹

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

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

No. There is little detail relating to alternative methods of implementing most other policies, except for the windfall gains tax (including re-evaluation of the tax's commencement date⁵¹⁰ and build-to-rent tax concessions.⁵¹¹

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

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

No. No cost benefit analysis is publicly available for any options.

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

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

No. Costings of policies are set out in the *Victorian Budget 2021-2022*.⁵¹² However, little additional information relating to oversight and monitoring of the taxation changes are available. No reviews of the new measures are mandated by the legislation.

⁵⁰⁷ Department of Treasury and Finance, Parliament of Victoria, *Build To Rent Working Group: Report to the Treasurer and Minister for Planning* (Report, 15 October 2021).

⁵⁰⁸ Victoria, *Parliamentary Debates*, Legislative Assembly, 13 October 2021, 3912 (Tim Pallas).

⁵⁰⁹ Department of Treasury and Finance, Parliament of Victoria, *Build To Rent Working Group: Report to the Treasurer and Minister for Planning* (Report, 15 October 2021) 38.

⁵¹⁰ Victoria, *Parliamentary Debates*, Legislative Council, 18 November 2021, 4585 (Fiona Pattern).

⁵¹¹ Department of Treasury and Finance, Parliament of Victoria, *Build To Rent Working Group: Report to the Treasurer and Minister for Planning* (Report, 15 October 2021).

⁵¹² Victorian Government, *Victorian Budget 2021/2022: Creating Caring for Victorians* (Budget Paper No 5, May 2021).

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

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

Yes. The new windfall gains tax was announced as part of the Victorian Budget 2021 /22. Changes were made to the policy between its announcement and the Bill’s introduction to Parliament after consultation with a variety of stakeholder groups⁵¹³

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

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

No.

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

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

Yes. Debate occurred in Parliament over multiple days and multiple amendments were proposed.⁵¹⁴

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

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

Yes. In November 2021, the State Revenue Office Released a webpage titled ‘Changes to State Taxes November 2021’ informing the public that the legislation had received Assent. It briefly details the taxation changes, with links to additional fact sheets relating to certain individual taxes.⁵¹⁵

Final scores

	Criterion	Yes/No
1	Establish Need (demonstrable, evidence-based need)	No
2	Set Objectives (public interest parameters)	Yes
3	Identify Options (consideration of alternatives)	No
4	Consider Mechanisms (implementation choices)	No
5	Brainstorm Alternatives (cost-benefit analysis)	No
6	Design Pathway (policy design framework)	No
7	Consult Further (further consultation after policy announcement)	Yes

⁵¹³ Victoria, *Parliamentary Debates*, Legislative Assembly, 28 October 2021, 4435 (Nick Staikos).

⁵¹⁴ Windfall Gains Tax and State Taxation and Other Acts Further Amendment Bill 2021 (Vic).

⁵¹⁵ ‘Changes to State Taxes November 2021’, State Revenue Office Victoria (Web Page 2021).

8	Publish Proposals (produce Green then White paper, or equivalents)	No
9	Introduce Legislation (comprehensive parliamentary debate)	Yes
10	Communicate Decision (information not propaganda)	Yes
	Final Score	4/10

Queensland

Voluntary Assisted Dying Act 2021

Policy Background

The *Voluntary Assisted Dying Act 2021* (Qld) was passed by the Parliament of Queensland on 16 September 2021, establishing a legal framework for voluntary assisted dying in the state. This legislation will allow eligible individuals who are ‘suffering and dying’ the option of requesting medical assistance to choose the timing and circumstances of their death.⁵¹⁶ Queensland was the 5th jurisdiction in Australia to pass legislation related to voluntary assisted dying, with Victoria, Western Australia, Tasmania, and South Australia having passed similar legislation in previous years.⁵¹⁷

The Voluntary Assisted Dying Bill 2021 (Qld) was a highly contentious piece of legislation, with members of Parliament participating in a conscience vote, due to the serious implications, and highly personal subject nature of the legislation. To address the complex interaction of ethical, legal, religious, medical, and duty of care considerations in drafting the legislation, the Queensland Government dedicated 3 years to research and preparation, before introducing the Bill into Parliament. This included 2 parliamentary committee inquiries and a year-long inquiry by the Queensland Law Reform Commission (QLRC).

