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EVIDENCE BASED POLICY RESEARCH PROJECT

20 CASE STUDIES

A report for the Evidence Based Policy Research Project facilitated by the newDemocracy Foundation.

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About the author

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Matthew's research interests include the power of economic and social freedom, the foundations of western civilisation, university intellectual freedom, and the dignity of work. Matthew has been published on a variety of topics across a range of media outlets, and provided extensive commentary on radio and television. He is also the author of *Democracy in a Divided Australia* (2018). Matthew holds a Bachelor of Arts (Degree with Honours), from the University of Melbourne, and an MSc in Public Policy and Administration from the London School of Economics. Before joining the IPA, he worked for state and federal parliamentarians and in digital communications, and founded a mobile application development start-up.

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Introduction[1]

Australia's governments, both state and federal, are failing to undertake best practice policymaking. This failure is undermining the quality of public policy and is having a detrimental impact on faith in public institutions. Public policy in Australia is often made on the run, built on shabby foundations, motivated by short term political gain, and consequently having mediocre outcomes. Policy-makers face the challenge of limited knowledge, and must remedy this by gathering evidence on the nature of the problem, alternatives to fix the problem and undertake public consultation on the impact of policies.[2] Good process does not guarantee good policy – but bad process has a much higher chance of producing lower quality, uninformed, and harmful policy outcomes.

The challenge of limited knowledge

The core difficulty of limited knowledge faced by policymakers is outlined in economist and Nobel prize winner Friedrich A. Hayek's *The Use of Knowledge in Society.*[3] Hayek argues, in the context of central economic planning, that 'knowledge of the circumstances of which we must make use never exists in concentrated or integrated form but solely as the dispersed bits of incomplete and frequently contradictory knowledge which all the separate individuals possess.' The core challenge, therefore, is the 'utilization of knowledge which is not given to anyone in its totality.'

A good policy making process attempts to address the knowledge problem by gathering a substantial quantity of evidence, consulting widely, and considering different options. This process, however, is inherently difficult. This is because, as political scientist Herbert Simon outlined, humans suffer from 'bounded rationality'. Policy-makers are humans who cannot weigh all costs and benefits of all policy options, and instead, due to limited time, cognitive ability, and knowledge, policymakers must selectively address a limited set of issues and policy options at any time.

It is essential that policy-makers are humble and self-aware of their limitations.[4] Acknowledging uncertainty, and the seeking out of more information is an absolute necessity in the context of limited knowledge. A good public policy process includes the establishment of the facts, identifying alternative policy options (including maintaining the status quo), weighing the pros and cons both quantitatively and qualitatively, and an open consultation with the public and stakeholders - all before the policy decision is finalised or legislation is developed. Subsequently, the decision would be communicated clearly with ample planning for implementation and review of the policy

1 This introduction is adopted from the Institute of Public Affairs' contribution to the 2018 Evidence Based Research Project.

2 For discussion of best practice evidence-based policymaking see https://ipa.org.au/wp-content/uploads/archive/1226382181_document_staley_vic_gov_innovation.pdf

3 F. A. Hayek, "The Use of Knowledge in Society," *The American Economic Review* 35, no. 4 (1945): 519–30.

4 For discussion of humility and policymaking, see Sheila Jasanoff, "Technologies of Humility: Citizen Participation in Governing Science," *Minerva* 41, no. 3 (September 1, 2003): 223–44, https://doi.org/10.1023/A:1025557512320.

A failure of process

There is substantial evidence that decisions are being made on an ad hoc basis, responding to immediate political concerns without the full analysis of alternatives, potential implications and consideration of implementation strategies and a policy design framework. As the Institute of Public Administration Australia's *Public Policy Drift* paper found, 'there is pressure for senior politicians in governments and oppositions to make decisions quickly and confidently in order to appear decisive, pander to populist ideas to appear responsive, manufacture wedge issues to distinguish themselves from their opponents, and to put a spin on everything to exaggerate its significance.'[5] Additionally, bureaucrats themselves are humans with preferences, which include both their own concept of what is the public good, and natural human interests in improving their salary, work conditions, and power[6]

The failure of process has wider institutional implications for Australia's system of government. Professor Gary Banks, former Dean of the Australia and New Zealand School of Government, has argued that policy development and administration is 'integral to how government is perceived by the public'.[7] While the public may, rationally, have limited interest in the specifics of policy process they do expect best practice policymaking. It is therefore likely that the failure to follow best practice is contributing to Australia's political discontent and loss of faith in democracy and key institutions.[8] The Lowy Institute's 2019 poll found that just 13 per cent of Australians are very satisfied with how democracy is working, while 30% are dissatisfied.[9]

Analysis

The Institute of Public Affairs has undertaken analysis of 20 public policies using the ten criteria of the Wiltshire test for good policy-making. This research project was commissioned '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' shown 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 http://www.ipaa.org.au/documents/2012/05/public-policy-drift.pdf/

6 For the classic theory on this issue, see Gordon Tullock, *The Politics of Bureaucracy* (Public Affairs Press, 1965); William A. Niskanen, "The Peculiar Economics of Bureaucracy," *The American Economic Review* 58, no. 2 (1968): 293–305.

7 http://www.ipaa.org.au/documents/2013/11/2013-garran-oration.pdf/

8 http://www.anu.edu.au/news/all-news/voter-interest-hits-record-low-in-2016-anu-election-study

9 https://lowyinstitutepoll.lowyinstitute.org/themes/democracy/#theme-description-democracy-democracy

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 and clear, simple, and inexpensive communication strategy based on information not propaganda, regarding the new policy initiative.

Furthermore, a series of questions have been designed to specifically evaluate these criteria in this analysis:

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

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. This analysis has found that both state and federal governments are failing to apply best practice in the development of public policy.

Just 7 of the 20 policies assessed were assessed to have met the Wiltshire Criteria. The other 13 policies failed the test.

The following policies were assessed to have followed more than five of the Wiltshire Criteria:

- FED: National Redress Scheme for Institutional Child Sexual Abuse Act 2018 (8/10)
- VIC: Environment Protection Amendment Bill 2019 (Single use plastic bag ban) (8/10)
- QLD: Termination of Pregnancy Act 2018 (legalisation of abortion) (8/10)
- FED: Social Security (Administration) Amendment (Income Management and Cashless Welfare) Act 2019 (7/10)
- VIC: Residential Tenancies Amendment Act 2018 (7/10)
- QLD: Human Rights Act 2019 (7/10)
- NSW: Electoral Funding Act 2018 (6/10)

These policies were typically based on a demonstrable evidence-based need, included wider consultation, were communicated and legislation was developed.

The following policies were found to have followed five or fewer of the Wiltshire Criteria:

- FED: Tax Relief So Working Australians Keep More Of Their Money Act 2019 (5/10)
- FED: Family and Domestic Violence Leave Act 2019 (5/10)
- FED: Schools funding formula, 'direct income' approach (5/10)
- VIC: Bail Amendment Act 2018 (5/10)
- NSW: Children and Young Persons (Care and Protection) Amendment Act 2018 (5/10)
- FED: Assistance and Access Act 2018 (Encryption law) (4/10)
- NSW: Modern Slavery Act (4/10)
- QLD: Non-consensual Sharing of Intimate Images Act 2019 ('revenge porn' laws) (4/10)
- FED: Promoting Sustainable Welfare Act 2018 (3/10)
- VIC: Fire Services Reform Act 2019 (3/10)
- NSW: Crimes (Domestic and Personal Violence) Amendment Act 2018 (3/10)
- QLD: Final environmental approval for Adani mine (3/10)
- FED: Sharing of Abhorrent Violent Material Act 2019 (2/10)

These policies typically lacked an evidence-based assessment of need, consideration of alternatives, cost-benefit analyses, a clear policy design framework, or a full consultation process.

Limitations

There are a number of limitations of this analysis. The EBP project required analysis of a large number of policies in a short period of time. This analysis is limited to publicly available documents and news reports. It is possible that there were further private consultations between the government and stakeholders, or additional analysis of policy alternatives, that are not accounted for in public documents, and therefore not reflected in the below analysis. In other words, just like policy development suffers from the knowledge problem, this analysis also struggles with the same limitation. Nevertheless, as a premise, good public policy process requires transparency and openness. If there was additional process behind closed doors this in itself could be considered a worrying sign. Best practice policymaking is transparent and should therefore be easy to assess, this project has demonstrated that there is a need for transparency.

Governments could improve the ability to undertake the analysis of the Evidence Based Policy Research Project, and provide the public with greater assurance about policy process, by including in explanatory memorandums specific sections explaining the background to the policy. The Commonwealth explanatory memorandums include some sections discussing whether a regulatory impact statement has been undertaken and the genesis of the policy process. In Queensland, there is an explicit "Consultation," "Alternative ways of achieving policy objectives" and "Estimated cost for government implementation" (though not cost-benefit) sections. These sections could be expanded at the Commonwealth and Queensland levels and introduced in New South Wales and Victoria to specifically address whether the Wilshire criteria has been met.

Findings

Policy	Establish need	Set objectives	Identify options	Consider mechanisms	Brainstorm alternatives	Design pathway	Consult further	Publish proposals	Introduce legislation	Communicate decision	Total
FED: Sharing of Abhorrent Violent Material Act 2019		Y								Y	2
FED: Assistance and Access Act 2018 (Encryption law)	Y	Y					Y		Y		4
FED: Tax Relief So Working Australians Keep More Of Their Money Act 2019	Y	Y				Y			Y	Y	5
FED: Social Security (Administration) Amendment (Income Management and Cashless Welfare) Act 2019	Y	Y	Y				Y	Y	Y	Y	7
FED: National Redress Scheme for Institutional Child Sexual Abuse Act 2018	Y	Y	Y	Y			Y	Y	Y	Y	8
FED: Family and Domestic Violence Leave Act 2019	Y	Y		Y					Y	Y	5
FED: Promoting Sustainable Welfare Act 2018		Y							Y	Y	3
FED: Schools funding formula, 'direct income' approach	Y	Y	Y					Y		Y	5
VIC: Environment Protection Amendment Bill 2019 (Single use plastic bag ban)	Y	Y	Y	Y	Y		Y		Y	Y	8
VIC: Fire Services Reform Act 2019		Y							Y	Y	3
VIC: Bail Amendment Act 2018	Y	Y					Y		Y	Y	5

VIC: Residential Tenancies Amendment Act 2018	Y	Y	Y	Y				Y	Y	Y	7
NSW: Modern Slavery Act	Y	Y	Y						Y		4
NSW: Crimes (Domestic and Personal Violence) Amendment Act 2018		Y							Y	Y	3
NSW: Children and Young Persons (Care and Protection) Amendment Act 2018	Y	Y	Y					Y		Y	5
NSW: Electoral Funding Act 2018	Y	Y	Y				Y	Y	Y	Y	6
QLD: Termination of Pregnancy Act 2018 (legalisation of abortion)	Y	Y	Y	Y	Y			Y	Y	Y	8
QLD: Non-consensual Sharing of Intimate Images Act 2019 ('revenge porn' laws)		Y					Y		Y	Y	4
QLD: Human Rights Act 2019		Y	Y			Y	Y	Y	Y	Y	7
QLD: Final environmental approval for Adani mine	Y	Y								Y	3

Federal

Sharing of Abhorrent Violent Material Act 2019

On 3 April, 2019, the Government introduced amendments to the Criminal Code Act 1995 to create new offences for online website hosts in relation to posts or streams of 'abhorrent violent material' – including terrorism, murder, attempted murder, torture, rape or kidnapping.[10] The law requires content services (i.e. social media sites, ISPs) and hosting services (i.e. web hosts) to report the material to the Australian Federal Police 'within a reasonable time' and expedite removal of the content from services. The law also enables the eSafety Commissioner to issue a notice to a hosting or content service that abhorrent violent material is on their service, which creates a presumption of reckless behavior for future prosecution. Individuals, including social media company executives, who fail to comply could be fined up to $2.1 million and face 3 years in jail; companies could face fines of up to $10.5 million or 10 per cent of annual turnover. The law was passed by the Senate immediately upon introduction at 9.13pm without debate. It was then introduced and passed by the House of Representatives the next day (4 April).[11] It received accent the day after (5 April). The law was not referred to parliamentary committee.

This legislation was in response to the live streaming of the Christchurch mosque shootings two weeks earlier.[12] In the media release announcing the new law, Prime Minister Scott Morrison declared that: "Big social media companies have a responsibility to take every possible action to ensure their technology products are not exploited by murderous terrorists. It should not just be a matter of just doing the right thing. It should be the law."[13] Attorney-General Christian Porter complained that the footage was available for too long on Facebook and that the Government expects the internet platforms to take responsibility to remove content that spreads "hate and terror".[14]

The law has been criticised by online rights groups, the technology industry, and free speech advocates, who raised issue about the ambiguities and potential unintended consequences.[15] The UN's special rapporteurs on counterterrorism and human rights and freedom of expression wrote to the Australian government warning that the law endangers free speech because it could excessively encourage social media companies to remove content to avoid liability.[16] Furthermore, concurs have been raised about the potential impact on journalists reporting on terrorist incidents, the requirements to share information with the government breaching US laws, the encouragement of proactive surveillance by social media companies undermining user privacy, and the impact on legitimate whistleblowing. The distinction between traditional media, such as television, and social media also raised the possibility that a video of TV coverage of a terrorist incident posted on social media would be unlawful.

There were also substantial concerns raised about the hurried process behind the legislation. Shadow

10 https://www.legislation.gov.au/Details/C2019A00038

11 https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s1201

12 https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/s1201_ems_08b22f92-a323-4512-bf31-bc55aab31a81/upload_pdf/19081em.pdf;fileType=application%2Fpdf

13 https://www.pm.gov.au/media/tough-new-laws-protect-australians-live-streaming-violent-crimes

14 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansardr%2F84457b57-5639-432a-b4df-68b704cb3563%2F0032;query=Id%3A"chamber%2Fhansardr%2F84457b57-5639-432a-b4df-68b704cb3563%2F0031"

15 https://www.lawfareblog.com/australias-new-social-media-law-mess

16 https://freedex.org/2019/04/04/comments-on-new-australian-law-on-online-abhorrent-violent-material/

Attorney-General Mark Dreyfus described the bill as "clumsy and flawed" and called the associated process "appalling". [17] Dreyfus complained about the lack of review by the Parliament's intelligence and security committee and the lack of parliamentary time to properly consider the bill before the forthcoming election. Despite these reservations, Labor supported the passage of the bill on the basis that it supported the goals. Greens MP Adam Bandt stated that while "we all grieve with New Zealand," it is unclear whether the legislation achieved the right balance between removing content and free speech, and whether it has any unintended consequences for journalism.[18] Bandt complained that the introduction of the legislation was "rushed".

