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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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# Introduction<sup>1</sup>

Australia's governments, both state and federal, are failing to undertake best practice policy making. 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.<sup>2</sup> 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*.<sup>3</sup> 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.<sup>4</sup> 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

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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](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>.

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

## 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.'<sup>5</sup> 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.<sup>6</sup>

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'.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

## Analysis

The Institute of Public Affairs, for the third year running, 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

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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>

both quantifying tangible and intangible knowledge, for instance the actual condition of a road as well as people's view of that condition so as to identify any perception gaps).

2. **Set objectives:** Outline the public interest parameters of the proposed policy and clearly establish its objectives. For example, interpreting public interest as 'the greatest good for the greatest number' or 'helping those who can't help themselves'.
3. **Identify options:** Identify alternative approaches to the design of the policy, preferably with international comparisons where feasible. Engage in realistic costings of key alternative approaches.
4. **Consider mechanisms:** Consider implementation choices along a full spectrum from incentives to coercion.
5. **Brainstorm alternatives:** Consider the pros and cons of each option and mechanism. Subject all key alternatives to a rigorous cost-benefit analysis. For major policy initiatives (over \$100 million), require a Productivity Commission analysis.
6. **Design pathway:** Develop a complete policy design framework including principles, goals, delivery mechanisms, program or project management structure, the implementation process and phases, performance measures, ongoing evaluation mechanisms and reporting requirements, oversight and audit arrangements, and a review process ideally with a sunset clause.
7. **Consult further:** Undertake further consultation with key affected stakeholders of the policy initiative.
8. **Publish proposals:** Produce a Green and then a White paper for public feedback and final consultation purposes and to explain complex issues and processes.
9. **Introduce legislation:** Develop legislation and allow for comprehensive parliamentary debate especially in committee, and also intergovernmental discussion where necessary.
10. **Communicate decision:** Design and implement a clear, simple, and inexpensive communication strategy based on information not propaganda, regarding the new policy initiative.

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. **Objectives:** Is there a statement of the policy's objectives couched in terms of the public interest?
3. **Options:** Is there a description of the alternative policy options considered before the preferred one was adopted?
4. **Mechanisms:** Is there a disclosure of the alternative ways considered for implementing the chosen policy?

5. **Analysis:** Is there a published analysis of the pros/cons and benefits/costs of the alternative options/mechanisms considered in 3 and 4?
6. **Pathway:** Is there evidence that a comprehensive project management plan was designed for the policy's rollout?
7. **Consultation:** Was there further consultation with affected stakeholders after the preferred policy was announced?
8. **Papers:** Was there (a) a Green paper seeking public input on possible policy options and (b) a White paper explaining the final policy decision?
9. **Legislation:** Was the policy initiative based on new or existing legislation that enabled comprehensive parliamentary debate and public discussion?
10. **Communication:** Is there an online official media release or website that explains the final policy in simple, clear and factual terms?

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 consistently apply best practice in the development of public policy.

Seven of the 12 policies assessed were assessed to have met most of the Wiltshire Criteria. The other 5 policies failed the test.

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

- FED: My Health Record (9/10)
- FED: Open banking regime (9/10)
- VIC: Gender Equality Bill (7/10)
- VIC: Wage theft bill (6/10)
- NSW: Reproductive Health Care Reform Bill (7/10)
- NSW: Right to farm (6/10)
- QLD: Child Death Review Bill (7/10)
- QLD: Personalised Transport Ombudsman (10/10)

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: Repeal of Medevac legislation (3/10)
- VIC: Free TAFE (3/10)
- NSW: Music Festivals Bill (5/10)
- QLD: Police Discipline Reform Bill (5/10)

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.



This year presented a number of policy challenges requiring a swift or urgent response. For these policies, a modified Wiltshire Criteria restricted to urgent crises such as bushfires, floods or pandemics was followed, the questions asked in response to these policies were:

1. **Urgency:** Was a justification given for the short timeline of the policy decision and was it accepted by the Parliamentary Opposition and ratified under existing or new legislation?
2. **Need:** Was there a statement of why the policy was needed based on factual evidence and expert opinion?
3. **Objectives:** Was there a statement of the policy's objectives couched in terms of the public interest?
4. **Options:** Was there any disclosure of why the chosen policy was preferred over other possible policy responses?
5. **Mechanisms:** Was there any disclosure of different ways (e.g. incentives versus fines) considered for executing the chosen policy?
6. **Analysis:** Was there any disclosure of technical data, working assumptions and mathematical modelling behind the chosen policy?
7. **Pathway:** Was there any evidence of a carefully considered logistical strategy for rolling out the policy decision?
8. **Consultation:** Was there meaningful input from relevant experts and stakeholder representatives before and after the policy decision?
9. **Communication:** Is there an official online media release or website that explains the final policy in simple, clear and factual terms?
10. **Review:** Was there a stated intention to review the lessons learnt from the official policy response once the emergency was over?