From 2018 to 2020, the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (Committee) undertook policy development work. The former Health and Ambulance Services Committee also considered voluntary assisted dying as part of its wide-ranging inquiry into aged care, end-of-life care, palliative care, and voluntary assisted dying.

After the Committee tabled its report, the Queensland Government asked the Attorney-General to refer the preparation of a legislative scheme for voluntary assisted dying to the QLRC, to make sure that the legal basis for the scheme was robust. In October 2021, a wide-ranging public consultation paper was released. Public submissions, in combination with the previous work undertaken by the parliamentary committees, led to the QLRC report, *A Legal Framework for Voluntary Assisted Dying*, tabled on 10 May 2021.⁵¹⁸ A draft Bill was also prepared for the Queensland Parliament to consider.

In total, between both parliamentary committees and the QLRC inquiry, there have been over 10,000 written submissions, a total of 39 public and private hearings, and briefings considering testimony, views and stories from hundreds of experts. There was consultation with the public, clinical experts, legal experts, health and care providers, religious groups, unions, and other relevant organisations.

Following the conclusion of the inquiry and consultation process, on 25 May 2021, Premier Anastacia Palaszczuk introduced the Voluntary Assisted Dying Bill 2021 (Qld) to Parliament, first debated on 14 September 2021.

Many MPs had their own personal experiences which shaped their views on this topic, ranging from the work they had done and people they had encountered in previous occupations, to family members going through life debilitating illnesses. In addition to this, many MPs conducted their own engagement with constituents prior to the voting of the Bill. Some MPs sent our surveys asking their constituents for their thoughts on the issue. Noosa MP Sandy Bolton stated, ‘[o]ver the last four years, the annual Noosa electorate survey showed over 90% of respondent were in support [of voluntary assisted dying].’⁵¹⁹

One of the main opposing arguments to the Bill was that the quality of palliative care in Queensland is extremely poor and needs improvement. If improved, it was argued that it would remove the need for voluntary assisted dying. Leader of the Opposition David Crisafulli, noted that specialist palliative care is only available to those with a prognosis of 3 months, but patients have access to voluntary assisted dying at 12 months. He stated, ‘[d]oes it mean a decision made by a human being to end their life because they cannot afford specialist palliative care and they are 9 months away from the public system being able to offer it, is voluntary?’⁵²⁰

⁵¹⁶ Explanatory Notes, *Voluntary Assisted Dying Bill 2021* (Qld) 1.

⁵¹⁷ Ibid.

⁵¹⁸ Ibid 1.

⁵¹⁹ Queensland, *Parliamentary Debates*, Legislative Assembly, 15 September 2021, 2707.

⁵²⁰ Ibid 2557.

While the Premier noted her government's commitment of an additional \$171 million in funding to palliative care, Crisafulli quoted the Australian Medical Association Queensland's submission which identified a considerable shortfall in funding for palliative care amounting to an annual requirement of \$275 million.⁵²¹ In addition to this, Gympie MP Tony Perrett made the point that the \$171 million funding to palliative care is spread over the course of 6 years.⁵²²

There was also significant pushback from religious individuals and organisations who argued for better safeguards to be put in place to protect their right to refuse to participate in, or administer, voluntary assisted dying. Most of this criticism is in response to sub-div 3 of the proposed legislation, which states that in 'rare circumstances where a resident of a faith-based facility wants to access voluntary assisted dying but is too frail to be moved to another place, external doctors or specialist would ultimately be allowed to access the facility to provide VAD'.⁵²³ However, there is still no mandatory requirement for a doctor or organisation who objects, to actively participate.

Despite these concerns Lindy Willmott, an expert on end-of-life law and professor at the Queensland University of Technology, stated that the proposed Bill was a measured and safe Bill which 'gives choice to terminally ill patients while still operating safely, including protecting the vulnerable in the community'.⁵²⁴

After 2 days of debate, the legislation was voted on and passed with 61 voting for and 30 voting against.⁵²⁵ It will take effect in January of 2023 to allow time for those administering voluntary assisted dying to be trained, guidelines to be created, and a review board to be set up.⁵²⁶

Policy Process

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

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

Yes. The Parliament Health and Environment Committee's August 2021 highlights the different needs for the Bill after a thorough inquiry with stakeholder input.⁵²⁷

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

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

Yes. The objective of the Bill was to establish a legal framework for voluntary assisted dying in Queensland, allowing people who are suffering from terminal illnesses to choose the timing and circumstances of their death.⁵²⁸

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

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

⁵²¹ *Ibid* 2557.