	Criteria	Conclusion	Comment
1	Establish need	No	The Government stated that the Christchurch terrorist attack showed that social media companies needed to remove abhorrent violent material. However, there was no effort to gather further evidence or stakeholder input to demonstrate the need for this legislation.
2	Set objectives	Yes	The Government stated that the aim was to stop the sharing of abhorrent violent material and ensure it was reported to the police.
3	Identify options	No	The Government does not appear to have considered alternative approaches to addressing material.
4	Consider mechanisms	No	The Government does not appear to have considered alternative mechanisms to address the issue, such as a voluntary code or other ways to change to law.
5	Brainstorm alternatives	No	The Government did not undertake a cost-benefit analysis of the policy, including potential compliance costs and unintended consequences. Notably, the policy was granted an exemption from the need to complete a Regulatory Impact Statement.
6	Design pathway	No	The Government does not appear to have developed a framework for rolling out the policy. There is still continued uncertainty about how the policy will work in practice.
7	Consult further	No	The Government did not undertake a consultation process following the development of the policy, or it would appear at any stage during the policy development.
8	Publish proposals	No	The Government has not produced a green then white paper on social media content and violent material.

17 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansardr%2F84457b57-5639-432a-b4df-68b704cb3563%2F0033;query=Id%3A%22chamber%2Fhansardr%2F84457b57-5639-432a-b4df-68b704cb3563%2F0032%22

18 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansardr%2F84457b57-5639-432a-b4df-68b704cb3563%2F0034;query=Id%3A%22chamber%2Fhansardr%2F84457b57-5639-432a-b4df-68b704cb3563%2F0032%22

9	Introduce legislation	No	While the legislation itself was developed, and presented to Parliament, the length of time from the bill's introduction to its passing by both houses, just two days, indicates a serious lack of time for proper legislative scrutiny. There was also no committee inquiry.
10	Communicate decision	Yes	The Government has clearly communicated the intention of the law, in public statements and media releases.
		2/10	

Assistance and Access Act 2018 (Encryption law)

On 6 December 2018, on the last day of sitting for the year, the Parliament passed the *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018*.[19] This law enables law enforcement and intelligence agencies to make requests, both voluntary and compulsory, for technology industry to enable access to encrypted communications. A "technical capability notice" can be issued to compel companies to modify their product to allow access to information. There are large financial penalties for companies that do not comply. These notices can be issued by state and federal law enforcement bodies, as well as foreign law enforcement bodies (via the attorney general) and Australia's spy agency, ASIO. The crime being investigated must have a maximum penalty of three years or more, which applies to a much broader set of crimes than the originally in focus issues such as terrorism and child exploitation. A judicial warrant must be obtained to use the power.

The law was instigated in response to concerns about encrypted communications following terrorist attacks in San Bernardino, California and Melbourne, Australia.[20] This issue was first flagged by former Prime Minister Malcolm Turnbull in July 2017.[21] The Exposure Draft of the Bill was released on 14 August 2018, and received almost 16,000 submissions, and some changes were made to the bill following these submissions and an amendment to the bill was made during parliamentary debate.[22] In practice, the law would require companies like Google, Apple and Microsoft to install tracking software on specific devices to enable access to encrypted services such as WhatsApp, iMessage and Telegram.[23] Home Affairs Minister Peter Dutton warned that "criminals are using encryption to send messages about planning a terrorist attack or images of children involved in pornography". Dutton also said that 90 per cent of lawfully intercepted material by the Australian Federal Police uses some form of encryption. "Once passed, the legislation will assist law enforcement and intelligence agencies to access lawfully specific communications, without compromising the security of a network," Dutton claimed.

Critics raised concerns that the legislation's lack of balance between state powers to protect national security and privacy and civil liberties. Human rights groups, academics and technology companies warned that the type of assistance could require the modification of products that would create vulnerabilities that could be exploited further by the agencies and malicious actors.[24] Apple warned that weakening encryption raises the "profound risk of making criminals' jobs easier, not harder" and that the "extraordinarily broad and vague powers that, the government may argue, allow them to

19 https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6195

20 For the Five Eyes response, see https://www.ag.gov.au/About/CommitteesandCouncils/Documents/joint-statement-principles-access-evidence.pdf

21 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22media/pressrel/5400131%22

22 https://www.homeaffairs.gov.au/help-and-support/how-to-engage-us/consultations/the-assistance-and-access-bill-2018

23 http://theconversation.com/the-governments-encryption-laws-finally-passed-despite-concerns-over-security-108409

24 This is discussed in quite a high number of the submissions to the parliamentary inquiry, see https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/TelcoAmendmentBill2018/Submissions

force companies to build tools that ultimately weaken the security of their products or create significant cybersecurity risks more broadly".[25] In particular, the expectation of a fast response (i.e. quickly building and deploying vulnerabilities) could have broader unintended consequences. The Global Digital Foundation, for example, warned that *"the existence and use of such powers weakens the fundamental basis of our digital world"* (italics original).[26] The act itself did include protection against the creation of 'systematic weakness,' including the creation of decryption capabilities. Concerns remained, however, that the broadness of the powers could be exploited in future and that it could cause a loss of trust in Australian cyber security and products.[27]

The law was ultimately passed with bipartisan support from Coalition and Labor, following concern raised by security agencies about risks over the Christmas holiday period.[28]

25 https://www.aph.gov.au/DocumentStore.ashx?id=ecd6be12-ab84-43de-be61-1599e1db2a74&subId=661073

26 https://www.aph.gov.au/DocumentStore.ashx?id=7da0fed5-5c32-4ca4-8c40-0d03c9142b06&subId=660996

27 Encryption system provider Senetas warned of this danger, see https://www.aph.gov.au/DocumentStore.ashx?id=ee556343-1a57-40d5-b62e-f89b80283daa&subId=662306

28 https://www.theaustralian.com.au/nation/politics/inprinciple-encryption-deal-done-as-labor-coalition-reach-agreement/news-story/7c60363d9256dec38d6b818a884c6e3f

	Criteria	Conclusion	Comment
1	Establish need	Yes	The Government stated that they lacked access to encrypted communications that were necessary for law enforcement, and according to subsequent document releases the Government did consult with major US stakeholders such as Apple, Facebook and Microsoft.[29]
2	Set objectives	Yes	The Government put the need for access to the information in terms of preventing illicit activity, with a focus on terrorist attacks.
3	Identify options	No	The Government does not appear to have published an analysis of the alternatives to the proposed approach to achieve the stated objections.
4	Consider mechanisms	No	The Government does not appear to have published an analysis of potential implementation choices; however, changes were made during the process.
5	Brainstorm alternatives	No	There is evidence, in the explanatory materials, of the government attempting to balance national security concerns with human rights.[30] The Government also claims to have undertaken a regulatory impact statement of the bill, including considering the potential impact on Australian businesses, however these documents were never publsihed.[31]
6	Design pathway	No	There is no evidence of a framework for implementing the proposals, however there were plans for reviewing the policy, including an initial review released in March 2019 and a further review due March 2020.
7	Consult further	Yes	The Government undertook consultation on the initial Exposure Draft of the Bill in August 2018, followed by the Parliamentary Joint Committee on Intelligence and Security investigation which provided an opportunity for further consideration of the policy before it was implemented.
8	Publish proposals	No	The Government does not appear to have developed a green and white paper-like process to analyse national security and intelligence issues interaction with technology.
9	Introduce legislation	Yes	The law was first introduced in September 2018, which was followed by debate and consideration by various parliamentary committees before passage in December 2018.
10	Communicate decision	No	The Government was never able to fully and clearly explain how this legislation would work in practice, raising concerns about whether basic privacy and security would be undermined.
		4/10	

29 https://www.abc.net.au/news/science/2019-07-10/dutton-encryption-laws-australian-tech-sector-not-consulted-foi/11283864

30 https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6195_ems_1139bfde-17f3-4538-b2b2-5875f5881239/upload_pdf/685255.pdf;fileType=application%2Fpdf

31 https://www.aph.gov.au/DocumentStore.ashx?id=13d6d87f-a64e-4e7c-8cc1-83d939e9fe1d&subId=660956

Tax Relief So Working Australians Keep More Of Their Money Act 2019

On July 4, Parliament passed a $158 billion plan to reduce income taxes, formally known as the *Treasury Laws Amendment (Tax Relief so Working Australians Keep More of Their Money) Bill 2019. This law, which was announced in the 2019-20 Budget delivered in April 2019, builds on previously legislated income tax reductions in the 2018-19 Budget. The Government claimed more than 10 million taxpayers would benefit,* with 4.5 million receiving the full amount of tax relief.

The law included several changes.[32] Firstly, in Stage 1, the low-and-middle-income tax offset was doubled from 2018-19 for earners up to $126,000, providing an immediate up to $1,080 tax relief for single earners (double the offset of $530 announced in the 2018-19 Budget) or up to $2,160 for dual income families. Secondly, in Stage 2, to preserve this tax offset over time, the Government has scheduled further reductions for 2022-23, when the top threshold for the 19 per cent tax bracket would increase from $41,000 to $45,000. Finally, in Stage 3, in addition to the legislated removal of the 37 per cent tax bracket in 2024-25, the 32.5 per cent tax rate will now be reduced to 30 per cent. Without the Government's plan, average full-time earners were set to be pushed into the second highest (37 per cent) tax bracket by 2024-25. When the system is fully implemented, Australia's income tax system will be simplified to three tax rates: 19 per cent $18,201 - $40,000, 30 per cent ($45,001-$200,000) and 45 per cent ($200,000+). This will mean that 94 per cent of Australians pay no more than 30 cents in the dollar.

The Government argued that taxpayers should be able to keep more of their own income and the changes would help boost the Australian economy. "This tax relief will lift household incomes, ease cost of living pressures and boost spending at local businesses," Treasurer Josh Frydenberg said in the 2019-20 Budget.[33] In response to the plan, then Labor Opposition Leader Bill Shorten announced that he would support the Stage 1 and 2 changes for earners up to $126,000, however would oppose the Stage 3 longer-terms plans for flatter taxes and Labor would instead back tax relief for earners below $40,000. [34] Shorten declared that "we will not be signing-up to the Liberals' radical, right-wing, flat-tax experiment, way off in the future." [35] Critics of Stage 3 of the Government' plan from the Australia Institute claimed that it would largely help higher income earners.[36] The Government responded that the system remained highly progressive, with the top 20% of taxpayers set to pay 60% of the total income tax take. Further, the Government pointed out that high income brackets missed out on prior income tax indexation adjustments accorded to other income brackets. The lack of announced spending cuts to pay for the tax cuts, over the full decade, has also been criticised.[37] The Government, however, claimed that the tax cuts were affordable and enabled by "disciplined fiscal management". The Centre for Independent Studies' Dr John Humphreys argued that the government *overestimated the cost of the tax relief – because its modelling did not include an analysis of the dynamic responses to the changes – and that the tax relief should be undertaken sooner.*[38] Following the 2019 federal election, and the change of Labor leader to Anthony Albanese, Labor supported the entire plan in order to achieve tax relief for lower income earners.[39] The measures were also supported by the Centre Alliance.

32 https://www.budget.gov.au/2019-20/content/tax.htm

33 http://jaf.ministers.treasury.gov.au/speech/002-2019/

34 https://www.billshorten.com.au/2019_budget_in_reply_address_canberra_thursday_4_april_2019

35 ibid.

36 https://www.theguardian.com/australia-news/2019/jun/10/coalitions-income-tax-plan-will-gift-highest-earners-33bn

37 https://www.abc.net.au/news/2019-07-04/tax-cuts-and-spending-cuts/11273454

38 https://www.cis.org.au/app/uploads/2019/04/pp19.pdf

39 https://www.theguardian.com/australia-news/2019/jul/05/we-didnt-change-our-position-albanese-defends-decision-to-back-tax-cuts

	Criteria	Conclusion	Comment
1	Establish need	Yes	The Government stated that the policy was needed to ensure Australians were not pushed into higher tax brackets over time and help boost the economy. The Government consulted on measures as part of the 2019-20 Budget.[40]
2	Set objectives	Yes	The Government stated that allowing Australians to keep a greater proportion of their income would boost household consumption, helping the overall economy.
3	Identify options	No	While there was presumably there was some alternative consideration during the 2019-20 Budget, the Government does not appear to have published documents outlining what alternatives tax options that have been considered.
4	Consider mechanisms	No	The Government does not appear to have considered alternative ways for implementing the policy of income tax cuts.
5	Brainstorm alternatives	No	The tax plan has been costed and there is a statement that the "measure is expected to only have a minor regulatory impact". However, the Government does not appear to have assessed the potential benefits of the tax plan to the economy in a cost-benefit analysis.
6	Design pathway	Yes	The Government has stated how the policy will be implemented over time, in various stages updating the tax thresholds and low-income tax offset. How this policy interacts with the existing law, and transitional provisions, is stated in the explanatory memoranda provided with the legislation.[41]
7	Consult further	No	While the Government did consult on the 2019-20 Budget, there does not appear to have been a formal process of further consultation after the announcement of the policy.
8	Publish proposals	No	The Government does not appear to have developed a comprehensive green and white paper process in relation to these tax cuts or further system-wide choices. The last Tax White Paper was undertaken in 2014-16.[42]
9	Introduce legislation	Yes	The Government developed the legislation and introduced it into Parliament, where there was debate about the legislation and proposed amendments.
10	Communicate decision	Yes	The plan was clearly explained in media releases during the budget, 2019 election campaign, and subsequently before and after it passed the Parliament.
		5/10	

40 https://treasury.gov.au/consultation/2019-20-pre-budget-submissions

41 https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6345_ems_650af31e-b0b6-4064-8ced-80460190b2c7/upload_pdf/711256.pdf;fileType=application%2Fpdf

42 https://treasury.gov.au/review/tax-white-paper

Social Security (Administration) Amendment (Income Management and Cashless Welfare) Act 2019

In April 2019, the Parliament legislated to extend the cashless debt card trial in three sites, and income management program in the Cape York, until 30 June 2020. This cashless debt card system quarantines 80 per cent of a recipient's welfare transfers on a separate debit card for essential living costs, such as food, clothing, shelter and transportation; the remaining 20% is put into their regular bank account. The amendment also allows a person to exit the program if they demonstrate reasonable and responsible financial management. This has been introduced for all welfare recipients in three primarily Aboriginal communities, Ceduna (South Australia), East Kimberley (Western Australia) and Goldfields (Western Australia). The scheme is also being rolled out in Bundaberg and Hervey Bay region (Queensland). The income management regime, which applies only to Cape York, allows individuals involved with the Cape York Welfare Reform Initiative to be referred by the Family Responsibilities Commission (a Queensland Government initiative) for income management. The stated objectives of the scheme are to reduce spending on alcoholic beverages, gambling and illegal drugs, assess whether this reduces violence and harm in the trial areas, determine whether measures are more effective when community bodies are involved, and encourage socially responsible behavior. The extension was first announced in the Mid-Year Economic and Fiscal Outlook 2018-19 and forms part of the Cashless Debit Card Trial – extension and expansion.