This analysis found that both state and federal governments succeeded at applying best practice in the development of public policy for each of the emergency policies. All policies, with the one exception of Queensland use of emergency powers which received a 5/10, were found to have met the modified Wiltshire Criteria:

- JobKeeper (8/10)
- COVIDSafe App (8/10)
- Funding Childcare (7/10)
- HomeBuilder (6/10)
- Early Release of Super (6/10)
- VIC: Use of emergency powers in response to COVID-19 (6/10)
- NSW: Use of emergency powers in response to COVID-19 (6/10)
- QLD: Use of emergency powers in response to COVID-19 (5/10)

While these emergency policies tended to be justifiably urgent, there appears to have been a broad lack of consideration of policy alternatives, mechanisms and analysis. While a crisis may require moving quickly it should not lead to a lack of basic best practice. Governments should be willing and open to acknowledge and publish the

various options that have been considered, trade offs required, the costs and benefits as far as is reasonably possible to determine, even in emergency policy making.

## 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, a 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 policy making is transparent and should therefore be easy to access, 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

## 'Normal' Decisions (Based on Wiltshire Criteria)

Policy	Establish need	Set objectives	Identify options	Consider mechanisms	Brainstorm alternatives	Design pathway	Consult further	Publish proposals	Introduce legislation	Communicate decision	Total
My Health Record	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	9
Repeal of Medevac legislation	N	Y	N	N	N	N	Y	N	Y	N	3
Open banking regime	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	9
Wage theft bill	N	Y	Y	Y	N	N	Y	N	Y	Y	6
Gender Equality Bill	Y	Y	N	Y	N	Y	Y	N	Y	Y	7
Free Tafe	N	Y	N	N	N	N	N	N	Y	Y	3
Reproductive Health Care Reform bill	Y	Y	Y	Y	N	N	Y	N	Y	Y	7
Music festivals bill	N	Y	N	Y	N	Y	N	N	Y	Y	5
Right to farm	N	Y	Y	Y	N	N	Y	N	Y	Y	6
Child Death Review bill	Y	Y	Y	Y	N	N	Y	N	Y	Y	7
Personalised Transport Ombudsman	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	10
Police Discipline Reform bill	Y	Y	N	Y	N	N	Y	N	Y	N	5

### 'Emergency' Decisions (Based on modified Wiltshire Criteria)

Policy	Justify urgency	Establish need	Set objectives	Identify options	Consider mechanisms	Disclose data	Design pathway	Consult	Communicate decision	Review	Total
JobKeeper	Y	Y	Y	N	Y	N	Y	Y	Y	Y	8
COVIDSafe App	Y	Y	Y	N	Y	Y	N	Y	Y	Y	8
HomeBuilder	Y	N	Y	N	Y	N	Y	N	Y	Y	6
Early Release of Super	Y	N	Y	N	N	Y	Y	N	Y	Y	6
Funding Childcare	Y	N	Y	N	N	Y	Y	Y	Y	Y	7
Victoria: Use of emergency powers in response to COVID-19	Y	Y	Y	N	N	N	Y	N	Y	Y	6
New South Wales: Use of emergency powers in response to COVID-19	Y	Y	Y	N	N	N	Y	N	Y	Y	6
Queensland: Use of emergency powers in response to COVID-19	N	Y	N	Y	N	Y	N	N	Y	Y	5

# Emergency Decisions (Federal)

## JobKeeper

JobKeeper is a wage subsidy programme to tackle the economic impact of the coronavirus. Originally announced on 30 March 2020, JobKeeper provides a flat payment of \$1,500 per fortnight, irrespective of previous earnings, to each employee at businesses with a significant financial hit caused by coronavirus. It covers part time, full time and long-term casual workers. The stated goal was to “keep Australians in jobs” and the scheme was initially estimated to cost \$130 billion (though this was ultimately an overestimate).<sup>10</sup> It came after calls for a wage subsidy program by union and business leaders, as well as media commentators and the Labor opposition throughout March.<sup>11</sup> The legislation was introduced to, and passed, by Parliament on 8 April, 2020.<sup>12</sup>

“This is about keeping the connection between the employer and the employee and keeping people in their jobs even though the business they work for may go into hibernation and close down for six months,” Prime Minister Scott Morrison said.<sup>13</sup>

“When the economy comes back, these businesses will be able to start again and their workforce will be ready to go because they will remain attached to the business through our JobKeeper payment.”

This would be consistent with similar wage subsidy programs in Denmark, the United Kingdom, Canada and New Zealand – that all have similar objectives, albeit differ in design. According to Paul Kelly and Dennis Shanahan in *The Australian* the Treasury assessed various schemes and different designs and rejected the British scheme that only paid people who stopped working, and was at a variable rate depending on previous income.<sup>14</sup> Morrison wanted to pay people to continue working where possible and provide an “equitable” system of wage subsidy in which all workers received the same amount. It was also decided to deliver the scheme using existing taxation office systems.