⁵²² *Ibid* 2720.

⁵²³ Ben Smee, 'Queensland Warned Not to Tear Apart Assisted Dying Bill With Amendments that Create Unworkable Barriers', *The Guardian* (Online, 6 September 2021) < <https://www.theguardian.com/society/2021/sep/06/queensland-warned-not-to-tear-apart-assisted-dying-bill-with-amendments-that-create-unworkable-barriers>>.

⁵²⁴ *Ibid*.

⁵²⁵ Queensland, *Parliamentary Debates*, Legislative Assembly, 16 September 2021, 2849.

⁵²⁶ Ben Smee, 'Queensland Warned Not to Tear Apart Assisted Dying Bill With Amendments that Create Unworkable Barriers', *The Guardian* (Online, 6 September 2021)

⁵²⁷ Parliament Health and Environment Committee, Parliament of Queensland, *Voluntary Assisted Dying Bill 2021* (Report No 10, 57th Parliament, August 2021)

⁵²⁸ *Explanatory Notes, Voluntary Assisted Dying Bill 2021* (Qld) 1.

Yes. The explanatory notes has a small paragraph outlining that there are no alternative ways of achieving the policy objectives. The only alternative method discussed was improving access to palliative care.⁵²⁹

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

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

No. There was no public disclosure of any alternative ways considered for implementing the chosen policy.

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

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

No. There was no published analysis of the costs of the alternative options/mechanisms considered in 3 and 4.

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

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

No. Although there is a lot of evidence of the project management plan for developing the Bill, there was nothing about policy rollout.

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

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

Yes. There was an extensive public consultation process over more than three years, including through policy development process by the Committee and the Health and Ambulance Services Committee inquiry into aged care, end-of-life care, palliative care, and voluntary assisted dying.

The development of the legislative scheme by the QLRC included the October 2021 public consultation paper, which resulted in the QLRC report, *A Legal Framework for Voluntary Assisted Dying*, tabled on 10 May 2021.⁵³⁰ A draft Bill was also prepared for the Queensland Parliament to consider.

In total, between both parliamentary committees and the QLRC inquiry, there were over 10,000 written submissions, 39 public and private hearings, and briefings considering testimony, views and stories from hundreds of experts. There was consultation with the public, clinical experts, legal experts, health and care providers, religious groups, unions, and other relevant organisations.

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

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

⁵²⁹ Ibid 37-8.

⁵³⁰ Ibid 1.

Yes.

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

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

Yes. The Bill was introduced into the Queensland Parliament on the 25 May 2021, and it was debated on 14-5 September 2021.

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

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

Yes. The Queensland Health Department's website has a page dedicated to all the information on voluntary assisted dying in Queensland.

Final Scores

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

Youth Justice and Other Legislation Amendment Act 2021

Policy Background

On 25 February 2021, the Youth Justice and Other Legislation Amendment Bill 2021 (Qld) was introduced into the Queensland Parliament by Minister for Police and Corrective Services Mark Ryan. It passed on 22 April 2022 and the *Youth Justice and Other Legislation Amendment Act 2021 (Qld)* received Assent on 30 April 2021. The purpose of the Act is to 'remain committed to community safety, reduce youth offending and reduce crime victimisation'.⁵³¹

It amends the:

- *Youth Justice Act 1992 (Qld)*,
- *Penalties and Sentences Act 1992 (Qld)*,
- *Police Powers and Responsibilities Act 2000 (Qld)*, and
- *Bail Act 1980 (Qld)*.

When introducing the Bill, Ryan stated that '[t]he government has moved swiftly and decisively in response to the continued risk posed to our community by a cohort of serious and persistent youth offenders'.⁵³² It has been found that 10% of all youth offenders account for 48% of all youth offending, showing that reoffending is quite common.⁵³³

On 11 December 2018 the Queensland Government released the *Working Together Changing the Story: Youth Justice Strategy 2019-2023*. It adopts the 'Four Pillars': intervene early, keep children out of court, keep children out of custody and reduce reoffending, as its policy position.⁵³⁴