Minister for Families and Social Services Paul Fletcher, introducing the bill to extend the scheme, claimed that "The cashless debit card is working,... This is a community-driven, bottom-up approach to tackling the scourge of welfare-funded drug and alcohol abuse."[43] Fletcher stated that extending the cashless welfare card program for a further year was necessary to allow time for the completion of a second assessment, which will also be subject to an independent review process. To justify the extension of Cape York income management program, the Government pointed to the Strategic Review of Cape York Income Management, undertaken by the Queensland University of Technology, which found that the scheme had led to a reduction of alcohol, drugs, violence and crime, as well as improving children's health.[44] This is consistent with an earlier 2012 evaluation, and has been subject to various other reviews.[45] To justify the cashless debit card extension, the Government pointed to ORIMA Research evaluation which found the scheme had "considerable positive impact" on the community and had reduced alcohol consumption, gambling, illicit drugs and violence.[46] However, the report also found that one-third of participants reported that the trial had made their lives worse by, for example, making it difficult to transfer money to children at boarding school and making cash-based payments. Since the initial introduction of the cashless debit card trial in 2015, the scheme has been extended on numerous occasions. In the 2019-20 Budget, the Government announced the intention to further extend the scheme to 30 June 2021.

The bill was also referred to the Senate Community Affairs Legislation Committee and the Parliamentary Joint Committee on Human Rights, which both released reports on the legislation. The Senate committee recommended that the ability to exit the trial was introduced into the legislation, which was ultimately accepted by the Government. [47] The Human Rights committee has found that, as in the case of previous legislation to enable trials, that the legislation restricts a person's agency, and limits the rights to

43 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A"chamber%2Fhansardr%2Ff45cf053-d00c-473b-88ab-ac7ccd4b00ec%2F0017"

44 https://www.dss.gov.au/families-and-children-programs-services-welfare-quarantining-income-management/strategic-review-of-cape-york-income-management

45 https://www.dss.gov.au/families-and-children-programmes-services-welfare-conditionality-income-management/income-management-evaluations

46 https://www.dss.gov.au/sites/default/files/documents/10_2018/cashless-debit-card-trial-final-evaluation-report_2.pdf

47 https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Debit_Card_Trial/Report

equality and non-discrimination, social security, and privacy and family.[48] While the committee has said that the objectives of the Government are legitimate, it has raised concerns that the measures may not be proportionate – in particular the cashless debit card which applies to all people residing in an area, not just those assessed to need the scheme like the Cape York Welfare Reform communities. The Government has claimed that to the extent that the scheme may limit human rights, these limitations are "reasonable, necessary and proportionate".[49]

The public response to the trial and its extension has been mixed. It is unclear whether the observed reduction in alcohol and drug usage is attributable to the cashless welfare card or other strategies.[50] The Australian National Audit Office assessment found that it was "difficult to conclude" that the reduction in social harm is caused by the policy due to a "lack of robustness in data collection".[51] The Labor opposition has supported the policy of extending the scheme, however that continued support for the program is conditional on the evaluations. The Greens have rejected the scheme and attempted to prevent its continuation for several years.[52] The scheme was initially supported by many indigenous Australians and academics, including the leaders of the East Kimberley and University of Melbourne Foundation Chair in Australian Indigenous Studies Marcia Langton.[53] Langton subsequently came to oppose to the policy due to "botched rollout".[54]

	Criteria	Conclusion	Comment
1	Establish need	Yes	The Government has pointed to serious social and economic issues in these communities to justify the measures. They have undertaken ongoing consultation on the issue, from the Forrest Review to the ongoing evaluations.
2	Set objectives	Yes	The Government has stated that the intention of the measures is to ensure better outcomes for those on welfare by reducing deprivation, violence and other socially irresponsible behavior, such as alcohol, drugs, and petrol snuffing.
3	Identify options	Yes	While this extension itself did not include consideration of alternatives, the cashless welfare system proposals dated back to the Forrest Review, completed in 2014, which assessed various alternatives to help improve quality of life for Indigenous Australians.[55]

48 https://www.aph.gov.au/~/media/Committees/Senate/committee/humanrights_ctte/reports/2019/Report%202/Report%202%20of%202019.pdf?la=en

49 https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6289_ems_c09da960-a36b-4f91-a8d5-5aa101668e77/upload_pdf/698369.pdf;fileType=application%2Fpdf

50 https://www.abc.net.au/news/2019-04-04/cashless-debit-card-trials-extended-but-do-they-even-work/10966900

51 https://www.abc.net.au/news/2018-07-18/cashless-welfare-audit-finds-monitoring-severely-lacking/10005214

52 https://thewest.com.au/news/the-kimberley-echo/greens-reattempt-derailment-of-cashless-debit-card-ng-b88422192z

53 https://theconversation.com/the-cashless-debit-card-trial-is-working-and-it-is-vital-heres-why-76951

54 https://www.smh.com.au/politics/federal/brutal-marcia-langton-early-backer-of-welfare-card-savages-its-roll-out-20190925-p52utw.html

55 This was described as "The Healthy Welfare Card," see https://www.pmc.gov.au/sites/default/files/publications/Forrest-Review.pdf

4	Consider mechanisms	No	The Forrest Review discussed various potential ways to implement the scheme of a cashless welfare care and the policy itself includes two alternative methods: the Cape York income management approach and the cashless debit card approach. However, there was no further consideration as part of the extending the trial, which would have been appropriate at the time to consider implementing changes.
5	Brainstorm alternatives	No	While the Government has allocated substantial funds for ongoing review the policy, which has included independent assessment of the costs and benefits for the community, there was no cost-benefit analysis in advance of the policy to consider the potential benefits of improved outcomes for communities.
6	Design pathway	No	The Government has developed plans for how the trial will be implemented and evaluated, including a first completed evaluation of the scheme and a second ongoing evaluation of the cashless debit card by the University of Adelaide.[56] However, there is no outline of the entire policy design.
7	Consult further	Yes	The Government has undertaken ongoing community consultation about the cashless debit card trial.
8	Publish proposals	Yes	The Forrest Review process, which is the originator of the proposal for the cashless welfare card can be considered akin to a green and white paper process, including 349 written submissions and forums attended by 1,600 people across Australia.
9	Introduce legislation	Yes	The Government developed and introduced legislation, that was subsequently debated, considered by various committees and amended in Parliament.
10	Communicate decision	Yes	The Government developed a clear media release explaining the expansion of the cashless welfare card.[57]
		7/10	

56 https://www.dss.gov.au/families-and-children-programs-services-welfare-quarantining-cashless-debit-card/cashless-debit-card-evaluation

57 https://www.paulfletcher.com.au/media-releases/media-release-morrison-government-extends-successful-cashless-debit-card-0

National Redress Scheme for Institutional Child Sexual Abuse Act 2018

On 19 June 2018, the Australian Parliament passed the *National Redress Scheme for Institutional Child Sexual Abuse Bill 2018. The law creates a ten-year scheme, beginning 1 July 2018, to provide a payment of up to $150,000 to survivors of child sexual abuse, providing access to counselling and psychological services and the option to receive a direct personal response from the responsible institution. The total estimated cost of the scheme is $3.8 billion, including both the scheme payments and administrative costs. The costs of the scheme are paid for by the responsible entity, be it the government or non-government institution. An individual who accepts support from the scheme releases the relevant institution, and individuals from the institution other than the responsible individual, from further liability.*

The legislation was part of federal, state and territory governments response to the Royal Commission into Institutional Responses to Child Sexual Abuse and recommend by the 668-page Redress and Civil Litigation Report.[58] The five year Royal Commission heard over 8,000 personal stories of abuse and received over 1,000 written accounts.[59] It also undertook extensive further work on policy issues, which included:

"Issues papers, roundtables and consultation papers are used by the Royal Commission to consult with government and nongovernment representatives, survivors, institutions, regulators, policy and other experts, academics and survivor advocacy and support groups. The broader community has an opportunity to contribute to our consideration of systemic issues and our responses through our public consultation processes."[60]

The *Redress and Civil Litigation Report stated that the existing civil litigation system had not provided justice for many survivors. It rejected the idea of a scheme for future injustice as such a scheme should be a response to future actions. The final report of the Royal Commission included a total of 84 recommendations for how the scheme should operate. The report also attempted to estimate the number of claims and the associated costs based on previous state-based schemes. Following the release of the report, the Government established a 15-member Independent Advisory Council to provide recommendations for how the redress scheme would be implemented.*[61] The members included 'survivors of institutional abuse and representatives from support organisations, as well as legal and psychological experts, Indigenous and disability experts, institutional interest groups and those with a background in government.'[62] The explanatory memorandum with the legislation states that the objective is to "recognise and alleviate the impact of past institutional child sexual abuse, and related non-sexual abuse, and to provide justice for the survivors of that abuse".[63] It also notes the potential need for future amendments following further discussions with state and territory governments, non-government institutions and survivor groups, as well as agreements with state governments for how the scheme will operate, the referral of powers and costs shared.

While there was no substantial opposition to the entire policy, the Human Rights Committee raised a number of concerns about its design, including the restriction to Australian citizens, the use of subsequent delegated legislation to create the rules of the scheme, the waiver of future legal liability,

58 See https://www.childabuseroyalcommission.gov.au/redress-and-civil-litigation

59 See https://www.childabuseroyalcommission.gov.au/

60 https://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/final_report_-_redress_and_civil_litigation.pdf

61 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:"media/pressrel/4998709"

62 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:"media/pressrel/4998709"

63 https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6101_ems_3475681d-40d9-44dd-8d46-19dc713fce13/upload_pdf/672609.pdf;fileType=application%2Fpdf

information sharing, and the removal of judicial review.[64] Academics Kathleen Daly and Juliet Davis raised concerns that the final design of the scheme did not keep to the original aims of the Royal Commission, including by lowering the maximum payment to $150,000 from $200,000, not providing access to the scheme for people with convictions of child sexual abuse, and limits on support for counselling and psychological care.[65] The Government justified these limitations as necessary following negotiations with the states and territories, and with churches and charities.[66] The legislation was passed with bipartisan support.

	Criteria	Conclusion	Comment
1	Establish need	Yes	The Royal Commission uncovered substantial evidence of historic child abuse by major institutions, that demonstrated the subsequent redress scheme that would provide equal access and equal treatment for survivors.
2	Set objectives	Yes	The Government appealed to a broader public moral responsibility to ensure a scheme was in place to provide support for those who suffered child sexual abuse and a sense of broader justice.
3	Identify options	Yes	The Redress and Civil Litigation Report from the Royal Commission considered various alternatives for responding to issues to historical claims of institutional child sexual abuse.
4	Consider mechanisms	Yes	The Independent Advisory Council on redress provided an opportunity to consider various mechanisms for how the scheme would operate in practice.
5	Brainstorm alternatives	No	There were various attempts to estimate the costs of the scheme. This includes by the Royal Commission[67], and the Government itself which calculated the immediate federal financial cost. There does not appear to have been a quantified analysis of the 'benefits' for survivors in the same manner.
6	Design pathway	No	There were concerns raised during the legislative process that the Government was intending to only release details for how the scheme would operate at a later date in delegated legislation, including the Assessment Framework and the Direct Personal Response Framework which were not released until August 13, months after the original legislation passed.[68] This indicates that a policy design framework had not been developed in advance. The Government did, nevertheless, include plans for a review of the scheme after two years.

64 https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/2017/Report_13_of_2017

65 https://theconversation.com/national-redress-scheme-for-child-sexual-abuse-protects-institutions-at-the-expense-of-justice-for-survivors-112954

66 https://formerministers.dss.gov.au/17436/press-conference-national-redress-scheme/

67 https://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/national_redress_scheme_participant_and_cost_estimates_report.pdf

68 This is discussed in this report: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/AbuseRedressScheme/Final_Report

7	Consult further	Yes	The Government undertook extensive consultation in relation to the proposals through the Independent Advisory Council, who directly considered and consulted on the text of the bill, and subsequent parliamentary inquiries.
8	Publish proposals	Yes	While not a traditional 'green' and 'white' paper process, this legislation follows Royal Commission into Institutional Responses to Child Sexual Abuse, which undertook extensive analysis of policy issues in the Redress and Civil Litigation Report.
9	Introduce legislation	Yes	The legislation was debated extensively in Parliament and referred to various committees including the Senate Community Affairs Legislation Committee, the Parliamentary Joint Committee on Human Rights, and the Senate Standing Committee for the Scrutiny of Bills
10	Communicate decision	Yes	The Government clearly communicated the need for the scheme and how it would work in media releases and public comments.[69]
		8/10	

69 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22media/pressrel/4914812%22

Family and Domestic Violence Leave Act 2019

On 11 December, 2019, the Parliament amended the Fair Work Act to insert into the National Employment Standards a requirement for five days of unpaid family and domestic violence (FDV) leave in a 12-month period.[70] This applies to all types of employees, including causal employees, does not accumulate year to year, and available to part-time and casual employees in full rather than pro-rated. It is available to employees experiencing family and domestic violence who need to undertake activities to deal with the impact that would be impractical to do outside of ordinary working hours – such as making arrangements for their own safety or the safety of a close relative, attending court hearings and accessing police services.

The ABS has found one-in-sex women and one-in-sixteen men has experienced physical or sexual abuse by an intimate partner.[71] Introducing the legislation, the Government's Minister for Jobs, Industrial Relations and Women Kelly O'Dwyer said that entitlement "will ensure they can take time to deal with the impact of family and domestic violence and help overcome the obstacles it creates—confident that their job is protected while they do so. It will provide time to seek support and counselling; to involve the police and authorities; to attend court hearings; or to relocate and get re-established."[72] The proposal for family and domestic violence leave dates to the Australian Law Reform Commission's (ALRC) *Family violence and Commonwealth laws: improving legal frameworks report, released in 2011, that called for the provision of paid leave. However, notably, the legislation does not appear to be a direct response to the much earlier ALRC report, which was not referred to in the explanatory memorandum or the Minister's speech. The Minister, did, however refer to the work of the Fair Work Commission between 2014 and 2018 which considered 68 written submissions on the topic.*[73]

The Labor opposition, while not opposing the measures, labelled the proposals 'too little, too late'.[74] The Senate Education and Employment Legislation Committee's report on the legislation included a dissenting report from Labor and Greens senators calling for ten days of *paid FDV. Some religious and community organisations, as well as the Western Australian, Queensland and Victorian Labor governments also supported the provision of paid leave.*[75] Employer groups raised concerns about the costs of the entitlement on productivity, profitability and operations, as well as overlapping with other requirements such as personal/careers' leave.[76]

The Government also justified the new requirement as necessary following the March 2018 decision of the Fair Work Commission to add a new clause to the 123 awards providing for five days of domestic violence leave. The law extends this entitlement to millions of other employees who are outside of the awards system.