The Labor opposition broadly supported JobKeeper but put forward amendments, rejected by the Government, to expand access to casual workers, people who have worked for their employer for less than a year and temporary visa holders.<sup>15</sup> On 21 July 2020, the Government announced that the JobKeeper program would be

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10 [pm.gov.au/media/130-billion-jobkeeper-payment-keep-australians-job](https://pm.gov.au/media/130-billion-jobkeeper-payment-keep-australians-job)

11 [https://www.skynews.com.au/details/\\_6144554704001](https://www.skynews.com.au/details/_6144554704001) <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=ld%3A%22media%2Fpressrel%2F7260534%22>  
<https://www.theaustralian.com.au/nation/politics/coronavirus-australia-retailers-call-for-ukstyle-wage-subsidies/news-story/39f8633945662a2792149cc3c71c142e>

12 [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r6533](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6533)

13 [pm.gov.au/media/130-billion-jobkeeper-payment-keep-australians-job](https://pm.gov.au/media/130-billion-jobkeeper-payment-keep-australians-job)

14 <https://www.theaustralian.com.au/nation/politics/coronavirus-countdown-to-a-revolutionary-decision-on-130bn-wage-subsidy-scheme/news-story/d08c3240580aa8a605a8f75bd7009256>

15 <https://www.theguardian.com/australia-news/2020/apr/08/mps-pass-130bn-wage-subsidy-as-part-of-australias-road-out-of-coronavirus-crisis>

extended till March 2021 for businesses significantly impacted by a revenue drop in the relevant period, with more stringent requirements to show impact, and a reduced payment amount (\$1,200 from September 2020 till January 2021, and \$1,000 from January 2021 to March 2021).<sup>16</sup>

	Criteria	Conclusion	Comment
1	Urgency	Yes	The scheme was in response to the immediate economic threat posed by Covid-19 and was passed in Parliament with bipartisan support from the Labour opposition. <sup>17</sup>
2	Need	Yes	The proposals were consistent with economic commentators' calls to attempt to "freeze" the economy during the coronavirus lockdowns, to minimise potential economic scarring. <sup>18</sup>
3	Objectives	Yes	The public interest goal of keeping people in jobs was clearly stated by the Government.
4	Options	No	The Government reportedly "canvassed possible approaches and designs" before announcing the policy, concluding in favour of an "equitable" system with a flat rate to all those regardless of their previous income. <sup>19</sup> However, these options and reasons were not published by the government.
5	Mechanisms	Yes	The Government reportedly considered different policy designs in developing the policy in late March.
6	Analysis	No	There were reports that the Treasury undertook forecasting about the extent of uptake of the programme – that ultimately proved an inaccurate overestimate of the uptake and cost based on pessimistic medical advice. <sup>20</sup> It does not appear this forecasting was released to the public.

16 <https://www.pm.gov.au/media/jobkeeper-payment-and-income-support-extended>  
<https://treasury.gov.au/coronavirus/jobkeeper/extension>

17 <https://www.theguardian.com/australia-news/2020/apr/08/mps-pass-130bn-wage-subsidy-as-part-of-australias-road-out-of-coronavirus-crisis>

18 The commentators opinions are discussed here: [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/FlagPost/2020/April/Coronavirus-Response-Wage-Subsidies](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2020/April/Coronavirus-Response-Wage-Subsidies)

19 <https://www.theaustralian.com.au/nation/politics/coronavirus-countdown-to-a-revolutionary-decision-on-130bn-wage-subsidy-scheme/news-story/d08c3240580aa8a605a8f75bd7009256>

20 <https://www.afr.com/policy/economy/what-caused-the-60b-jobkeeper-blunder-20200522-p54vou>

7	Pathway	Yes	The Government announced that the policy would be delivered by the Australian Taxation Office, with payments provided to employers from the first week of May as monthly arrears. <sup>21</sup> This allowed the use of existing private sector payroll and government payment systems. <sup>22</sup>
8	Consultation	Yes	The Government reportedly consulted the states and territories, business leaders and the union movement in formulating the policy. <sup>23</sup>
9	Communication	Yes	There is both a media release and a website that explains details about the programme. <sup>24</sup>
10	Review	Yes	The Treasury undertook a three-month review of the JobKeeper payment published in June 2020. <sup>25</sup> The legislation was also considered by the scrutiny committee of Parliament in May 2020 and the policy has been subsequently extended by the Government.
		8/10	

## COVIDSafe app

The COVIDSafe app is a mobile application designed to identify people exposed to coronavirus (Covid-19) to help facilitate contact tracing efforts.<sup>26</sup> It uses a phone's Bluetooth to record interactions with other individuals who also have the app installed using anonymised temporary IDs.<sup>27</sup> This data is stored on the mobile devices of the two users, along with other information like the date and time, for 21 days, and the length and closeness of the contact. If an individual subsequently tests positive for Covid-19 they can consent for this encrypted data to be sent to the National COVIDSafe Data Store, which can then be accessed by state and territory health officials, to inform an individual who came into contact with a positive case to isolate and seek a test.

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

22 Also see page 33 of the explanatory memorandum, [https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6533\\_ems\\_1daae531-9b3a-493f-8596-23432c143fb3/upload\\_pdf/735865.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6533_ems_1daae531-9b3a-493f-8596-23432c143fb3/upload_pdf/735865.pdf;fileType=application%2Fpdf)

23 [theaustralian.com.au/nation/politics/coronavirus-countdown-to-a-revolutionary-decision-on-130bn-wage-subsidy-scheme/news-story/d08c3240580aa8a605a8f75bd7009256](https://theaustralian.com.au/nation/politics/coronavirus-countdown-to-a-revolutionary-decision-on-130bn-wage-subsidy-scheme/news-story/d08c3240580aa8a605a8f75bd7009256)

24 <https://www.pm.gov.au/media/jobkeeper-payment-and-income-support-extended>  
<https://www.ato.gov.au/General/JobKeeper-Payment/>