In March 2020, the Government announced its *Five Point Action Plan (FPAP)* to work alongside the Youth Justice Strategy, targeting a specific cohort of recidivist youth offenders who 'present a significant risk not only to themselves but also to the communities in which they live'.⁵³⁵ Based on the findings in the FPAP and inquiry by the Legal Affairs and Safety Committee, the Bill amends the *Youth Justice Act 1999 (Qld)* to 'respond to the characteristics of the offending behaviours of serious recidivist youth offenders'.⁵³⁶ The amendments create a presumption against bail for certain offences and a 12-month trial for GPS ankle bracelets for 16 and 17-year-olds as a bail condition in five locations across the state.⁵³⁷

The Bill was extremely controversial and received wide-reaching scrutiny. Many human rights organisations and legal advocates have stated that this Act is a 'knee-jerk response by the Queensland Government to recent, tragic events in Queensland'.⁵³⁸ There was also concern from many Aboriginal and Torres Strait Islander community advocates. Meena Singh the Legal Director at Human Rights Law Centre said: '[t]hese laws are cruel and will punish children who need support and services the most. They will result in racist outcomes and will hit Aboriginal and Torres Strait Islander kids the hardest'.⁵³⁹ She also stated that the Palaszczuk Government was going back on a previous commitment to move kids out of police watch houses by enacting these laws.

Despite all this backlash, the Bill received bipartisan support from members of the Queensland Parliament. However, Liberal party MPs proposed amendments to the Bill, stating it didn't go far enough. Laura Gerber stated 'I will not be opposing this Bill. However, it is my sincere belief that the measures in this bill fall well short of what is required to keep the community safe from these repeat offenders'.⁵⁴⁰ There was also criticism of the Queensland Labor government for their inaction which some claimed contributed to the dangers that the community have faced. Liberal members also

⁵³¹ Explanatory Notes, Youth Justice and Other Legislation Amendment Bill 2021 (Qld) 1.

⁵³² Queensland, *Parliamentary Debates*, Legislative Assembly, 25 February 2021, 238.

⁵³³ *Ibid.*

⁵³⁴ Explanatory Notes, Youth Justice and Other Legislation Amendment Bill 2021 (Qld) 1.

⁵³⁵ *Ibid.*

⁵³⁶ *Ibid.*

⁵³⁷ Rachel Riga and Kate McKenna, 'Youth Workers Warn Queensland's Tough New Laws on Teen Crime Could Backfire', ABC News (Online, 23 March 2021) <https://www.abc.net.au/news/2021-03-23/qld-youth-justice-hearing-state-parliament/100021814>.

⁵³⁸ Human Rights Law Centre, Submission No 44 to Legal Affairs and Safety Committee, Parliament of Queensland, *Youth Justice and Other Legislation Amendment Bill 2021* (17 March 2021) 4.

⁵³⁹ Human Rights Law Centre 'New Laws Will Only Serve to Trap and Harm Children in Queensland Prisons' (Media Release, 24 April 2021).

⁵⁴⁰ Queensland, *Parliamentary Debates*, Legislative Assembly, 25 February 2021, 1043.

argued that the bail offence should be brought back. Gerber stated '[s]o many stakeholders submitted to our committee that breach of bail must be included in this bill, yet their concerns and submissions have been brushed aside by this government'.⁵⁴¹

Policy Process

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

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

Yes. The amendments were the result of an inquiry by the Legal Affairs and Safety Committee (LASC) with 83 submissions from stakeholders and subscribers being received. The LASC also received a public briefing about the Bill from the Queensland Police Service and Department of Children, Youth Justice and Multicultural Affairs.⁵⁴²

However, it should be noted that much of the stakeholder input through submissions was opposed Bill with recommendations for the Bill to be rejected. This calls into question the extent to which the Bill is informed by stakeholder advice.

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

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

Yes. The Bill's explanatory notes state that the Bill will 'respond to the characteristics of the offending behaviours of serious recidivist youth offenders and strengthen the youth justice bail framework' in order to limit behaviours which 'place both the community and youth offenders at risk of serious harm or death'.⁵⁴³

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

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

Yes. The Bill's statement of compatibility outlines the alternatives that were considered before the preferred option was adopted. These included confining the availability of electronic tracking to those charged with more serious offences, clarifying that electronic tracking is an 'alternative to remand', and providing additional supports to children on bail.⁵⁴⁴

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

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

No.

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

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

⁵⁴¹ Ibid 1044.