70 https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6181

71 http://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0/

72 https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/b0437b01-060b-4060-bfa3-1bd778011a5e/0009/hansard_frag.pdf;fileType=application%2Fpdf

73 https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/94aec17b-432c-4e5b-80ed-7c316c83ad31/0022/hansard_frag.pdf;fileType=application%2Fpdf

74 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22media/pressrel/6206955%22

75 This is discussed further here: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1819a/19bd047#_ftnref32

76 See, for example, https://www.aph.gov.au/DocumentStore.ashx?id=86602e03-896b-4023-b9c2-37e01054cba2&subId=660325 https://www.aph.gov.au/DocumentStore.ashx?id=ae6d5748-d8a0-43fa-ab8c-a0562bbe63c3&subId=660319 https://www.aph.gov.au/DocumentStore.ashx?id=0a2bc567-a906-4a77-b108-4874f2d71270&subId=660362

	Criteria	Conclusion	Comment
1	Establish need	Yes	The Government pointed to evidence of the burden of domestic violence, as well as the impetus provided by the earlier Fair Work decision.
2	Set objectives	Yes	The Government justified the proposal based on a broad public interest in supporting people who have faced domestic violence and their need to take time off work to address the issue.
3	Identify options	No	Despite the earlier work of the ALRC considering policy responses to the issue of domestic violence, there is no evidence of the current Government undertaking a review of the alternatives in the context of proposing the 5 day legislation.
4	Consider mechanisms	Yes	The Government referred to the work of the Fair Work Commission which considered how the policy would be implemented, and choose to mimic the same model for all employees.
5	Brainstorm alternatives	No	The explanatory memorandum contained "Nil" on the page titled "Financial Impact Statement" and there is no evidence of a published regulatory impact statement.[77]
6	Design pathway	No	The Government does not appear to have published a framework for how the policy will operate and be reviewed.
7	Consult further	No	The Government did not undertake a formal consultation following the announcement of the legislation.
8	Publish proposals	No	Despite the earlier work of the ALRC, that could be considered green and white paper like, there is no evidence of the current government undertaking a similar review.
9	Introduce legislation	Yes	The legislation was introduced into Parliament in September, and subsequently debated and considered by the Senate Education and Employment Legislation Committee.
10	Communicate decision	Yes	The Government published a media release with details of the new entitlement.
		5/10	

77 https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6181_ems_2b2ee1ae-6c4e-4880-b0ff-95490d6fb2d8/upload_pdf/684509.pdf;fileType=application%2Fpdf

Promoting Sustainable Welfare Act 2018

On 10 December 2018, the Australian Parliament passed the Promoting Sustainable Welfare Act 2018 to extend the newly arrived resident's waiting period (NARWP) for social security payments and concession cards from 104 weeks (2 years) to 208 weeks (4 years).[78] This applies to new residents settling in Australia, and payments such as the Newstart allowance, youth allowance, and seniors health card. The law also introduced a NARWP, of various lengths, for the family tax benefit Part A, paid parental leave, bereavement allowance, widow allowance, parenting payment and career allowance. There are some exemptions to the NARWP that will remain, such as for refugees, New Zealand migrants in the case of the family tax benefit Part A, and individuals who become a lone parent after arriving in Australia. The Government estimated that the law would save approximately $1.3 billion over the four years to 2021-22, with the largest savings coming from the change in family assistance.[79] This is a relatively small proportion of Australia's annual welfare budget of $109.5 billion. The new rules came into effect for migrants arriving from 1 January, 2019.

The measures were first announced in the 2017-18 Mid-Year Economic and Fiscal Outlook (MYEFO) in December 2017, with a further extension announced in the 2018-19 Budget in May 2018.[80] They were justified on the basis of ensuring that the welfare system remains sustainable, the Budget is kept in balance, and new arrivals are self-sufficient. Social Services Minister Paul Fletcher said that "The increased waiting periods reflect the nature of these payments and capacity of skilled and family migrants who come to Australia to work or to be with family, who should be self-reliant during their initial settlement period".[81] The Labor opposition supported the measures, following amendments, while the Greens opposed the measures on the basis that they were "Trump-esque punishment of migrants".[82] A range of community groups, such as Brotherhood of St Laurence, expressed opposition to the measures and raised concern that child and family poverty could be increased.[83]

It is notable that migrants are less likely than the general population to receive welfare payments, with just 3 per cent of permanent skilled migrants and 13 per cent of family migrants receiving payments compared to 17 per cent of the overall population.[84] The Government used this finding to claim that most migrants are self-sufficient and therefore do not need the payments. The Government also pointed out that some form of NARWP dates back to 1993.

The Parliamentary Joint Committee on Human Rights analysis of the legislation raised concerns that increasing waiting periods is a "retrogressive measure, a type of limitation" of rights to social security, health and an adequate living standard.[85] However, following a response by the Minister, the committee concluded that "the measure appears likely to be compatible with the right to social security" but "may be incompatible with the right to paid maternity leave and the right to equality and nondiscrimination.".[86] The Government's statement of compatibility with human rights claimed that to the extent that the legislation undermined human rights "the impact is reasonable and proportionate in achieving the objectives of the measure and the welfare payments system more broadly". [87]

78 The original bill was amended to change it from a three year, as was originally announced in December 2017, to a four-year waiting period. The measures were also delayed from the original start date of 1 July 2018 to 1 January 2019. The estimated savings remained the same.

79 https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6048_ems_9586d91d-dda0-47e8-9418-7d0e3c2dcd25/upload_pdf/SSOLA%20(Promoting%20Sustainable%20Welfare)%20Bill%202018_Revised%20EM.pdf;fileType%3Dapplication%2Fpdf

80 https://www.dss.gov.au/living-in-australia-and-overseas/updates

81 https://formerministers.dss.gov.au/18669/waiting-periods-changed-for-newly-arrived-residents/

82 https://www.theguardian.com/australia-news/2018/nov/29/labor-does-deal-with-coalition-to-force-migrants-to-wait-four-years-for-welfare

83 https://probonoaustralia.com.au/news/2018/04/welfare-waiting-period-increase-poverty-migrants/

84 See Productivity Commission's 2016 Migrant Intake into Australia report

85 https://www.aph.gov.au/~/media/Committees/Senate/committee/humanrights_ctte/reports/2018/Report%204/Report4.pdf?la=en

86 https://www.aph.gov.au/~/media/Committees/Senate/committee/humanrights_ctte/reports/2018/Report%204/Report4.pdf?la=en

87 https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6048_ems_9586d91d-dda0-47e8-9418-7d0e3c2dcd25/upload_pdf/SSOLA%20(Promoting%20Sustainable%20Welfare)%20Bill%202018_Revised%20EM.pdf;fileType%3Dapplication%2Fpdf

	Criteria	Conclusion	Comment
1	Establish need	No	It is not clear on what evidence that Government is basing the claim that an immigrant is not self-sufficient if they receive or do not receive a welfare payment; there does not appear to have been any consultation or development of an evidence base before the announcement of this policy.
2	Set objectives	Yes	The Government claimed the measures would deliver a fairer welfare system, by ensuring migrants are self-sufficient, and more sustainable welfare system, ensuring Australia's budget is kept in balance.
3	Identify options	No	The Government does not appear to have considered alternatives for achieving the goals of self-sufficiency and budgetary sustainability.
4	Consider mechanisms	No	The Government does not appear to have undertaken analysis of the implementation choices for these changes, however did undertake amendments during the legislative process.
5	Brainstorm alternatives	No	The cost saving to the government of extending the waiting period has been calculated, however the broader social benefits and costs of this legislation does not appear to have been calculated.
6	Design pathway	No	The Government does not appear to have published a rollout plan for how the policy such as when it will be reviewed.
7	Consult further	No	The Government does not appear to have undertaken formal consultation following the announcement of the policy.
8	Publish proposals	No	The Government does not appear to have developed a welfare green and white paper associated with these changes.
9	Introduce legislation	Yes	The bill was originally introduced in February 2018, amended, extensively debated and considered by the Human Rights committee and the Senate Community Affairs Legislation Committee.
10	Communicate decision	Yes	The Government clearly communicated the changes in media releases and a subsequent fact sheet released in various languages.[88]
		3/10	

88 https://formerministers.dss.gov.au/18669/waiting-periods-changed-for-newly-arrived-residents/ https://www.dss.gov.au/living-in-australia-and-overseas-updates/changes-to-the-waiting-period-for-newly-arrived-migrants

Schools funding formula, 'direct income' approach

In June 2017, the Australian Parliament passed the 'Gonski 2.0' school funding package.[89] Under Gonski, all schools were to receive the same level of taxpayer funding based on the 'Schooling Resource Standard' (SRS) calculation.[90] The SRS, which derived from the 2011 Gonski Review of Funding for Schooling, is an estimate of how much a school needs for every primary and secondary student, with six loadings to account for the socio-economic and socio-educational disadvantage, disability, English language proficiency, Aboriginal and Torres Strait Islander students, and school location and size. Then-Prime Minister Malcolm Turnbull claimed this system would deliver "national, consistent, needs-based funding right across the country".[91]

These changes, however, sparked substantial backlash from the Catholic school sector, who claimed they would be disadvantaged by $1.1 billion over the forthcoming decade.[92] The sector, which includes 770,000 students and 100,000 staff, was mobilized for a large campaign against the Government.[93] Following this pressure, the Government launched the *National School Resourcing Board SES Review*, to analyse the existing socio-economic status (SES) method to assessing school funding. The SES method, which dates to 2001, is a calculation for all non-government schools based on the income, education and occupation characteristics of the *area* where each student resides. The Catholic school sector criticised this calculation on the basis that it assumed all families from the same neighborhood were equally wealthy, which disadvantaged less-wealthy Catholic families who live in wealthy areas.[94]

The Final Report of the Review, released in July 2018, recommended a more precise 'direct measure' calculation of parents' capacity to pay considering their personal income and census data. The review acknowledged that "the direct SES scores for independent schools sit higher than the scores for Catholic schools". These changes were expected to redistribute $100 million a year from independent to Catholic schools.[95] The changes were strongly supported by the Catholic school sector.[96] Professor Greg Craven, a member of the review panel, dissented to the recommendations of the review and expressed an opinion that the Total Private Income, including fee income, of a school should be included in a measure of the capacity of a school community to contribute to the cost of education. Craven did, nevertheless, agree that the recommended change is superior to the status quo.

In September 2018, new Prime Minister Scott Morrison accepted all the recommendations of the review and announced an additional $3.2 billion funding over ten years to schools identified as most in need, and $1.2 billion to fund specific challenges such as supporting schools in drought-affected areas.[97] Morrison said the changes would deliver choice in education and address concerns from the independent and Catholic school sector. Labor backed the changes and promised more for schools.[98]

Critics of the change claimed it equated to a substantial handout to the Catholic school sector.[99] The Australian Education Union have continued to claim that under the formulas the federal government provides more funding for private and Catholic schools than public schools, however it should be

89 https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2017/June/Schools_funding_legislation_passed_by_Parliament

90 https://www.education.gov.au/what-schooling-resource-standard-and-how-does-it-work

91 https://www.theguardian.com/australia-news/2017/jun/23/gonski-20-states-say-they-will-face-budget-nightmare-under-school-funding-changes

92 https://www.ncec.catholic.edu.au/news-events/media-releases/458-school-funding-model-fails-to-deliver-consistency-and-fairness/file

93 https://theconversation.com/catholics-vow-to-go-hard-in-schools-fight-with-government-77299 https://www.sbs.com.au/news/catholic-schools-step-up-campaign-against-gonski-2-0-education-reforms

94 https://www.catholicnewsagency.com/news/catholic-education-group-applauds-australian-school-funding-plan-76294

95 https://www.theguardian.com/australia-news/2018/jul/06/schools-funding-plan-could-shift-100m-from-independent-to-catholic-schools

96 https://www.ncec.catholic.edu.au/news-events/media-releases/494-school-funding-changes-support-families/file

97 https://www.pm.gov.au/media/more-choice-australian-families

98 https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview201920/EducationTraining

99 https://www.news.com.au/national/why-are-catholic-schools-getting-more-money/news-story/be13f1e4501d4cdfa00af9e28eb77f4f

noted that government schools are primarily funded by state governments.[100] Overall, on a per student basis when state and federal funding is combined, government schools receive $13,445 per student, compared to $11,510 for Catholic schools and $9,601 for independent schools.[101]

	Criteria	Conclusion	Comment
1	Establish need	Yes	The Government pointed to concerns from the Catholic sector about the funding arrangement to justify investigating the system.
2	Set objectives	Yes	The Government justified the change on the basis that it would ensure the educational system is fairly funded and parental choice is maintained.
3	Identify options	Yes	The National School Resourcing Board SES Review considered alternatives to the existing funding calculation, and researched and consulted widely on the funding system.
4	Consider mechanisms	No	The Government did not formally outline different ways to implement the policy change.
5	Brainstorm alternatives	No	While the Government has published the costs of additional funding, at the time of announcement, there is no cost-benefit in terms of considering outcomes as well as costs.
6	Design pathway	No	The Government does not appear to have developed a framework for how the policy will be rolled out.
7	Consult further	No	There were reports that the Government undertook further consultation, described as "negotiations," with the Catholic sector following the change of Prime Minister and Education Minister in August 2018.[102] However, that was not after the policy changed itself and does not include broader consultation with the education sector.
8	Publish proposals	Yes	The NSRB process can be considered equivalent to a green and white paper process with an initial issues paper and a subsequent publication.
9	Introduce legislation	No	The changes to the funding calculation were not considered as part of a legislative process.
10	Communicate decision	Yes	The Government released a specific media release announcing the changes.[103]
		5/10	

100 https://www.theguardian.com/australia-news/2019/may/13/some-catholic-schools-in-key-marginals-get-more-government-aid-than-public-schools

101 ibid.

102 https://www.afr.com/news/policy/education/minister-dan-tehan-reaches-out-to-angry-catholic-church-20180827-h14jzy https://www.theguardian.com/australia-news/2018/sep/04/school-funding-talks-unfinished-business-scottmorrison-says

103 https://www.pm.gov.au/media/more-choice-australian-families

Victoria

Environment Protection Amendment Bill 2019 (Single use plastic bag ban)

In June 2018, the Andrews Government announced that from late 2019 a ban on plastic bags with a thickness of 35 microns or less, inclusive of degradable, biodegradable and compostable plastic.[104] This follows the *Reducing Plastic Pollution discussion paper and consultation undertaken over 2017-18 that received 8,000 submissions, 96% of which were supportive of the ban.*[105] The discussion paper associated with the consultation specifically stated that:

> The National Litter Index reports that plastic bags account for less than 1 per cent of Victoria's litter (both by item count and by volume). Although only a small proportion of plastic bags used in Victoria end up as litter, the impact they have on the environment can be disproportionate. As plastic bags are highly mobile, they can easily be blown into opens spaces and waterways. In the environment, they can cause significant harm, particularly to marine life. Research suggests that most plastic bag litter is made up of bags that were supplied for 'away-from-home' uses, like carrying takeaway food.[106]

This discussion paper and consultation came after the decision had already been made to ban the bags. The legislation to enforce the proposed ban was introduced in June 2019.[107] Victorian Minister Minister for Energy, Environment and Climate Change Lily D'Ambrosio claimed that the lightweight, ubiquitous nature of single-use plastic bags had led to "throwaway culture centered on convenience" that "take hundreds of years to break up in the environment".[108] "Reducing the number of plastic bags we use is an important part of addressing the overall impact of plastic pollution in Victoria," said D'Ambrosio.