25 <https://treasury.gov.au/sites/default/files/2020-07/jobkeeper-review-2020.pdf>

26 <https://www.health.gov.au/resources/apps-and-tools/covidsafe-app>

27 <https://www.theguardian.com/australia-news/2020/may/15/covid-safe-app-australia-how-download-does-it-work-australian-government-covidsafe-covid19-tracking-downloads>

The app was originally released on 27 April, 2020. Health Minister Greg Hunt, calling on Australians to download the app, stated that:

“The more people who download this important public health app, the safer they and their family will be, the safer their community will be and the sooner we can safely lift restrictions and get back to business and do the things we love.”<sup>28</sup>

Prime Minister Scott Morrison, while highlighting that the app was voluntary, stated that decisions about how quickly lockdown could be eased would in part be dependent on downloads of the app. The app was broadly supported by Labor opposition leader Anthony Albanese, despite concerns about privacy protections and the lack of information provided to the opposition in advance of its announcement.<sup>29</sup>

Critics raised further concerns about the privacy implications and effectiveness of the app. Former Nationals leader and Deputy Prime Minister Barnaby Joyce joined the chorus about privacy concerns: “I treasure the government knowing as little about me as possible.”<sup>30</sup> IPA Executive Director John Roskam described the app as “very bad and very dangerous” on privacy grounds.<sup>31</sup> There were also specific concerns about the US CLOUD Act, which could potentially give the US Government access to Australian COVIDSafe data stored by Amazon Web Services.<sup>32</sup>

The Government commissioned and released an independent privacy assessment, undertaken by Maddocks.<sup>33</sup> The assessment noted the Government’s “genuine appreciation of the importance of addressing privacy” but stated further steps, including publicly clarifying the purpose and function of the app and further assurances about privacy were necessary. The Government agreed to every recommendation.<sup>34</sup> At the time of release, the Health Minister committed that “information provided voluntarily through the App will only be accessible for use by authorised state and territory health officials. Any other access or use will be a criminal offence.”<sup>35</sup> The initial privacy protections were contained in a ministerial “COVIDSafe Determination”.<sup>36</sup> In May, the Government put forward legislation to amend the privacy act to provide protections against the misuse of COVIDSafe contact tracing app data.<sup>37</sup>

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28 [health.gov.au/ministers/the-hon-greg-hunt-mp/media/covidsafe-new-app-to-slow-the-spread-of-the-coronavirus](https://health.gov.au/ministers/the-hon-greg-hunt-mp/media/covidsafe-new-app-to-slow-the-spread-of-the-coronavirus)

29 <https://anthonyalbanese.com.au/anthony-albanese-transcript-television-interview-sky-news-afternoon-agenda-with-kieran-gilbert-wednesday-22-april-2020>

30 <https://www.smh.com.au/politics/federal/mps-refuse-to-download-official-covid-19-app-and-demand-privacy-guarantees-20200418-p5411k.html>

31 <https://www.smh.com.au/politics/federal/mps-refuse-to-download-official-covid-19-app-and-demand-privacy-guarantees-20200418-p5411k.html>

32 <https://www.abc.net.au/news/2020-04-28/covidsafe-tracing-app-data-may-not-be-protected-from-usa/12189372>

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

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

35 [health.gov.au/ministers/the-hon-greg-hunt-mp/media/covidsafe-new-app-to-slow-the-spread-of-the-coronavirus](https://health.gov.au/ministers/the-hon-greg-hunt-mp/media/covidsafe-new-app-to-slow-the-spread-of-the-coronavirus)

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

37 [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/bd/bd1920a/20bd098](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1920a/20bd098)



Concerns were also raised about Australia pursuing a proprietary solution, that did not work as well in the background, rather than using the Apple-Google contract tracing standard. Documents showed that the app works particularly poorly between two locked Apple iPhone devices.<sup>38</sup> By the end of August, more than 7 million people have downloaded the app and it was updated ten times.<sup>39</sup> However, many raised subsequent concerns that the app was not in fact successfully tracing people.<sup>40</sup> Albanese called the app a “dud” and claimed not a “single person” had been traced using it.<sup>41</sup> The Government responded that the app was simply one tool in contract tracing, it had picked up cases and Australia had relatively few cases to track.<sup>42</sup>

	Criteria	Conclusion	Comment
1	Urgency	Yes	The app was developed because of the urgent need to limit the coronavirus spread. The idea of an app was supported by the Opposition, albeit with concerns about the privacy and functionality.
2	Need	Yes	The Government claimed the app was necessary based on the “Chief Medical Officer’s advice” and had “received strong support from states and territories and the health sector.” <sup>43</sup> A separate statement by the Chief Medical Officer, Chief Nursing and Midwifery Officer and the Health Minister was released in support of the app: “a critical tool in helping our nation fight the COVID-19.” <sup>44</sup> A further statement in support was signed by various professional medical bodies such as the Australian Medical Association and the Australian College of Nursing.
3	Objectives	Yes	The Government claimed the app was in the public interest and necessary to “save lives and save livelihoods.” <sup>45</sup>

38 <https://www.theguardian.com/australia-news/2020/jun/17/covid-safe-app-australia-covidsafe-contact-tracing-australian-government-covid19-tracking-problems-working>