⁵⁴² 'QLD Assents Youth Justice and Other Legislation Amendment Act 2021' TimeBase Legislation News (Web Page, 30 April 2021) <<https://www.timebase.com.au/news/2020/AT05210-article.html>>.

⁵⁴³ Explanatory Notes, Youth Justice and Other Legislation Amendment Bill 2021 (Qld) 1.

⁵⁴⁴ Statement of Compatibility, Youth Justice and Other Legislation Amendment Bill 2021 (Qld) 8.

No.

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

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

Yes. The Bill's explanatory notes outline the Bill's objectives, responsible bodies, such as Queensland Police, a review process for the trial of hand-held electronic monitors, and a sunset clause⁵⁴⁵.

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

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

Yes. There was consultation with stakeholders between the Bill's introduction and debate, as well as selective consultation prior to the Bill being introduced into Parliament. This selective consultation occurred during the development of the *Working Together Changing the Story: Youth Justice Strategy 2019-2023 Report*.⁵⁴⁶

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

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

No.

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

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

Yes. It was introduced into Parliament in February and debated in April.

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

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

Yes. The Queensland Government's Cabinet and Ministerial Directory website has two media releases regarding the Youth Justice reforms and the GPS devices being used to tackle juvenile crime.⁵⁴⁷

⁵⁴⁵ Explanatory Notes, Youth Justice and Other Legislation Amendment Bill 2021 (Qld) 1.3.

⁵⁴⁶ Queensland Government, *Working Together Changing the Story: Youth Justice Strategy 2019-2023*, (Report, Jul 2019) 3.

⁵⁴⁷ Mark Ryan, 'Palaszczuk Government's Strong New Youth Justice Reforms Passed by Queensland Parliament' (Media Release, 22 April 2021) < <https://statements.qld.gov.au/statements/91952> >; Mark Ryan, 'GPS Device to Tackle Juvenile Crime' (Media Release, 14 May 2021) < <https://statements.qld.gov.au/statements/92097> >.

Final Scores

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

Housing Legislation Amendment Act 2021

Policy Background

The Housing Legislation Amendment Bill 2021 (Qld) was introduced into the Queensland Parliament on 18 June 2021 by Leeanne Enoch, Minister for Communities and Housing.

The Bill amended the:

- *Residential Tenancies and Rooming Accommodation Act 2008* (Qld),
- *Retirement Villages Act 1999* (Qld),
- *Residential Tenancies and Rooming Accommodation Regulation 2009* (Qld), and
- *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020* (Qld),⁵⁴⁸

The Bill's purpose is to deliver rental law reforms aimed at improving the safety, security and certainty for the Queensland rental market and balance the rights of renters and rental property owners.⁵⁴⁹

The amendments and reforms were brought about by the 10-year framework: *Queensland Housing Strategy 2017-2027* which drives 'key reforms and targeted investment across the housing continuum'.⁵⁵⁰ This was followed by the *Queensland Housing Strategy 2017-2020 Action Plan*, a publication which committed to regulatory reforms and objectives such as modernisation, connections, and confidence.⁵⁵¹ This Bill was drafted to deliver these objectives.

Key objectives of the Bill include;

- removing the ability for landlords to end tenancies without grounds;⁵⁵²
- expanding reasons for lessors and renters to end tenancies;⁵⁵³
- introducing minimum housing standards and introducing compliance mechanisms to enforce these standards;⁵⁵⁴.
- strengthening residential law protections for individuals and families experiencing family violence and streamlining processes to manage tenancy arrangements in these situations;⁵⁵⁵ and
- establishing a framework for renters to come to an agreement with lessors about keeping pets on a property. Under this framework, lessor's discretion to deny requests for pets is limited, however renters must seek permission to keep a pet.⁵⁵⁶

In the Minister's second reading speech, Enoch stated that '[t]he bill delivers reform for priority renting issues identified through extensive consultation with Queenslanders in 2018 and 2019'.⁵⁵⁷

The Bill was referred to the Community Support and Services Committee (CSSC) who tabled its report on 16 August 2021. The CSSC Chair, Corrine McMillan stated that while a 'diverse' range of stakeholder views were presented during the committee enquiry, the CSSC believes that the Bill seeks to strike the appropriate balance between the rights of the tenant and the rights of the lessor.⁵⁵⁸ The CSSC recommended that the Bill be passed and put forward several additional recommendations relating to continual evaluation of the changes by the Department of Communities, Housing and Digital Economy.⁵⁵⁹

The Liberal party supported certain elements of the Bill, including amendments pertaining to protections for domestic violence survivors and did not oppose the Bill. However, MPs raised concerns relating to provisions which would require

⁵⁴⁸ Explanatory Notes, Housing Legislation Amendment Bill 2021 (Qld), 2.