Critics of the ban pointed out that 93% of river waste comes from ten rivers in Asia and Africa, with Australia making little contribution.[109] The Australian Retailers Association (ARA) opposed the ban on the basis that it would increase costs and limit choice, and particularly hurt smaller retailers.[110] The ARA favours voluntary measures such as a code of code and educational measures. The Institute of Public Affairs' Gideon Rozner has argued that the proposed plastic bag ban is "insultingly paternalistic" and would have "no actual environmental benefit, despite the obvious inconvenience to consumers."[111] Rozner claimed that consumers are unlikely to reuse the thicker plastic bags, leading to more plastic waste. There have also been concerns raised about additional plastic purchases required for kitchen tidy bins, and the time it takes for thicker purchasable bags to break down.[112]

104 https://www.premier.vic.gov.au/victoria-says-no-to-plastic-waste/

105 https://engage.vic.gov.au/download_file/9969/1160

106 https://www.environment.vic.gov.au/__data/assets/pdf_file/0030/395418/Reducing-the-impacts-of-plastics-on-the-Victorian-environment.pdf

107 http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6cb0ca256da400837f6b/9b4481df5b3022f3ca258419001a6e85!OpenDocument

108 http://hansard.parliament.vic.gov.au/search/?LDMS=Y&IW_DATABASE=*&IW_FIELD_ADVANCE_PHRASE=be+now+read+a+second+time&IW_FIELD_IN_SpeechTitle=Environment+Protection+Amendment+Bill+2019&IW_FIELD_IN_HOUSENAME=ASSEMBLY&IW_FIELD_IN_ACTIVITYTYPE=Second+reading&IW_FIELD_IN_SittingYear=2019&IW_FIELD_IN_SittingMonth=June&IW_FIELD_IN_SittingDay=20

109 https://www.scientificamerican.com/article/stemming-the-plastic-tide-10-rivers-contribute-most-of-the-plastic-in-the-oceans/

110 https://cdn2.hubspot.net/hubfs/2272858/Policy/2018/ARA%20Position%20on%20Banning%20Lightweight%20Plastic%20Bags.pdf

111 https://ipa.org.au/publications-ipa/in-the-news/dans-ban-plastic-bags-doesnt-carry-weight

112 https://au.news.yahoo.com/disturbing-truth-behind-success-supermarket-giants-plastic-bag-ban-052407530.html

	Criteria	Conclusion	Comment
1	Establish need	Yes	The Victorian Government claimed that the policy was needed based on evidence of the impact of plastic on the environment.
2	Set objectives	Yes	The Victorian Government appealed to a public interest in a cleaner environment.
3	Identify options	Yes	The discussion paper did consider various alternatives for introducing a ban or limiting plastic bag usage in Victoria.
4	Consider mechanisms	Yes	The November 2016 cost-benefit analysis and the subsequent discussion paper in 2018 considered design options for the ban.[113]
5	Brainstorm alternatives	Yes	A cost-benefit analysis of a ban on plastic bags, which specifically considered the option of banning bags with a thickness of 35 microns or less, was released in November 2016.[114]
6	Design pathway	No	The Government announced a three-stage process for the policy's implementation, with ongoing work on reducing plastic bags, however full details were never provided including performance measures, ongoing evaluation, and oversight arrangements.[115]
7	Consult further	Yes	The Government both consulted throughout the discussion and consultation paper process.
8	Publish proposals	No	While there was a review of this specific issue, there was no extended green and white paper like process to consider plastic waste and potential solutions to concerns.
9	Introduce legislation	Yes	The Environment Protection Amendment Act 2019 has been introduced in Parliament, debated or passed.
10	Communicate decision	Yes	The changes were announced in a media release which stated the details.
		8/10	

113 https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/1915/0580/1564/Plastic_Bags_Ban_Options_-_Cost_Benefit_Analysis_Report.pdf

114 https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/1915/0580/1564/Plastic_Bags_Ban_Options_-_Cost_Benefit_Analysis_Report.pdf

115 https://www.environment.vic.gov.au/__data/assets/pdf_file/0021/325353/Reducing-the-impacts-of-plastic-on-the-Victorian-Environment-Consultation-Report.pdf

Fire Services Reform Act 2019

In June 2019, the Victorian Parliament passed the Fire Services Reform Act 2019.[116] The reforms transition the Country Fire Authority (CFA) into a voluntary-only service and moves 'integrated brigades,' the 38 CFA stations with volunteer and paid firefighters, into the newly created Fire Rescue Victoria (FRV). FRV is also set to replace the existing Melbourne Fire Brigade (MFB) and will provide fire services in all urban areas across the state. Most of the CFA brigades, 1,149 of the 1,186, are voluntary and would be unaffected by the changed. Volunteers at the 38 integrated stations can remain by co-locating with the FRV unit. The changes will also provide presumptive compensation for firefighters that develop certain types of cancer.

Advocates of the change claimed it would improve safety for both firefighters and the community. They also pointed to the inconsistency of outer suburban areas using the volunteer CFA brigade structure, designed in the 1950s. Critics claimed it was a blatant attempt to grab power by the union.[117] Volunteer Fire Brigades Victoria complained that the Government did not properly consult before announcing the changes that would "undermine community safety" and would see "volunteers effectively relegated to a secondary role".[118] They also worried that if volunteer firefighters were to quit it would reduce surge capacity for the state. Shadow Emergency Services Minister Brad Battin said that "They have voted to treat our CFA volunteers as second-class citizens and put the safety of Victorians at risk".[119] Volunteer firefighters have repeatedly raised concerns that the creation of the professionalized units would undermine the work of volunteers. Premier Daniel Andrews said that "We've had eight reviews in the past ten years. All of them have reached the same conclusion – the current fire services structure isn't working."[120]

These changes had long attracted controversy and questions over the close links between the Labor government, led by Premier Daniel Andrews, and the United Firefighters Union. In 2016, Emergency Services Minister Jane Garett resigned, alongside senior firefighters, due to concerns about the excessive requests for control by the union.[121] The Premier sided with the union, sacked the CFA board, and continued with proposals that would make the MFB agreement also apply to CFA's paid firefighters. During the 2016 federal election campaign, then-Prime Minister Malcolm Turnbull attended a rally against Labor's proposed reforms, and introduced changes in August 2016 to the Fair Work Act to prevent enterprise agreements that interfere with volunteers.[122] In May 2017, the Andrews Government announced their plan to split the CFA in two, as to avoid inconsistency with the federal law which prevented a workplace agreement reducing the role of volunteers.[123] In March 2018, the fire service restructure was initially rejected by the Victorian Upper House, during an unpreceded sitting that stretched into Good Friday, when two opposition MPs broke convention by reneging on an agreed paring arrangement.[124] It was ultimately passed following the 2018 state election delivering Labor increased numbers in Parliament.

116 http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6cb0ca256da400837f6b/2edb9d7ca602e31eca25840a007bf715!OpenDocument

117 https://www.standard.net.au/story/4673709/volunteers-respond-to-cfa-split/

118 http://standard.net.au/story/4673709/volunteers-respond-to-cfa-split/

119 http://abc.net.au/news/2019-06-21/mfb-fire-services-bill-passes-but-cfa-volunteer-exodus-a-test/11233708

120 http://premier.vic.gov.au/modern-fire-services-for-a-safer-victoria/

121 https://www.theage.com.au/national/victoria/emergency-services-minister-jane-garrett-has-resigned-20160610-gpg0on.html

122 https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1617a/17bd019

123 https://www.abc.net.au/news/2017-05-18/cfa-to-become-volunteer-only-in-major-split-of-organisation/8539266 https://www.premier.vic.gov.au/modern-fire-services-for-a-safer-victoria/

124 https://www.abc.net.au/news/2018-03-30/vic-fire-bill-voted-down-after-opposition-mps-reappear-for-vote/9605148

	Criteria	Conclusion	Comment
1	Establish need	No	While the Victorian Government pointed to a series of historic reviews on the fire services, the decision to split the CFA and create Fire Rescue Victoria did not derive from a review, and there was no formal consultation with the CFA, volunteer firefighters, Emergency Management Victoria, or MFB were consulted prior to announcing the reform.[125]
2	Set objectives	Yes	The Government appealed to a broad public interest necessary to "keep Victorians safe".[126]
3	Identify options	No	The Victorian Government does not appear to have considered splitting the CFA and creating a new single fire service in a previous review or in the context of other alternatives.
4	Consider mechanisms	No	The Victorian Government does not appear to have considered various choices to implement the changes.
5	Brainstorm alternatives	No	The Victorian Government does not appear to have undertaken a cost-benefit analysis of the changes, including considering the impact on safety.
6	Design pathway	No	The Victorian Government has established an Operational Implementation Committee to roll out the reforms and an 'implementation Monitor' to 10 years to provide oversight of the changes, however it has been claimed that there was a lack of information about the rollout of the changes including a comprehensive plan to manage the project.
7	Consult further	No	The Victorian Government does not appear to have undertaken further formal consultation following the announcement of the changes.
8	Publish proposals	No	The Government announced the changes in a 'Fire Services Statement' in May 2017 as a decision of the government, there was no green and white paper-like process that considered splitting the CFA and creating the new fire service.[127]
9	Introduce legislation	Yes	The Government proposed legislation that attracted substantial parliamentary debate and review before subsequently passing.
10	Communicate decision	Yes	The changes were clearly communicated in a series of media releases and on the Victorian Government website.[128]
		3/10	

125 Volunteer Fire Brigades Victoria: "Today's decision has never been a matter discussed or subject of consultation with CFA volunteers," see http://standard.net.au/story/4673709/volunteers-respond-to-cfa-split/. Also see, parliament.vic.gov.au/images/Fire_Services_Bill/final_report/FSBSC_58-02_Text_WEB.pdf

126 https://www.premier.vic.gov.au/modern-fire-services-for-a-safer-victoria/

127 See https://www.cfa.vic.gov.au/documents/20143/216987/FSS-statement-FINAL-18-May.pdf/afdbb377-33c9-c301-e281-75d2c661513a

128 https://www.premier.vic.gov.au/modern-fire-services-for-a-safer-victoria/ https://www.vic.gov.au/fire-services-reform

Bail Amendment Act 2018

In early 2018, the Victorian Parliament passed the second stage of amendments to Victoria's bail arrangements.[129] The legislation reformulates and clarifies the tests for bail, allows for police to remand an accused adult until a court is available, require an accused adult to be taken before court for a serious offence (except for children, Aboriginal people or vulnerable adults), provide a court the express power to bail or remand a person appearing on summons.[130]

The legislation implements the remainder of the recommendations of the review into Victoria's bail system following the Bourke Street attack of 20 January 2017. It emerged, following the attack that killed five people, that the individual responsible was out on bail at the time, leading to public concerns about the over provision of bail in Victoria.[131] The Bail Review was undertaken by Paul Coghlan QC, a former Supreme Court Judge and Director of Public Prosecutions. The Bail Review received 115 submissions, undertook 39 consultation sessions, and presented two reports with 37 recommendations in total.[132] Coghlan concluded that the theoretical underpinnings of the bail system did not need reform, however it was necessary to clarify when bail was to be granted and under what risk. The government accepted all the recommendations in principle and moved to pass the first bail amendment legislation in June 2017, implementing 16 recommendations of the bail review.[133]

The Victorian Government argued that the second stage of bail changes were necessary to empower police and keep Victorians safe. Victorian Attorney-General Martin Pakula said that "Strengthening the bail tests will ensure that risk to community safety is given a higher priority when deciding whether to grant bail."[134] The Police Association welcomed the amendments, while the Opposition said the changes were "too small and too weak".[135] Human rights groups raised concerned that the changes would undermine the presumption in favour of bail and excessively expand police powers to remand individuals. Liberty Victoria opposed the stage two changes, raising concerns that it would lead to a "serious erosion of the right to apply for bail" and "lead to more young people being unnecessarily detained".[136]

129 http://classic.austlii.edu.au/au/legis/vic/num_act/bata20183o2018269/

130 http://classic.austlii.edu.au/au/legis/vic/bill_em/batb2017233/batb2017233.html

131 http://abc.net.au/news/2017-01-23/accused-bourke-st-killer-charged-with-five-counts-of-murder/8204148

132 https://engage.vic.gov.au/bailreview

133 http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/51dea49770555ea6ca256da4001b90cd/D12077A0D8BF7CDACA25814C0014CD30/$FILE/17-026aa%20authorised.pdf https://www.premier.vic.gov.au/major-reforms-to-overhaul-bail-system-pass-parliament/

134 https://www.premier.vic.gov.au/new-police-remand-powers-under-bail-reforms/

135 http://59.100.168.91/Publications_and_Media/InBrief/InBrief_Landing_Pages/InBrief_14_17/InBrief_14_17_article_2.html https://www.heraldsun.com.au/news/law-order/victorian-bail-law-changes-to-be-announced-by-state-goverment/news-story/7725bd55aee875ea161421a85cdfe35c

136 https://libertyvictoria.org.au/content/bail-amendment-stage-two-bill-2017

	Criteria	Conclusion	Comment
1	Establish need	Yes	The Victorian Government pointed to the Bourke Street attack and the evidence gathered by the Bail Review to justify the changes.
2	Set objectives	Yes	The Victorian Government appealed to a broad public interest in safety to justify the legislation.
3	Identify options	No	While the Bail Review provided an opportunity to assess changes to the bail laws, there is no evidence of the Government considering alternatives in a formal manner.
4	Consider mechanisms	No	The Victorian Government does not appear to have undertaken an analysis of the alternative options to implement changes to the bail arrangements.
5	Brainstorm alternatives	No	The Victorian Government does not appear to have undertaken a cost-benefit analysis of the changes.
6	Design pathway	No	The Victorian Government does not appear to have published plans for how the changes will be implemented in practice.
7	Consult further	Yes	The Government claimed to undertake further consultation on the Stage Two changes following the announcement of the review's findings.
8	Publish proposals	No	While the Bail Review did take submissions, there was no publication of a discussion paper, followed by consultation and a further paper stating the Government's position and therefore this cannot be considered green and white paper-like process. The review itself notes that the process was time limited and there was limited consultation.
9	Introduce legislation	Yes	The Victorian Government developed legislation to implement the changes proposed by the review.
10	Communicate decision	Yes	The Victorian Government released a clear media release statement that explained the changes.[137]
		5/10	

137 https://www.premier.vic.gov.au/new-police-remand-powers-under-bail-reforms/

Residential Tenancies Amendment Act 2018

In September 2019, the Victorian Parliament passed the most substantial changes to tendency arrangements in over 20 years.[138] The law set minimum standards, required that animals can be kept in rental properties and that renters can make minor modifications to rental properties, and established a non-compliance register for rental providers who fail to meet these obligations.[139] The amendments also ended 'no fault' evictions, requires yearly not six-monthly rent increases and faster reimbursement of urgent repairs, and establishes automatic bond repayments. In total the package included more than 130 changes.[140] These arrangements apply to the 29 per cent of Victorians who live in a rented dwelling.[141] The new rules come into effect fully from July 2020, with specific regulatory rules yet to be developed.