39 <https://www.dta.gov.au/news/covidsafe-helps-slow-spread-covid-19>

40 <http://afr.com/technology/covidsafe-a-tale-of-two-apps-20200717-p55cze>  
<https://www.theguardian.com/australia-news/audio/2020/may/27/does-the-covidsafe-app-work-podcast>

41 <https://www.sbs.com.au/news/government-faces-tough-questions-over-covidsafe-app-as-outbreaks-emerge-in-victoria-and-nsw>

42 <https://www.health.gov.au/news/covidsafe-app-an-important-tool-in-fight-against-coronavirus>

43 [health.gov.au/ministers/the-hon-greg-hunt-mp/media/covidsafe-new-app-to-slow-the-spread-of-the-coronavirus](https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/covidsafe-new-app-to-slow-the-spread-of-the-coronavirus)

44 <https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/health-professionals-support-covidsafe-app>

45 [health.gov.au/ministers/the-hon-greg-hunt-mp/media/covidsafe-new-app-to-slow-the-spread-of-the-coronavirus](https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/covidsafe-new-app-to-slow-the-spread-of-the-coronavirus)

4	Options	No	The Health Minister has referenced other contact tracing options, and learning from Singapore, as well as potentially using the Apple-Google framework in future. <sup>46</sup> This shows some consideration of different options however there is no formal record of alternative policy considerations.
5	Mechanisms	Yes	The Health Minister stated during the press conference launching the app that “we didn’t believe that that was appropriate for Australia” to mandate the app: “We didn’t think that that would be acceptable to the Australian public and it wasn’t acceptable to us.” <sup>47</sup> This discussion shows consideration of different mechanisms for the policy.
6	Analysis	Yes	The Government has released various analysis documents: an independent privacy analysis; <sup>48</sup> the source code behind the app, enabling technical analysis; <sup>49</sup> and a research brief by the Chief Scientist’s Rapid Research Information Forum about why people download and continue to use the COVIDSafe app. <sup>50</sup>
7	Pathway	No	The Government did launch an advertising campaign in support of the policy, however did not formally state how it would go about encouraging uptake and rolling out the app over time.
8	Consultation	Yes	The Digital Transformation Agency, which developed the app, claims to have consulted with security agencies, academics and industry specialists before the app was released, and, after releasing the source code in May, welcomed further community feedback. <sup>51</sup>
9	Communication	Yes	The Government has both created a dedicated website for the app, as well as published various media releases explaining the app. <sup>52</sup>

46 <https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/doorstop-interview-on-6-may-2020-about-covid-19>

47 [health.gov.au/ministers/the-hon-greg-hunt-mp/media/press-conference-about-the-covidsafe-app-launch](https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/press-conference-about-the-covidsafe-app-launch)

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

49 <https://www.dta.gov.au/news/dta-publicly-releases-covidsafe-application-source-code>

50 <https://www.chiefscientist.gov.au/sites/default/files/2020-05/RRIF%20Q011%20Using%20the%20COVIDSafe%20app%2017%20May%202020.pdf>

51 <https://www.dta.gov.au/news/dta-publicly-releases-covidsafe-application-source-code>

52 <https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/covidsafe-new-app-to-slow-the-spread-of-the-coronavirus> <https://www.covidsafe.gov.au/>

10	Review	Yes	In response to a question about reviewing the policy, the Health Minister stated that the COVID committee of the Senate is “reviewing the entire government response to COVID” which would include the app. <sup>53</sup> The Government also stated that there would be “a review point on at six months” to assess when data would be deleted. <sup>54</sup>
		8/10	

## HomeBuilder

The HomeBuilder program provides “eligible owner-occupiers (including first home buyers) with a grant of \$25,000 to build a new home or substantially renovate an existing home.”<sup>55</sup> The eligibility is based on income caps of:

“\$125,000 per annum for an individual applicant based on your 2018-19 taxable income or later; or \$200,000 per annum for a couple based on both 2018-19 taxable income or later.”<sup>56</sup>

The building contract must be entered into between 4 June 2020 and 31 December 2020 and “construction must commence on or after 4 June and within three months of the contract date.” The contract must be to either “build a new home as a principal place of residence, where the property value does not exceed \$750,000; or substantially renovate your existing home as a principal place of residence, where the renovation contract is between \$150,000 and \$750,000, and where the value of your existing property (house and land) does not exceed \$1.5 million (pre-renovation).”<sup>57</sup>

The government says that the objective of the scheme is to “assist the residential construction market by encouraging the commencement of new home builds and renovations.”<sup>58</sup> The assistant treasurer and minister for housing, Michael Sukkar, said that “HomeBuilder is temporary and targeted support to keep the pipeline of construction flowing.”<sup>59</sup>

The policy was met with opposition from the Labor Party leader Anthony Albanese who was concerned that requirements would increase economic hardship. He said that the introduction was “at a time of economic uncertainty and not many people have \$150,000 ready to go.”<sup>60</sup>

53 [health.gov.au/ministers/the-hon-greg-hunt-mp/media/doorstop-interview-about-the-covidsafe-app-and-coronavirus-covid-19](https://health.gov.au/ministers/the-hon-greg-hunt-mp/media/doorstop-interview-about-the-covidsafe-app-and-coronavirus-covid-19); also see