⁵⁴⁹ *Rental law reform* | Department of Communities, Housing and Digital Economy. (2022, June 29).

<https://www.chde.qld.gov.au/about/initiatives/rental-law-reform>

⁵⁵⁰ Explanatory Notes, Housing Legislation Amendment Bill 2021 (Qld), 1.

⁵⁵¹ Ibid.

⁵⁵² Ibid 2.

⁵⁵³ Ibid.

⁵⁵⁴ Ibid.

⁵⁵⁵ Ibid.

⁵⁵⁶ Ibid 4.

⁵⁵⁷ Queensland, *Parliamentary Debates*, Legislative Assembly, 18 June 2021, 2119.

⁵⁵⁸ Housing Legislation Amendment Bill 2021 (Qld), v. ,

⁵⁵⁹ Ibid vi.

landlords to ‘justify’ reasons for denying tenants the ability to keep a pet on the property. These provisions were described as a contravention of property rights, as were provisions which allowed prohibited landlords to terminate leases without grounds.⁵⁶⁰

Greens MLC Amy McMahon raised concerns that members of Parliament who were landlords should not be determining Bills influencing the rights of renters, arguing that this presented a conflict of interest. An amendment moved by McMahon requiring all landlords present in Parliament to excuse themselves from the debate was negated.⁵⁶¹

Government amendments circulated Enoch, included clarification on the rights of tenants in occasions where rental agreements must end due to family violence situations, along with other smaller modifications.⁵⁶²

There will be a second stage of rental law reform in the future.⁵⁶³

Policy Process

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

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

Yes. The Bill’s second reading speech explained that the Bill ‘delivers reform for priority renting issues identified through extensive consultation with Queenslanders in 2018 and 2019. It is informed by consultation with key stakeholders and the learnings garnered from the implementation of key elements of the Queensland government’s COVID-19 response for residential tenancies’.⁵⁶⁴

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

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

Yes. The explanatory notes set out the objectives of the reforms in terms of protecting consumers in the rental market. ‘The Housing Strategy aims to ensure confidence in housing markets, ensure consumers are protected and the housing legislative framework is reformed and modernised so that people living in and investing in the rental market will have better protections and certainty in their tenancy arrangements’.⁵⁶⁵

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

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

Yes. The explanatory notes sets out alternative ways of achieving policy objectives. An analysis of these options can be found in the Stage 1 Rental Law Reform Decision Regulatory Impact Statement. It was found that these policy options would be unlikely to achieve the government’s objectives. ‘A range of policy options were considered to achieve the policy objectives in regulatory impact analysis undertaken of the reforms in accordance with the Queensland Government *Guide to Better Regulation*’.⁵⁶⁶

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

⁵⁶⁰ Queensland, *Parliamentary Debates*, Legislative Assembly, 18 June 2021, 2298.

⁵⁶¹ Ibid 3007.

⁵⁶² Queensland, *Parliamentary Debates*, Legislative Assembly, 19 June 2021.

⁵⁶³ Queensland, *Parliamentary Debates*, Legislative Assembly, 18 June 2021, 2294.

⁵⁶⁴ Ibid 2119.

⁵⁶⁵ Explanatory Notes, Housing Legislation Amendment Bill 2021 (Qld), 1.

⁵⁶⁶ Ibid 12.

No.

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

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

Yes. The *Decision Regulatory Impact Statement* provides comprehensive cost-benefit analysis of the recommended reforms against the status-quo.⁵⁶⁷

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

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

Yes. The *Decision Regulatory Impact Statement* provides a detailed account of the policy's objectives, evaluation procedures, responsibility for compliance and reporting, performance measures and a review process within 18 months of the reforms being implemented.⁵⁶⁸

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

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

Yes. Regarding the amendments to the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld), the Queensland Government implemented an *Open Doors to Renting Reform Consultation Program* to hear about individuals' rental experiences and ideas to improve renting in Queensland. There were more than 135,000 responses received.⁵⁶⁹ Additionally, 15,200 survey responses and 600 written submissions were received from tenants, lessors, and property managers, on reform options that were outlined in the government's *Consultation Regulatory Impact Statement*.⁵⁷⁰