The agenda dates to Labor's 2014 election promise to change the rules around tenancies. To implement this promise, the Victorian Government undertook a substantial review, including releasing the *Laying the Groundwork consultation paper in June 2015, followed by six public consultation papers on a range of issues.*[142] These consultations considered a range of issues including security of tenure, rent and bonds, rights and responsibilities, dispute resolution, property conditions and alternative forms of tenure. In January 2017, the government released *Heading for Home, an options paper outlining the conclusions of the consultation for final discussion.*[143] The Government also commissioned market research by EY Sweeney to assess the extent to which issues identified in the consultation process were more broadly experienced by renters and landlords in Victoria.[144] Overall this survey found that most tenants and landlords are satisfied (73% of tenants and 86% of landlords). Half of tenants (50%) think that the laws are balanced and 44% think they are unbalanced; while 39% of landlords thought the laws were balanced and 58% thought the laws favour tenants. The government claims more than 4,800 public comments were submitted during the review by individuals and organizations. The final list of changes was announced as part of the government's 'Rent Fair' campaign in October 2017, and legislative changes were introduced in August 2018.

Victorian Premier Daniel Andrews, announcing the reforms, claimed that the package "gives tenants more rights, helps them stay on longer leases, makes bonds smaller and fairer, and cracks down on dodgy landlords".[145] The Real Estate Institute of Victoria (REIV), who represent landlords, strongly opposed the changes, warning that they swung the pendulum too far in favour of renters and could lead to less availability of rental properties.[146] REIV president Richard Simpson said that stripping the ability to decide what goes on walls or whether pets can be in a property was unfair and that it would lead to "landlords simply pulling out [of the rental market] because it is becoming all too hard and too much of a risk." Tenants Victoria welcomed the changes, with CEO Mark O'Brien declaring that "This bill is a landmark step forward for legitimising renters as deserving of safety, stability and privacy in their homes".[147] The Liberal-National opposition opposed the changes, and attempted to amend the proposals in Parliament, however the law passing without amendment.[148]

138 http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/PubPDocs_Arch.nsf/5da7442d8f61e92bca256de50013d008/ca257cca00177a46ca2582e30013a6f8!OpenDocument&Highlight=0,Residential,Tenancies

139 https://www.parliament.vic.gov.au/publications/research-papers/download/36-research-papers/13872-residential-tenancies-amendment-bill-2018

140 https://engage.vic.gov.au/fairersaferhousing

141 https://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/2?opendocument

142 https://engage.vic.gov.au/download_file/2088/634

143 https://engage.vic.gov.au/download_file/1652/634

144 https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/5814/8781/7797/Victorian_Renting_Research_Report_-_RTA_Review_1.pdf

145 https://www.premier.vic.gov.au/andrews-labor-government-will-make-renting-fair/

146 https://reiv.com.au/policy-resources/latest-news/reiv-to-fight-%E2%80%98nanny-state%E2%80%99-changes-to-rental-laws

147 tuv.org.au/news/historic-step-forward-for-renters-as-residential-tenancies-amendment-bill-2018-passes-through-victorian-parliament/

148 https://www.domain.com.au/news/victorias-rental-reforms-pass-parliament-in-win-for-tenants-20180906-h151x2-762361/

	Criteria	Conclusion	Comment
1	Establish need	Yes	The Victorian Government pointed to evidence of a growing number of renters in Victoria to justify changing the arrangements in their favour; however, notably, the commissioned market research did not find widespread unhappiness with arrangements or a view that the laws were unbalanced in favour of landlords.
2	Set objectives	Yes	The Victorian Government appealed to a public interest in helping renters.
3	Identify options	Yes	The Laying the Groundwork and Heading for Home consultation papers considered a substantial number of alternatives for changing rental arrangements in Victoria.
4	Consider mechanisms	Yes	The Victorian Government did consider various implementation options for the proposed changes as part of the discussion paper process.
5	Brainstorm alternatives	No	While there has been consideration of costs and benefits of various changes, the Victorian Government does not appear to have published a cost-benefit analysis of the entire regime.
6	Design pathway	No	The full arrangements for how the legislation would work in practice were not settled in advance, with substantial regulatory work to be subsequently developed following the legislation. many final implementation choices, such as the 'minimum standard,' 'prescribed modifications,' and what can be determined as a 'pet' still undecided.
7	Consult further	Yes	The Government has undertaken consultation throughout this policy process, including in relation to forming the proposals and commitment to further consultation on the specifics of the regulation.
8	Publish proposals	Yes	The Victorian Government's extensive review process, including various consultation papers and a final concluding paper, is akin to a green and white paper process.
9	Introduce legislation	Yes	The legislation was introduced and debated, albeit with relatively limited time: the bill was introduced into the lower house on 7 August and passed 23 August (16 days), and introduced into the upper house on 24 August and passed 6 September. (13 days). Despite the substantial size of the changes they were not considered by a Parliamentary committee.
10	Communicate decision	Yes	The Victorian Government announced the changes in a media release and website dedicated to the process.[149]
		8/10	

149 https://www.premier.vic.gov.au/andrews-labor-government-will-make-renting-fair/

New South Wales

Modern Slavery Act

In mid-2018, the NSW Parliament passed the Modern Slavery Act 2018 to tackle issues such as human trafficking, slavery, servitude, forced labour, debt bondage and forced marriage.[150] The Australian Institute of Criminology have estimated there are up to 1,900 people living in modern slavery in Australia during 2016-17, with just one-in-five cases known by police.[151] The law, the first in Australia to specifically legislate against modern slavery and establish a Slavery Commissioner. It aims to ensure that NSW is not involved in the crime of modern slavery, both directly in NSW itself and in the supply chains of NSW companies anywhere in the world. The law establishes an Anti-Slavery Commissioner, develops a response to support victims, and sets out requirements for businesses, in their supply chain, and NSW Government agencies to address modern slavery. Companies that do not comply can be fined up to $1.1 million. NSW businesses with an annual turnover of between $50 million and $100 million must submit a statement to the Anti-Slavery Commissioner outlining the steps they are taking. This in addition to the subsequently passed *Commonwealth Modern Slavery Act 2018*, which created a national reporting requirement for businesses with over $100 million revenue.[152]

The genesis of the legislation is a private members bill introduced into the Legislative Council by Christian Democratic Party MP Paul Green, which ultimately came to be supported by all sides of Parliament.[153] The legislation was introduced into the legislative Assembly by Premier Gladys Berejiklian. This came following a legislative council select committee inquiry into human trafficking in 2016-17, which recommended a series of measures to combat modern slavery including the appointment of an independent anti-slavery commissioner.[154] The law was strongly supported by Sydney Archbishop, Glenn Davies, said the law "deserves the wholehearted support of the Parliament and the people of NSW".[155] However, businesses, such as Nestle, have raised concerns that supply chain reporting requirements could require significant cost and time that would be passed along to consumers.[156]

Despite being legislated, the act has no starting date.[157] In June 2019, Special Minister of State Don Harwin admitted that the law has "defects" that could make the act inoperable, was open to "constitutional challenge" because of potential conflicts with federal law, and required review, including considering whether it is necessary in the context of federal legislation.[158] In August 2019, the NSW Parliament's Legislative Council Standing Committee on Social Issues announced a review of the Modern Slavery Act and the associated draft regulations, with submissions due by 4 October 2019 and

150 https://www.legislation.nsw.gov.au/~/view/act/2018/30

151 https://aic.gov.au/publications/sb/sb16

152 https://www.legislation.gov.au/Details/C2018A00153

153 https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1820781676-75577'

154 https://www.parliament.nsw.gov.au/lcdocs/inquiries/2421/Final%20report.pdf

155 http://www.anglicannews.org/news/2018/03/sydney-archbishop-welcomes-new-south-wales-modern-slavery-bill.aspx

156 This was discussed in the context of the federal legislation, see https://www.smh.com.au/politics/federal/nestle-says-slavery-reporting-requirements-could-cost-customers-20180816-p4zy5l.html

157 http://claytonutz.com/knowledge/2019/june/the-future-of-the-nsw-modern-slavery-act-is-unclear

158 https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-79150

final report due February 2020.[159] The NSW Government's initial submission to the review stated that:

> "As a Private Member's Bill, the policy development and drafting of the [Modern Slavery Act 2018 (NSW) Act] did not have the full range of government resources and expertise behind it, and while the intent of the proponent is generally clear, the NSW Act as drafted sometimes does not fulfil that intent."[160]

The NSW Department of Premier and Cabinet is also inviting feedback on the design of the supply chain reporting scheme as outlined in the draft regulations, due by 13 September 2019.[161]

	Criteria	Conclusion	Comment
1	Establish need	Yes	The initial human trafficking parliamentary committee provided for evidence of concern about modern slavery and an impetus to propose policy change.
2	Set objectives	Yes	The need for the legislation was put in the terms of the public good in tackling human slavery.
3	Identify options	Yes	The various reviews presented an opportunity to consider the issue including alternatives of approach in policy design.
4	Consider mechanisms	No	There does not appear to have been consideration of options for implementation prior to the introduction of the Modern Slavery Bill, with specific details left to regulatory design after the legislation was passed.
5	Brainstorm alternatives	No	There does not appear to have been development of a cost-benefit analysis to assess the potential regulatory cost of the new reporting requirements relative to the potential benefits it could provide.
6	Design pathway	No	The lack of preparation and full policy design is indicated by the lack of starting date at the time of legislation and the subsequent need for to undertake a further parliamentary inquiry in 2019.
7	Consult further	No	Following the introduction of the bill, there does not appear to have been further public consultation on the issue and its viability, perhaps helping explain the subsequent discovery that the legislation is inoperable.
8	Publish proposals	No	The NSW did develop a green and white paper on the issue of modern slavery, the parliamentary committee process did not include a discussion paper followed by a final statement of policy.
9	Introduce legislation	Yes	The legislation was developed, introduced and debated in Parliament between February 2018 and June 2018.[162]

159 https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2546#tab-submissions

160 http://parliament.nsw.gov.au/lcdocs/submissions/64692/0001%20%20NSW%20Government.pdf

161 https://www.nsw.gov.au/improving-nsw/have-your-say/modern-slavery-regulation-2019/

162 https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3488

10	Communicate decision	No	The NSW Government has not published a media release announcing the passing of the modern slavery legislation, with NSW Government websites only discussing the appointment of a commissioner (December 2018).[163] An information page on the legislation was only published in February 2019.[164]
		4/10	

Crimes (Domestic and Personal Violence) Amendment Act 2018

Prior to the end of the 2018 sittings, the NSW parliament enacted seven criminal law amendments to address issues ranging from terrorism and high-risk offenders to bushfires and the supply of drugs.[165] One of these changes was the *Crimes (Domestic and Personal Violence) Amendment Act 2018* which expanded the definition of stalking and intimidation to include cyberbullying and making it clear that stalking can include contacting a person using the internet or other technology. The law applies to a range of online activity, including abusive emails, threatening or hurtful messages, photos or videos online or repeatedly sending unwanted messages. It also provides the opportunity for an individual who has been cyberbullied to apply for Apprehended Violence Orders. The law allows for penalties of up to 5 years in jail for stalking and harassing online.

NSW Attorney-General dubbed this "Dolly's Law" in tribute to 14-year-old Amy "Dolly" Everett, "who tragically took her own life in January this year following persistent bullying and abuse, including cyberbullying".[166] Dolly's parents launched a campaign to raise awareness about cyberbullying.[167] In a statement following the announcement of the law, Dolly's parents said that "Laws about respect can have an impact if they are part of broader community education, standards and behaviour change."[168] NSW Police Commissioner Mick Fuller said that a criminal threshold would still apply and that he hoped it would give more confidence for victims to come forward.[169] The NSW Government said these reforms build on existing NSW and Commonwealth law, and is consistent with updated laws in other states.[170] There was no substantial opposition to the legislation.

163 https://www.dpc.nsw.gov.au/updates/2018/12/21/interim-anti-slavery-commissioner-appointed/

164 https://www.nsw.gov.au/improving-nsw/projects-and-initiatives/modern-slavery/

165 https://theconversation.com/law-and-order-is-no-get-out-of-jail-card-for-floundering-politicians-107701

166 parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1323879322-104058

167 https://www.abc.net.au/news/2018-01-10/dolly-everett-nt-suicide-cyber-bullying-campaign-launched/9317056

168 https://www.facebook.com/dollysdreamaustralia/posts/774877369510448

169 http://abc.net.au/news/2018-10-07/online-trolls-and-cyberbullies-in-nsw-face-tougher-new-laws/10348246

170 http://parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1820781676-78300'

	Criteria	Conclusion	Comment
1	Establish need	No	The NSW Government claimed that the existing law inadequately dealt with online intimidation and stalking about abuse, however failed to link this to evidence or consultation to justify its introduction beyond the focus on a single case.
2	Set objectives	Yes	The NSW Government claimed the law was necessary to address public safety in the online context.
3	Identify options	No	The NSW Government has not published a consideration of the alternatives to address cyberbullying.
4	Consider mechanisms	No	The NSW Government has not published a consideration of the implementation choices for this policy.
5	Brainstorm alternatives	No	The NSW Government has not published a cost-benefit analysis for this legislation.
6	Design pathway	No	The NSW Government has not published information on the plans for implementing the new policy.
7	Consult further	No	The NSW Government does not appear to have undertaken formal consultation on the proposed policy following its announcement.
8	Publish proposals	No	The NSW Government did not develop a green and a white paper to assess possible responses to online bullying.
9	Introduce legislation	Yes	The legislation was introduced and debated in Parliament, albeit over a relatively short time frame (introduced October 16, 2018 and passed November 21, 2018).[171]
10	Communicate decision	Yes	The law was explained in a media release following its passing in Parliament.[172]
		3/10	

171 https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3563

172 https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2018/dolly-law.aspx

Children and Young Persons (Care and Protection) Amendment Act 2018

In November 2018, the NSW Parliament amended the care and protection and adoption legislation with the aim of improving the treatment of vulnerable children and young people.[173] The laws, among other changes, require children in the foster care system to be placed in a permanent new home – returned to their birth parents, in guardianship or adopted – within two years. Under the amendments, the courts will be able to allow a child to be adopted without the consent of their parents if: "the child has established a stable relationship with his or her guardians; the adoption of the child by his or her guardians will promote the child's welfare; and to do so is in the best interests of the child."[174] The law was designed to help combat NSW's low adoption rate, with less than a few hundred of the over 18,000 children in foster care adopted each year.

The law enacts proposals from the NSW Government's Shaping a Better Child Protection System discussion paper, released in October 2017.[175] The NSW Government sought to consult on the proposed changes, which subsequently led to over 100 submissions and face-to-face consultations, with the subsequent legislation informed by the feedback.[176] NSW Premier Gladys Berejiklian said that "When it is no longer safe for a child to stay at home, we want them to have a permanent home as quickly as possible through guardianship or open adoption. These reforms will help speed up that process."[177]

The reforms, however, have been controversial. Some have warned that the proposals could lead to a repeat of the Stolen Generations.[178] Shadow Family and Community Services Minister Tanya Mihalik said that the two year limit was "arbitrary" and called for more resources for the foster care sector.[179] Community Legal Centres NSW strongly opposed the changes, raising concerns that "creating a fast-tracked pathway to adoptions and adoption-like guardianship orders that will repeat the harms caused by past policy failures."[180] They specifically raised concerns about the disproportionate impact on Aboriginal children, which make up 38% of children in out-of-home-care, and could allow the 810 Aboriginal children under guardianship orders to be immediately adopted without their parents' consent. "If pursued, the legacy of these reforms will be another government apology to yet another generation of vulnerable and traumatised children," Community Legal Centres NSW warned.