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/COVID-19/COVID19/Media\\_Releases](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/COVID-19/COVID19/Media_Releases)

54 <https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/press-conference-about-the-covidsafe-app-launch>

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

56 [https://treasury.gov.au/sites/default/files/2020-06/Fact\\_sheet\\_HomeBuilder\\_0.pdf](https://treasury.gov.au/sites/default/files/2020-06/Fact_sheet_HomeBuilder_0.pdf)

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

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

59 <https://www.afr.com/politics/treasury-costings-reveal-homebuilder-scheme-too-small-labor-20200913-p55v4f>

60 <https://www.businessinsider.com.au/the-australian-governments-680-million-homebuilder-scheme-is-being-slammed-by-critics-2020-6>

Criticism also came from think tanks. The progressive think tank Per Capita criticised the policy because it would only help those with resources, executive director Emma Dawson said:

“Anyone able to start this kind of large-scale renovation by the end of the year either already has their finance lined up and hasn’t suffered an income cut during this crisis that would make them reconsider, or has the cash to do it without borrowing.”<sup>61</sup>

Free market think tank, the Institute of Public Affairs also criticised the policy for being “a bank stimulus package by another name.” Director of policy Gideon Rozner said:

“No couple earning under \$200,000 or individual on under \$125,000 a year has a spare \$150,000 lying around to spend on a home renovation to even be eligible... So in order to access this Australians are going to be putting more money on their mortgage, and will end up paying the free \$25,000 in interest payments.”<sup>62</sup>

Industry bodies such as the Housing Industry Association said that HomeBuilder had a positive impact on the market and predicted that the residential building industry would stay afloat during the December quarter.<sup>63</sup> Housing Institute of Australia also released data that showed that jobs in the industry had been protected due to the scheme.<sup>64</sup>

The scheme was quite complicated to implement as it required that the state governments sign up to the National Partnership Agreement. It also required substantial administrative oversight to make sure the extensive eligibility criteria was met.

	Criteria	Conclusion	Comment
1	Urgency	Yes	It was created in response to the economic emergency brought about by the response to COVID-19. Whilst there was agreement that this was an emergency, the specific policy received criticism from the parliamentary opposition for being too narrow and “poorly targeted.” <sup>65</sup>
2	Need	No	There is no evidence that this particular scheme was the product of fact-finding or stakeholder engagement.

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

62 <https://www.theguardian.com/business/2020/jun/05/coalition-governments-homebuilder-grants-for-renovations-and-building-criticised-by-economists-and-backbench-mps>

63 <https://eliteagent.com/homebuilder-will-keep-residential-building-industry-afloat-in-december-quarter/>

64 <https://www.murrayvalleystandard.com.au/story/6899834/homebuilder-is-protecting-tradies-jobs/>

65 <https://www.9news.com.au/national/grants-of-25-000-offered-to-home-builders/ce83cc61-9c61-457b-8bee-b2bfea20fdd5>

3	Objectives	Yes	The scheme was to ensure that the residential building industry would still exist during and after the pandemic response. This is in the interest of those that work in the industry and the public more generally as they benefit from housing being developed. <sup>66</sup>
4	Options	No	No public statement that shows that other options were considered.
5	Mechanisms	Yes	Housing Minister Sukkar justified the policy's high level of required capital on the basis that "This requires people to have skin in the game. It's got to be a project that employs a lot of trades." <sup>67</sup> This shows some consideration of the policy mechanisms.
6	Analysis	No	The budget predictions of the policy were released to the public but no underlying assumptions or data released. <sup>68</sup>
7	Pathway	Yes	This program was to be delivered in partnership with the states as per the National Partnership Agreement. Under the agreement each state manages the program and reports up-take to the Commonwealth government.
8	Consultation	No	No public statement indicating that there was a consultation process.
9	Communication	Yes	The Treasury website has a clear description of the policy as well as links to enable people to access it.
10	Review	Yes	It is being reviewed as part of the inquiry into the Australian Government's response to the COVID-19 pandemic. <sup>69</sup>
		6/10	

<sup>66</sup> <https://treasury.gov.au/coronavirus/homebuilder>

<sup>67</sup> <https://www.dailymail.co.uk/news/article-8400923/2-000-people-register-governments-25-000-HomeBuilder-grant.html>

<sup>68</sup> [https://treasury.gov.au/sites/default/files/2020-06/Fact\\_sheet\\_HomeBuilder.pdf](https://treasury.gov.au/sites/default/files/2020-06/Fact_sheet_HomeBuilder.pdf)

<sup>69</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/COVID-19](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/COVID-19)

## Early Release of Super

On 22 March 2020, the Commonwealth Government announced that citizens and permanent residents will be able to access up to \$10,000 of their superannuation before the end of the financial year and then a further \$10,000 in the following financial year. This was a measure introduced to help people manage the adverse economic effects of the COVID-19 response. The superannuation release was only for those currently receiving welfare benefits, or for those that:

- were made redundant
- had working hours were reduced by 20% or more (including to zero)
- were a sole trader whose business was suspended or there was a reduction in turnover of 20% or more (partners in a partnership are not eligible unless the partner satisfies any other of the eligibility).<sup>70</sup>