A review panel consulted with Queensland Resident-Operated Retirement Village Support Service, the Queensland Retirement Village, and Park Advice Service, as well as industry and consumer peak bodies during its two-year review of the *Retirement Villages Act 1999* (Qld). The Panel also received submissions from 34 residents, spoke with 22 residents, received 30 survey forms from residents and consulted with 60 residents at a forum in a village.⁵⁷¹

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

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

⁵⁶⁷ Queensland Government, *A better Renting Future — Safety, Security and Certainty: Review of The Residential Tenancies and Rooming Accommodation Act 2008 Stage 1 Reforms* (Decision Regulatory Impact Statement, June 2021).

⁵⁶⁸ Explanatory Notes, Housing Legislation Amendment Bill 2021 (Qld), 1.

⁵⁶⁹ Ibid 17

⁵⁷⁰ Ibid 18

⁵⁷¹ Ibid 19

Yes. The *Decision Regulatory Impact Statement* may act as a White Paper as it provides a comprehensive breakdown of the policy decision. Moreover, the *CSSC Report* acted as a Green paper as it allowed for further stakeholder consultation after the Bill was introduced to Parliament.⁵⁷²

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

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

Yes. The Bill was introduced into Parliament on 18 June 2021 and was first debated 13 October 2021.

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

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

Yes. The Department of Communications, Housing and Digital Economy sets out on a website page the rental law reforms in simple, clear, and factual terms.⁵⁷³

Final Scores

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

⁵⁷² Housing Legislation Amendment Bill 2021 (Qld).

⁵⁷³ 'Rental Law Reform' Department of Communities, Housing and Digital Economy (Web Page, 29 June 2022). <<https://www.chde.qld.gov.au/about/initiatives/rental-law-reform>>.

Defamation (Model Provisions) and Other Legislation Amendment Act 2021

Policy Background

In November of 2004, the Attorneys-General of the States and Territories agreed to support the enactment of uniform model provisions for defamation law: *Model Defamation Provisions*.⁵⁷⁴ In Queensland, these provisions were enacted in the *Defamation Act 2005* (Qld). Through the Model Defamation Provisions Intergovernmental Agreement, the Model Defamation Law Working Party (DWP) was established to report on, and propose amendments to, model defamation provisions.⁵⁷⁵ From 2019-2020, DWP held a review into the provisions and recommended that certain amendments prepared by the Australasian Parliamentary Counsel's Committee be made to the provisions.

On the 20 April 2021, the *Defamation (Model Provisions) and Other Legislation Amendment Act 2021 (Queensland)* was introduced into Parliament by Attorney-General and Minister for Justice, Shannon Fentiman. Fentiman said, 'the Bill closely mirrors the model defamation amendment provisions as agreed at a national level', and 'updating the national approach to defamation laws will provide greater clarity to the courts, the community and the media'.⁵⁷⁶

The proposed reforms included:

- a single publication rule (for multiple publications of the same defamation matter); requirement to issue concerns notice prior to going to court;
- a serious harm threshold to be established by a party taking action for defamation;
- two new defences (public interest defence and defence applying to peer-reviewed statements/assessments in a scientific or academic journal); and
- greater clarification around the cap on damages for non-economic loss.⁵⁷⁷

In a media statement, the Palaszczuk Government announced its intention for proposed legislation to 'protect freedom of expression, modern media reporting and protection of individuals from reputational harm'.⁵⁷⁸ Fentiman stated that 'this is a significant step to protect freedom of expression for Queenslanders and ensure open and transparent reporting in our state'.⁵⁷⁹

There was also extensive consultation and input from many stakeholders. Fentiman noted that an extensive review process was undertaken by the DWP which held two rounds of public consultation, four stakeholder round tables, and the engagement of an expert panel comprised of judges, academics, defamation practitioners and the NSW Solicitor-General was utilised.⁵⁸⁰ The Queensland Law Society made a submission stating that they 'broadly supports the objectives of the amendments, particularly to achieve consistency across the Australian jurisdictions'.⁵⁸¹ Fentiman also noted that differing views were expressed by stakeholders and these were all considered by the DWP during the process of review.