173 https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3598

174 https://www.theaustralian.com.au/nation/politics/new-laws-streamline-adoption-process/news-story/780290ff8422bc9e22256678c35c1f92

175 https://www.parliament.nsw.gov.au/bill/files/3598/XN%20Children%20and%20Young%20Persons%20(Care%20and%20Protection)%20Amendment%20Bill%202018.pdf

176 https://www.facs.nsw.gov.au/download?file=633577

177 https://www.nsw.gov.au/your-government/the-premier/media-releases-from-the-premier/landmark-child-protection-reform-to-ensure-children-no-longer-languish-in-care/

178 https://www.sydneycriminallawyers.com.au/blog/stop-the-stolen-generations-repeal-biased-forced-adoption-laws/ https://honisoit.com/2019/02/sorry-means-you-dont-do-it-again-hundreds-protest-ongoing-indigenous-child-removals-on-sorry-day/ https://www.thesaturdaypaper.com.au/news/indigenous-affairs/2018/11/17/adoption-law-changes-nsw/15423732007144

179 http://abc.net.au/news/2018-10-24/nsw-government-adoption-law-overhaul-proposed/10422140

180 http://clcnsw.org.au/briefing-children-young-persons-care-and-protection-amendment-bill-201

	Criteria	Conclusion	Comment
1	Establish need	Yes	The NSW Government pointed to the discussion paper consultation and relatively low level of adoption of children in foster care to justify the legislation.
2	Set objectives	Yes	The NSW Government said that the changes were necessary to ensure more certainty and better life outcomes for vulnerable children.
3	Identify options	Yes	The Shaping a Better Child Protection System review assessed various alternatives for improving NSW's child protection system.
4	Consider mechanisms	No	The NSW Government does not appear to have published an analysis of the implementation options.
5	Brainstorm alternatives	No	The NSW Government did not publish a cost-benefit analysis of the proposed changes.
6	Design pathway	No	The NSW Government does not appear to have outlined a plan for implementing and reviewing this policy.
7	Consult further	No	The NSW Government does not appear to have consulted further following the announcement of the changes in the report on the outcome of consultations.
8	Publish proposals	Yes	The Shaping a Better Child Protection System discussion paper (a green paper) followed by the report on the outcome of the consultations (a white paper) is the equivalent process. [181]
9	Introduce legislation	No	The NSW Government introduced legislation into the parliament that was debated and passed.[182] However, there was very limited time to consider the bill or time spent in committee.
10	Communicate decision	Yes	The NSW Government outlined the details of the reform in a published media release.[183]
		5/10	

181 https://www.facs.nsw.gov.au/download?file=633577

182 https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3598

183 https://www.nsw.gov.au/your-government/the-premier/media-releases-from-the-premier/landmark-child-protection-reform-to-ensure-children-no-longer-languish-in-care/

Electoral Funding Act 2018

On May, 2018, the NSW Parliament passed the Electoral Funding Act 2018, a law to make provision for the disclosure, capping and prohibition of certain political donations and electoral expenditure for parliamentary and local election campaigns, and for public funding of parliamentary election campaigns.[184] The law introduced the first cap on local government election donations, requires all donations of $1,000 or more to be disclosed within 14 days, requires parties to identify expenditure aimed at influencing voting in a specific electorate, requires parties to identify senior officeholders, increases potential fines, requires 'associated entities' to undertaken some disclosure, and reinstate the 'dollar-per-vote model for electoral funding.[185] Most controversially, the law included caps on third-party expenditure, set at $500,000 in the immediate six months before an election (decreased from $1.29 million). This applies to unions, environmental groups and churches.

The law implements the recommendations of the Parliamentary Joint Standing Committee on Electoral Matters, which follows up on an independent expert panel chaired by Dr Kerry Schott. The panel, which released its final report in December 2014, was established following concerns raised in Independent Commission Against Corruption (ICAC) hearings about donations undermining the integrity of government decision-making.[186] ICAC raised evidence of corrupt solicitation, reception and concealed payments from various sources. The Schott inquiry received over 70 submissions.[187] The Schott review recommended various limitations on donations and disclosure requirements, as well as requirements for real-time disclosure and a $500,000 expenditure cap for third parties. The NSW Government accepted all but one of the 50 recommendations.[188] Subsequently, the Parliamentary Joint Standing Committee reviewed the report and, in principle, endorsed 44 of the 50 recommendations.[189]

The NSW Government claimed the measures were necessary to ensure transparency and accountability in the state's politics, including applying expenditure caps to local government elections for the first time and capping election spending by third-parties. NSW Premier Gladys Berejiklian claimed that the "reforms will drive greater integrity, transparency and accountability in our electoral funding regime, and help protect our democratic values and freedoms".[190] However, critics said the proposals were ill-designed and undermine freedom of expression. The peak body for local government, complained that the formula for capping local government campaign expenditure produces "bizarre outcomes," with a candidate in Walcha Council being able to spend $8.70 per a voter and yet a City of Sydney backed candidate being able to spend just 3 cents per a voter.[191] The NSW Government subsequently announced a review of local government expenditure caps by the Parliamentary Committee on Electoral Matters to address the issues.[192]

The law was also heavily criticized by the union movement who claimed it would "silence" union members by preventing speech on their behalf.[193] In January 2019, the High Court of Australia ruled, in a unanimous decision, that the $500,000 cap on third-party campaign expenditure to be unconstitutional in response to a case bought by Unions NSW.[194] The Court found that the provision

184 https://www.legislation.nsw.gov.au/#/view/act/2018/20

185 https://nsw.liberal.org.au/Shared-Content/News/2018/REFORM-OF-ELECTORAL-FUNDING-LAWS

186 https://www.dpc.nsw.gov.au/updates/2014/05/27/panel-of-experts-political-donations/

187 http://dpc.nsw.gov.au/assets/media-news/95/attachments/611c3861d7/Volume_1_-_Final_Report.pdf

188 https://www.dpc.nsw.gov.au/assets/media-news/95/attachments/5333fdabf0/Government_response_to_Expert_Panels_final_report.pdf

189 https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=1639

190 https://nsw.liberal.org.au/Shared-Content/News/2018/REFORM-OF-ELECTORAL-FUNDING-LAWS

191 https://www.smh.com.au/national/nsw/urgent-fix-needed-for-election-funding-laws-say-nsw-councils-20180808-p4zwac.html

192 https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2506

193 https://www.abc.net.au/news/2018-12-04/nsw-unions-launch-high-court-bid-against-campaign-funding-laws/10578594

194 https://www.theguardian.com/australia-news/2019/jan/29/high-court-strikes-down-nsws-500000-cap-on-third-party-political-donations

infringes on the implied freedom of political communication and left 'no cap' in place. This followed a High Court decision in 2013 that struck down a NSW law that established a total ban on union and corporate political donations. Further, since the introduction of laws, concerns have been raised that NSW Labor has attempted to evade the scheme.[195]

	Criteria	Conclusion	Comment
1	Establish need	Yes	The NSW Government pointed to evidence of corrupt political behavior gathered by various reviews, including the Schott review.
2	Set objectives	Yes	The NSW Government claimed a public interest in ensuring integrity of NSW elections.
3	Identify options	Yes	The NSW Government considered alternatives for changing the electoral system as part of the Schott review.
4	Consider mechanisms	No	The NSW Government does not appear to have analyzed alternative implementation choices for this change. Notably, the parliamentary committee recommended further reviews by the government that do not appear to be undertaken.
5	Brainstorm alternatives	No	The NSW Government does not appear to have undertaken a cost-benefit analysis in relation to these policies, weighing up the potential impact
6	Design pathway	No	The NSW Government does not appear to have developed a framework for the policy. The immediate need to review the legislation by the Parliamentary Committee on Electoral Matters indicates that the government had not fully considered how the policy would work in practice in advance.
7	Consult further	Yes	The NSW Government undertook further consultation on the laws through the parliamentary review process, which provided an opportunity for feedback following the initial acceptance of the recommendations of the Schott.
8	Publish proposals	Yes	The Schott review, which included both an interim report (green paper) and a final report with recommendations (white paper) can be considered the equivalent of a green and white paper process.
9	Introduce legislation	Yes	The NSW Government developed and introduced legislation that was debated in Parliament.
10	Communicate decision	Yes	The NSW Government released a media release outlining the key details of the reforms.[196]
		7/10	

195 https://www.smh.com.au/national/nsw/labor-had-scheme-to-evade-electoral-funding-laws-20190724-p52age.html

196 https://nsw.liberal.org.au/Shared-Content/News/2018/REFORM-OF-ELECTORAL-FUNDING-LAWS

Queensland

Termination of Pregnancy Act 2018 (legalisation of abortion)

On 17 October 2018, the Queensland Parliament passed the Termination of Pregnancy Bill 2018, making abortion legal in Queensland in a wider variety of circumstances.[197] The law treats abortion as a 'health issue rather than a criminal issue' by supporting a women's right to choose and providing guidelines for health practitioners in relation to terminations.[198] Before the reforms, the Criminal Code made it a crime to unlawfully terminate a pregnancy, or for anyone to support ending a pregnancy, with a maximum penalty of 14 years. Exceptions existed for certain circumstances, such as a serious danger to a women's life, physical or mental health. The Queensland Government claimed this "created uncertainty among doctors" leading to less accessibility of termination services for women.[199] Queensland follows all other Australian jurisdictions, not including New South Wales which is currently considering changing the law, that have amended laws to decriminalise abortion.

In February 2017, the Queensland Government announced that the termination of pregnancy laws would be considered by the Queensland Law Reform Commission (QLRC), with a view to reform the law.[200] The associated consultation paper considered the existing law in Queensland and other jurisdictions and called for feedback on issues such as limitations on terminations, conscious objection, and counselling. The QLRC, released in July 2018, received 1,200 submissions on its consultation paper; and also considered previous parliamentary committee inquiries that included public hearings and over 2,700 submissions. [201] It made 28 recommendations for legislative change and proposed draft legislation.

The QLRC recommendations were guided by the principle that abortion is a health matter; women's autonomy and health should be protected, with greater emphasis on a woman's autonomy in the earlier stages of a pregnancy and greater emphasis on the fetus in later stages; alignment with international human rights obligations; consistency with clinical practice and other Australian jurisdictions. Specifically, the QLRC called for the sections of the Criminal Law which outlaw abortion to be removed and a new standalone termination of pregnancy law be introduced to establish circumstances when abortion is legal. Following the 'combined approach,' in Victoria, it suggests that termination be available on request up to 22 weeks, with additional requirements after this time assessed by the medical practitioner. This was consistent with current clinical practice, and the views of the majority of Australians that support a woman's right to choose but do not consider this right to be absolute. QLRC also recommended additional measures to ensure access, including a requirement that health practitioners with a conscientious objection to refer a woman to a health practitioner without a conscientious objection; and 'safe access zones' near termination services premises. The Queensland Government accepted all 28 recommendations.

197 https://www.legislation.qld.gov.au/view/html/asmade/act-2018-023

198 https://www.health.qld.gov.au/system-governance/legislation/specific/termination-of-pregancy-legislation

199 http://qlrc.qld.gov.au/__data/assets/pdf_file/0011/579863/ex-notes-termination-of-pregnancy-bill-2018.pdf

200 https://www.qlrc.qld.gov.au/__data/assets/pdf_file/0010/547165/qlrc-wp-no-76-2017.pdf

201 https://www.qlrc.qld.gov.au/__data/assets/pdf_file/0004/576166/qlrc-report-76-2018-final.pdf

The proposals attracted substantial public controversy, with pro-choice and pro-life activists undertaking competing rallies. The law was backed by the Queensland branch of the Australian Medical Association and the Queensland Nurses and Midwives Union, while opposed by anti-abortion groups such as Cherish Life.[202] LNP Opposition Leader Deb Frecklington claimed that abortion was already effectively legal, with a lack of cases of prosecution of woman. She claimed that "This bill is not about protecting women from persecution. So why is this legislation before the house? It is before us because of politics, pure and simple."[203] Attorney-General Yvette D'Ath said that "Termination is never an easy option for any woman, and no one ever makes this decision lightly, but all women across Queensland should have the right to make the decision for themselves and without fear of criminal prosecution."[204] While Labor formally supported the changes and the Liberal Nationals opposed, MPs in both parties were given a conscience vote on the issue. The legislation passed 50 votes to 41, with one Labor MP voting against and one abstaining, while three LNP MPs supported the law.[205]

	Criteria	Conclusion	Comment
1	Establish need	Yes	The Queensland Government pointed to the need to update the laws to provide "certainty and clarity" for woman, healthcare practitioners and the community.[206]
2	Set objectives	Yes	The Queensland Government framed the reforms in the context of supporting a woman's access to healthcare, supporting their individual autonomy.
3	Identify options	Yes	The Explanatory Notes accompanying the Termination of Pregnancy Bill 2018 provides evidence of consideration of alternatives, concluding that "There are no alternative ways of achieving the policy objectives other than through legislative amendment." [207]
4	Consider mechanisms	Yes	The QLRC inquiry provided an opportunity to consider a review a variety of implementation choices, including questions such as gestational limits, conscious objections, counselling and safe access zones.
5	Brainstorm alternatives	Yes	The Queensland Government did not undertake a traditional cost-benefit analysis, however considering this is a social policy it is difficult to formally price different costs and benefits. The review process did consider the pros and cons of different models in a systematic fashion.
6	Design pathway	No	The Queensland Government does not appear to have developed plans for how the law will be rolled out, including a subsequent review.
7	Consult further	No	The Queensland Government considered the consultation undertaken by the QLRC to be sufficient, leading to "no specific consultation occurred in relation to the Bill" after the announcement of the chosen policy.[208]

202 http://theaustralian.com.au/nation/politics/queensland-mps-to-vote-on-abortion-reforms/news-story/a66451a453c727bc7aee523670286498

203 http://abc.net.au/news/2018-10-17/queensland-abortion-debate-politicians-in-tears/10386110

204 https://www.abc.net.au/news/2018-10-17/abortion-legal-in-queensland-after-historic-vote/10382538

205 https://www.abc.net.au/news/2018-10-17/abortion-legal-in-queensland-after-historic-vote/10382538

206 http://qlrc.qld.gov.au/__data/assets/pdf_file/0011/579863/ex-notes-termination-of-pregnancy-bill-2018.pdf

207 http://qlrc.qld.gov.au/__data/assets/pdf_file/0011/579863/ex-notes-termination-of-pregnancy-bill-2018.pdf

208 http://qlrc.qld.gov.au/__data/assets/pdf_file/0011/579863/ex-notes-termination-of-pregnancy-bill-2018.pdf

8	Publish proposals	Yes	The QLRC's 'Review of termination of pregnancy laws' included both a 'Consultation Paper' (a green paper), which provided an opportunity for feedback, and a 'Report' (white paper) that the Government accepted as a statement of policy; this can be considered the equivalent of a green and white paper process.[209]
9	Introduce legislation	Yes	Following the Queensland Law Reform Commission investigation, the Queensland Government introduced legislation that was debated in Parliament.
10	Communicate decision	Yes	The law changes were explained in a media release following the passing of a policy, as well as other communications.[210]
		8/10	

Non-consensual Sharing of Intimate Images Act 2019 ('revenge porn' laws)

In February 2019, the Queensland Parliament amended the criminal code to outlaw the non-consensual sharing of intimate images.[211] The law explicitly outlaws what is commonly known as 'revenge porn': the "sending, or threatening to send, intimate material without consent".[212] An intimidate image includes a nude, an image with genitals or backside showing with or without underwear, an image with breasts showing, or any intimate sexual activity. Digitally altered images, that for example put a person's face onto a pornographic image, are also included in the definition under the legislation. It does not matter if the image was originally taken with consent if no permission has been given to other people seeing the image. If the person in the image is under 16 it is never legal to share an image. The Queensland Government claimed that these images, which are often acquired in the context of a relationship, can be "humiliating and distressing," while the threat to share can be coercive.[213] A maximum penalty of three years imprisonment applies for both the action of sharing and the threat of sharing; a court can also order the destruction of an image.

The policy was first announced on November 22, 2017, three days before the 2017 state election.[214] Premier Annastacia Palaszczuk claimed that "Revenge porn, as it's often known, is used in a variety of disturbing ways, and there is anecdotal evidence that it's occurring more often, particularly as part of a pattern of domestic violence behaviour".[215] Attorney-General Yvette D'Ath said that "We want offenders to know that this is more than unacceptable, it is a crime. We want victims to know that it is safe to come forward. They will not be blamed or shamed, they will be supported by the new laws."[216] In May 2019, it was reported that the first five Queenslanders would be charged with offences for sharing intimate images without consent.[217] The state law is in addition to a federal law that calls for fines of up to $525,000 for corporations and $105,000 for individuals for sharing intimate images.[218]

209 http://qlrc.qld.gov.au/recently-completed-reviews#TOP

210 http://statements.qld.gov.au/Statement/2018/10/17/palaszczuk-government-delivers-historic-abortion-laws

211 https://www.legislation.qld.gov.au/view/html/bill.first/bill-2018-050/lh

212 https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2018-050

213 https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2018-050

214 https://www.brisbanetimes.com.au/queensland-election-2017/revenge-porn-to-become-a-criminal-offence-under-labor-20171122-p4yx5i.html

215 https://www.brisbanetimes.com.au/queensland-election-2017/revenge-porn-to-become-a-criminal-offence-under-labor-20171122-p4yx5i.html

216 http://statements.qld.gov.au/Statement/2019/2/13/revenge-porn-now-a-criminal-offence

217 https://www.couriermail.com.au/news/queensland/crime-and-justice/queensland-police-launch-first-revenge-porn-prosecutions/news-story/96ed1d3fd11320960268d904aa4735a7

218 https://www.qt.com.au/news/revenge-porn-bill-passes-australian-senate/3335838/

	Criteria	Conclusion	Comment
1	Establish need	No	The Explanatory Memorandum noted that some existing offences in the criminal code that may apply in specific circumstances, however the law was necessary to fill "a potential gap" in relation to whether an individual could expect privacy; it also creates an offence for threatening to distribute.[219] However, the Queensland Government have not produced evidence of the extent of the problem, or consultation with effected parties to demonstrate a need for this law. When originally announcing the policy in November 2017, Premier Annastacia Palaszczuk could only point to "anecdotal evidence that it's occurring more often" to justify the policy.[220]
2	Set objectives	Yes	The Queensland Government appealed to a broad public interest in tackling intimidating behavior and protecting vulnerable people, with links to domestic violence.
3	Identify options	No	The Explanatory Notes accompanying the bill states that "There are no alternative ways to achieve the policy objectives."[221] However, there does not appear to be any stated basis for this broad claim or analysis of why other options are not adequate. The Government could have considered other options such as the greater enforcement of existing laws, voluntary codes and education.
4	Consider mechanisms	No	The Queensland Government does not appear to have considered different options to implement the policy, such as different definitions and fines.
5	Brainstorm alternatives	No	The Queensland Government does not appear to have undertaken cost-benefit analysis of the proposal.
6	Design pathway	No	The Queensland Government does not appear to have developed plans for how the law will be rolled out, including a subsequent review.
7	Consult further	Yes	The Explanatory Notes accompanying the bill states that a consultation draft of the legislation was provided to several entities, including the Queensland Family and Child Commission and Legal Aid Queensland.[222]
8	Publish proposals	No	The Queensland Government did not produce an inquiry into the issue of sharing images or other associated law reform.
9	Introduce legislation	Yes	The legislation to implement this policy was developed and introduced into Parliament.
10	Communicate decision	Yes	The Queensland Government released a statement following the passage of the law explaining the initiative.[223] A subsequent social media advertising campaign has also been announced.[224]
		4/10	

219 https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2018-050

220 http://brisbanetimes.com.au/queensland-election-2017/revenge-porn-to-become-a-criminal-offence-under-labor-20171122-p4yx5i.html

221 https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2018-050

222 http://legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2018-050

223 http://statements.qld.gov.au/Statement/2019/2/13/revenge-porn-now-a-criminal-offence

224 http://statements.qld.gov.au/Statement/2019/5/12/icymi-sharing-intimate-images-without-consent-could-land-you-in-jail https://www.qld.gov.au/law/crime-and-police/types-of-crime/intimate-images

Human Rights Act 2019

On the 27 February 2019, the Queensland Parliament passed the Human Rights Act 2019, following previous enactments of international human rights law in domestic law by the Australian Capital Territory and Victoria.[225] The law aims to consolidate and establish statutory provisions for protection of human rights and encourage 'dialogue' about human rights.[226] It includes a list of 23 human rights drawn from international human rights law, including equality before the law, property rights, privacy, education and health services. It requires the Government to consider human rights in all decision-making and only limit human rights in certain circumstances and after careful consideration.

The rights are not considered absolute and must be balanced against the rights of others. The law, which is scheduled to come into effect on 1 January 2020, establishes a responsibility for public service employees to respect, protect and promote human rights.[227] A Human Rights Unit has been established within government to coordinate preparations. If an individual believes their human rights has been limited they will be able to submit a complaint, first to the respective department and subsequently to the Human Rights Commission (formally the Anti-Discrimination Commission Queensland).

The Human Rights Act cannot be able to be used by the courts to invalidate legislation – maintaining parliamentary sovereignty – but courts would have an obligation to interpret law in a way that is consistent with human rights. Public entities have an obligation to make decisions that are compatible with and consider human rights. There are limited legal remedies available for contraventions of the law, with no access to monetary damages and only an ability to 'picky-back' onto another claim.

The original impetus of the law was a referral by Queensland's Legislative Assembly to the Legal Affairs and Community Safety Committee to inquire on a Human Rights Act for Queensland. The seven-month inquiry received 480 submissions and included public hearings across the state. The report, tabled in 2016, was split between Government members that supported the establishment of an act and the opposition members who opposed the law.[228] The law was broadly supported by submissions, however some claimed it was unnecessary given existing protections and it would be inappropriate to expand the role of the judiciary. The Government members recommended that a 'statement of compatibility' accompany parliamentary bills, that inconsistency with human rights itself does not limit a bill and that the judiciary not have a part in a human rights complaint process.

Introducing the legislation, Attorney-General and Minister for Justice Yvette D'Ath said that "The bill will ensure that human rights are a key consideration in public sector decision-making and in the development of policy and legislation in Queensland."[229] The Liberal National Party opposed the law. Shadow Attorney-General David Janetzki stated that protecting vulnerable people is a "worthy aspiration" but that existing mechanisms, such as judicial review and the Queensland Ombudsman provide this accountability, with rights such as freedom of expression and equality regardless of gender or race already protected by the common law and existing legislation.[230] Janetzki said that the existing system is "well balanced" and worried about the transfer of power to the judiciary by requiring the courts to "interpret the bill's provisions in a way that is compatible or most compatible with another act, that is, the human rights listed in the bill. This will constitute a significant change in the relationship between the courts and the parliament and will increase the relative power of the courts."

225 https://www.legislation.qld.gov.au/view/pdf/asmade/act-2019-005

226 http://legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2018-076

227 https://www.qld.gov.au/law/your-rights/discrimination-and-equality/human-rights

228 https://www.parliament.qld.gov.au/work-of-committees/committees/LACSC/inquiries/past-inquiries/HumanRights2018

229 http://parliament.qld.gov.au/documents/hansard/2019/2019_02_26_WEEKLY.PDF

230 https://www.parliament.qld.gov.au/documents/hansard/2019/2019_02_26_WEEKLY.PDF

	Criteria	Conclusion	Comment
1	Establish need	No	The Queensland Government was unable to point to specific, demonstrable evidence of a problem that the proposed law was addressing. It is not clear how human rights are not currently protected and that this legislation would be necessary to protect further rights.
2	Set objectives	Yes	The Queensland Government said that the legislation reflected a public interest need to protect human rights.
3	Identify options	Yes	The explanatory notes with the legislation display evidence of consideration of alternatives to protect human rights, including constitutionally entrenched model, a parliamentary model focused on scrutiny within parliament itself, enforcement of common law protections, or the 'dialogue model' as pursued in the Act.[231]
4	Consider mechanisms	No	While there is evidence of consideration of different alternatives, there is a lack of evidence that the Government considered different options for implementing the chosen 'dialogue' model.
5	Brainstorm alternatives	No	The explanatory memorandum states that the cost of supporting the operation of the law by providing $2.3 million over four years to the Queensland Human Rights Commission, however this does not include other potential costs for public service and judicial time, or a consideration of the potential benefits of this law.
6	Design pathway	Yes	The Queensland Government has developed a framework for now the policy will be implemented, including outlining principles and goals. The law requires periodic review, with the first scheduled for after 1 July 2023. However, it should be noted that documents related to how the public service should consider human rights do not appear to not have been developed till after the passage of the law.[232]
7	Consult further	Yes	The explanatory memorandum lists a large number of organizations that were consulted on the Bill prior to finalization, including the Anti-Discrimination Commission Queensland, Bar Association of Queensland, and Queensland Council of Social Services.
8	Publish proposals	Yes	The parliamentary committee report, though not a formal 'green' and 'white' paper did undertake an extensive analysis of the issue and consider a wide array of options, and therefore can be considered equivalent.
9	Introduce legislation	Yes	The Government produced and legislated the Human Rights Bill 2019.
10	Communicate decision	Yes	The Queensland Government released a statement celebrating the passage of the legislation and outlining its details.[233]
		7/10	

231 http://legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2018-076

232 https://www.forgov.qld.gov.au/apply-human-rights-your-work

233 http://statements.qld.gov.au/Statement/2019/2/27/historic-day-for-queenslanders-as-human-rights-bill-passes

Final environmental approval for Adani mine

> **Note:** This is arguably not a 'policy' decision. Regulatory approval is not necessiairly a policy decision, with the 'policy' being the creation of the relevant environmental laws and standards, and accordingly it is difficult to assess against the Wilshire criteria.

On May 22 2019, the Queensland Government instructed the Coordinator-General to set a timeline for the two final Adani-related approvals, following extensive delays to the project.[234] This followed shortly after the re-election of the Morrison Government at a Commonwealth level, with substantial swings towards the government in Queensland partly attributed to support for the Adani mine.[235] On May 24, the Coordinator-General stated that the Black-throated Finch Management Plan (BTFMP) should be finalised by 31 May, and the Groundwater Dependent Ecosystem Management Plan (GDEMP) by 13 June.[236] Following nine years of planning and approvals, the final approval for the mine was provided on 13 June following approval of the mine's groundwater management plan by Queensland's Environment Department.[237] It is the first mining basin opened up in five decades in Queensland, with a further six proposed for the region.

In a statement released on 31 May, the Department of Environment and Science (DES) approved the BTFMP.[238] In a statement released by the Department of Environment and Science (DES) on 13 June, stated that the GDEMP assessment had been "rigorous and based on the best available science," and included advise from the CSIRO and Geoscience Australia.[239] The DES was ultimately satisfied that the main source aquifer of the springs as the Clematis Sandstone, but also required further scientific work over the coming years including understanding source aquifers of springs in the locality and using a bore in the Dunda Beds. Underground mining will not commence until Adani undertaken further reviews related to geological and groundwater remodeling.

The mine, located at Carmichael, Queensland, has attracted substantial controversy due to concerns about the impact of coal on the climate, as well as local environmental impacts of the mine itself on local springs, such as the Doongmabulla Springs.[240] The mine was supported by local businesses who sought out the associated investment and job-creation, with the mine expected to create 6,750 indirect jobs in the region.[241]

234 http://statements.qld.gov.au/Statement/2019/5/22/coordinatorgeneral-to-set-adani-timeline

235 https://www.abc.net.au/news/2019-05-19/election-results-how-labor-lost-queensland/11122998

236 http://statements.qld.gov.au/Statement/2019/5/24/coordinatorgeneral-releases-timeline-for-carmichael-mine-approvals-process

237 https://www.abc.net.au/news/2019-06-13/adani-carmichael-coal-mine-approved-water-management-galilee/11203208

238 https://www.des.qld.gov.au/our-department/news-media/mediareleases/2019-05-31-black-throated-finch-mp-approved

239 https://www.des.qld.gov.au/our-department/news-media/mediareleases/2019-06-13-gdemp-approved

240 http://abc.net.au/news/2019-05-01/adani-coal-mine-poses-alarming-risk-to-sacred-wetlands/11058854

241 http://abc.net.au/news/2019-06-13/adani-carmichael-coal-mine-approved-water-management-galilee/11203208

	Criteria	Conclusion	Comment
1	Establish need	Yes	The Queensland Government pointed to extensive scientific evidence in favour of approving the mine, following various stages of feedback. There was a need to decide on the issue, as per Government processes.
2	Set objectives	Yes	The Queensland Government pointed to the public interest in ensuring final approval of the much-delayed mine, that would provide jobs and opportunities for Queensland.
3	Identify options	No	The Queensland Government does not appear to have considered alternatives to approving Adani.
4	Consider mechanisms	No	The Queensland Government does not appear to have considered different ways to implement the Adani approval.
5	Brainstorm alternatives	No	The Queensland Government does not appear to have undertaken a cost-benefit analysis.
6	Design pathway	No	The Queensland Government does not appear to have developed a framework for approving Adani.
7	Consult further	No	While there has been ongoing consultation with Adani, there does not appear to have been public consultation.
8	Publish proposals	No	The Queensland Government does not appear to have developed a Green and White paper type process.
9	Introduce legislation	No	The Queensland Government did not introduce, or need to be introduced, legislation for the approval of the mine.
10	Communicate decision	Yes	The Department of Environment and Science (DES) released a statement explaining the final approval.[242]
		3/10	

242 https://www.des.qld.gov.au/our-department/news-media/mediareleases/2019-06-13-gdemp-approved

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