On 15 June 2021, during the second reading debate in the Legislative Assembly, Liberal party leader David Janetzki criticised the lag in Queensland's assent to these reforms, saying 'despite New South Wales, Victoria and South Australia all having passed their legislation last year, Queensland has lagged'.⁵⁸² Despite this criticism, the opposition and majority of the house welcomed the reforms and laws seeking to improve how defamation law operates.

Included in the Bill is also the *Heavy Vehicle National Law and Other Legislation Amendment Act 2019* (Qld), which made a range of amendments to the *Heavy Vehicle National Law Act 2012* (Qld). These amendments seek to 'improve roadside enforcement, reduce the compliance burden for industry and reduce the administrative burden for the National Heavy Vehicle Regulator'.⁵⁸³

⁵⁷⁴ Explanatory Notes, *Defamation (Model Provisions) and Other Legislation Amendment Bill 2021* (Qld).

⁵⁷⁵ Ibid.

⁵⁷⁶ Queensland, *Parliamentary Debates*, Legislative Assembly, 20 April 2021.

⁵⁷⁷ Ian Blomendal, et al, 'Queensland Passes Major Amendments to Defamation Laws' *Clayton UTZ* (Online, 24 June 2021).

⁵⁷⁸ Shannon Fentiman, 'Significant Updates to Queensland's Defamation Laws' (Media Release, 20 April 2021)

<<https://statements.qld.gov.au/statements/91919>>.

⁵⁷⁹ Ibid.

⁵⁸⁰ Queensland, *Parliamentary Debates*, Legislative Assembly, 20 April 2021

⁵⁸¹ Queensland Law Society, Submission No 5 to Legal Affairs and Safety Committee, Parliament of Queensland, *Defamation (Model Provisions) and Other Legislation Amendment Bill 2021* (12 May 2021).

⁵⁸² Queensland, *Parliamentary Debates*, Legislative Assembly, 15 June 2021, 1798.

⁵⁸³ Explanatory Notes, *Defamation (Model Provisions) and Other Legislation Amendment Bill 2021* (Qld)1.

The Bill was passed the Legislative Council on 16 June 2021 and received Assent on 24 June 2021.

Policy Process

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

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

Yes. The explanatory notes set out the policy objectives of the Bill and the reasons for amendments to the relevant Acts.⁵⁸⁴

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

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

Yes. The explanatory notes outlined an extensive list of the objectives of the Bill. One was couched in terms of the public interest, to 'provide for a defence for the publication of defamatory matter concerning an issue of public interest'.⁵⁸⁵

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

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

No. There was a statement in the explanatory notes that 'in relation to defamation, there are no alternative ways to achieve the policy objectives'.⁵⁸⁶ There is, however, a paragraph explaining that the HVNL can only be improved through legislative amendments.⁵⁸⁷

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

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

No. There was no disclosure of any alternative ways considered for implementing the chosen policy.

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

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

No. There was estimated costs for implementation of these amendments in the explanatory notes, but nothing on alternative process costs.⁵⁸⁸

Criterion 6 – Design Pathway: Develop a complete policy design framework including principles, goals, delivery mechanisms, program or project management structure, the implementation process and phases, performance measures,

⁵⁸⁴ Ibid.

⁵⁸⁵ Ibid.

⁵⁸⁶ Ibid 3.

⁵⁸⁷ Ibid 4.

⁵⁸⁸ Ibid.

ongoing evaluation mechanisms and reporting requirements, oversight and audit arrangements, and a review process ideally with a sunset clause.

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

No. There did not seem to be a design pathway laid out.

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

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

Yes. There was an extensive public consultation process over a two-year-period which was undertaken by the DWP. This included the public release of a discussion paper, background paper, and draft amendments for comment, four stakeholder round tables and the engagement of an expert panel comprised of judges, academics, defamation practitioners and the NSW Solicitor-General.⁵⁸⁹ In addition to this, the heads of jurisdiction and legal stakeholders in Queensland were consulted during the DWP's consultation process. The consultation process information was also uploaded onto the Department of Justice an Attorney-General's community consultation page.⁵⁹⁰

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

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

Yes. As above.

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

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

Yes.⁵⁹¹

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

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

No.

⁵⁸⁹ Ibid 5.

⁵⁹⁰ Ibid.

⁵⁹¹ Defamation (Model Provisions) and Other Legislation Amendment Bill 2021(Qld).

Final Scores

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