The government's announcement was part of a larger package to help people through the economic crisis that resulted from the COVID-19 response. The Treasurer, Josh Frydenberg, said that "extraordinary times demand extraordinary measures" and that unprecedented economic action from the government was required.<sup>71</sup> He went on to explain that:

"These withdrawals will be tax-free and available to those who are eligible for the coronavirus supplement as well as sole traders who have seen their hours of work, or income fall, 20 per cent or more as a result of the coronavirus"<sup>72</sup>

The Labor opposition criticised this measure on the basis that the economic hardship would be felt by superannuation funds after "tens of billions of dollars wiped off share prices in the past few weeks" if the funds now have people withdrawing their money they may experience liquidity issues.<sup>73</sup> Shadow Assistant Treasurer, Stephan Jones said that if this happens "there will be a big expectation that they [the Reserve Bank] have to step in and secure liquidity for any fund that finds itself in trouble."<sup>74</sup> Leader of the Opposition, Anthony Albanese said it was "not the best time for individuals to be withdrawing money from their superannuation given the impact from the fall in the share market."<sup>75</sup>

Industry representatives such as Industry Super Australia chief executive officer, Bernie Dean also cautioned that the policy could lead to "compounding of liquidity pressures that may be faced by funds in the current market conditions."<sup>76</sup>

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70 <https://www.ato.gov.au/individuals/super/in-detail/withdrawing-and-using-your-super/covid-19-early-release-of-super/>

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

72 <https://www.canberratimes.com.au/story/6690879/labor-unhappy-with-super-stimulus-measure/?cs=14264>

73 <https://www.canberratimes.com.au/story/6690879/labor-unhappy-with-super-stimulus-measure/?cs=14264>

74 <https://www.afr.com/companies/financial-services/super-funds-may-need-rba-support-labor-warns-20200325-p54dp5>

75 <https://www.canberratimes.com.au/story/6690879/labor-unhappy-with-super-stimulus-measure/?cs=14264>

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

Taxpayer advocacy group, the Australian Taxpayers Alliance, supported the policy and called for it to be extended as the previous regulation of super access had arbitrarily made “superannuation highly illiquid” and that “increased superannuation flexibility” gives “Australians more power over their retirement savings.”<sup>77</sup>

The policy process was criticised for a lack of consultation. Industry Super Australia commented that they were not consulted on the policy with the government instead relying on advice from Australian Prudential Regulation Authority (APRA). Chief executive officer, Bernie Dean said that:

“Although industry superannuation funds were not consulted in the formulation of this proposal, we stand ready to engage with government and the Australian Tax Office (ATO) to make it work.”<sup>78</sup>

Former Prime Minister, Paul Keating also criticised the policy implementation for having “no scrutiny whatsoever.”

The policy had a large uptake. At the end of the financial year “payments totalling A\$18.1 billion had been made, with 1.63 million applications having been paid since inception.”<sup>79</sup>

	Criteria	Conclusion	Comment
1	Urgency	Yes	It was created to respond to the economic emergency brought about by the response to COVID-19. There was agreement that this was an emergency, however, the specific policy received criticism from the parliamentary opposition. The <i>Coronavirus Economic Response Package Omnibus Bill 2020</i> which contained the measure was passed by the parliament to receive Royal Assent on 24 March 2020.
2	Need	No	Whilst the policy was justified because “people need access to their own money at times of hardship” this was not based on expert opinion. <sup>80</sup>
3	Objectives	Yes	The objective was in the public interest, that being to allow super access for people that are “adversely financially affected by COVID-19.” <sup>81</sup>
4	Options	No	No disclosure of why the chosen policy was preferred over other possible policy options.

77 <https://www.taxpayers.org.au/submissions/post-covid-19-australia-a-five-point-policy-proposal>

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

79 <https://www.intheblack.com/articles/2020/09/01/early-super-access-consequences-not-seeking-advice>

80 <https://www.afr.com/politics/federal/people-need-access-to-their-money-frydenberg-defends-super-access-20200731-p55hav>

81 <https://www.ato.gov.au/individuals/super/withdrawing-and-using-your-super/early-access-to-your-super/?anchor=Compassionategrounds#Compassionategrounds>

5	Mechanisms	No	No disclosure of the alternative ways considered for executing the chosen policy.
6	Analysis	Yes	Treasury released their working estimates of the policy. They assumed that \$29.5bn would be accessed under the scheme. This was later revised to \$41.9bn.
7	Pathway	Yes	The Australian Tax Office (ATO) managed the policy's rollout, and the Government announced the practical method of accessing super at the time of the policy announcement: "Eligible individuals will be able to apply online through myGov." <sup>82</sup>
8	Consultation	No	Reportedly there was some consultation on the policy. APRA was consulted on the policy. However, according to industry representation, super funds were not consulted. <sup>83</sup>
9	Communication	Yes	ATO website sets out the policy clearly as well as guidelines on accessing the scheme.
10	Review	Yes	It is being reviewed as part of the inquiry into the Australian Government's response to the COVID-19 pandemic. <sup>84</sup>
		6/10	

## Funding Childcare

On 2 April 2020, the Government announced that the childhood education and care (ECEC) sector would receive new funding arrangements during the response to the coronavirus (COVID-19) pandemic given its impact on the economy. The funding changes that took effect from 6 April 2020 made childcare a taxpayer funded service (whereas previously the funding was based on a Child Care Subsidy (CCS), which was means tested). The new funding arrangement suspends the CCS and in the interim creates a weekly 'business continuity payment' for childcare providers to keep eligible child care centres operating during the pandemic. To be eligible they must:

- stay open with at least one child actively enrolled (except where the service is made to close on public health advice or for other health and safety reasons)
- not charge families any fees
- continue and prioritise care for essential workers, vulnerable and disadvantaged children and previously enrolled children
- comply with other regulatory requirements under the National Quality Framework and the conditions for approval for the CCS.<sup>85</sup>

<sup>82</sup> <https://www.pm.gov.au/media/supporting-australian-workers-and-business>

<sup>83</sup> <https://www.investmentmagazine.com.au/2020/03/canberra-grants-early-access-to-super/>

<sup>84</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/COVID-19](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/COVID-19)

<sup>85</sup> [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/FlagPost/2020/April/Coronavirus\\_response-Free\\_child\\_care](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2020/April/Coronavirus_response-Free_child_care)



This scheme ended on 12 July 2020 when it entered a 'Transition Package' phase which is scheduled to take place between 13 July 2020 – 27 September 2020 and then enter a 'Recovery Package' phase between 28 September 2020 – 31 January 2020.

The policy was introduced by Prime Minister Scott Morrison MP and Minister for Education Dan Tehan MP in order to help childcare facilities stay operating to ensure that children of essential workers had care. In the 2 April press conference, Mr Morrison said:

“Childcare and early childhood education is critical, particularly for those Australians who rely on it so they can go to work every day, particularly those who are working in such critical areas. And as I said, critical areas aren’t just the obvious ones. It’s not just the doctors or the nurses who are at the hospitals. It’s the cleaners at the hospitals as well. It’s the people driving trucks to get food out to supermarkets and ensure the supplies continue to run. If you have a job in this economy, then that’s an essential job, in my view, in terms of the running of the economy, and it’s important that all those parents who have children, that they get access to childcare and that those facilities will be there for them in the many months ahead.”

Following on from Mr Morrison, Mr Tehan said “we want all parents who have to work through the coronavirus pandemic to be able to make sure that their children are getting the care that they expect and they want their children to be getting. So that’s why we’ll be moving to a different childcare system as of Sunday night. It will be a system which will mean parents will get their children cared for for free.”

The policy didn’t receive much criticism or opposition. The opposition supported the policy but criticised the phase out of it on 12 July 2020. Labor spokeswoman, Amanda Rishworth had concerns “that parents will be sitting around their kitchen tables doing the maths and working out that childcare will just be too expensive for them.”<sup>86</sup> Greens senator Mehreen Faruqi said the phase out was a “betrayal of Australian families” and “an anti-women move.”<sup>87</sup>

Industry representatives such as Early Childhood Australia also spoke in support of the package, CEO Samantha Page said it “tackles most of the big issues that services and families have been grappling with over the past month.”

The process also didn’t receive much criticism except some industry bodies have highlighted uncertainty around the phase out.<sup>88</sup> There has also been concern over the

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86 <https://www.theguardian.com/australia-news/2020/jun/08/australian-government-to-end-free-childcare-on-12-july-in-move-labor-says-will-snap-families>

87 <https://www.theguardian.com/australia-news/2020/jun/08/australian-government-to-end-free-childcare-on-12-july-in-move-labor-says-will-snap-families>

88 <https://childcarealliance.org.au/media-publications/aca-media-releases/136-aca-media-release-aca-applauds-government-for-lifeline-to-families-and-early-learning-sector-02-04-2020/file>; and [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/FlagPost/2020/April/Coronavirus\\_response-Free\\_child\\_care](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2020/April/Coronavirus_response-Free_child_care)

policies interaction with state imposed restrictions, in particular the second lock down in Melbourne.<sup>89</sup> “A review found the Relief Package helped keep services open and viable, with 99% of 13,400 services operational as of 27 May 2020,” according to the Government’s website.<sup>90</sup>

Criteria	Conclusion	Comment	
1	Urgency	Yes	It was created to respond to the economic emergency brought about by the response to COVID-19. The opposition agreed that there was an urgent need and with the policy in substance. The policy was brought in under delegated legislation, the <i>Child Care Subsidy Amendment (Coronavirus Economic Response Package) Minister’s Rules 2020</i> . <sup>91</sup>
2	Need	No	The policy apparently was needed to ensure that childcare centres continue to operate for the community at large and in particular for children of essential workers so that they could continue to work through the pandemic. However this does not appear to be based on expert opinion. <sup>92</sup>
3	Objectives	Yes	There was a clearly stated objective couched in terms of public interest. On introducing the policy the minister stated that the policy was to “ensure that your childcare centre will remain open.”
4	Options	No	No disclosure of why the chosen policy was preferred over other possible policies.
5	Mechanisms	No	No disclosure of the alternative ways considered for executing the chosen policy.
6	Analysis	Yes	The budget predictions of the policy were released to the public and were “estimated at around \$1.6 billion over three months.” <sup>93</sup>
7	Pathway	Yes	The Department of Skills and Education rolled out the new policy as well as the transition and recovery packages that come into effect after the policy lapses. <sup>94</sup>

89 <https://theconversation.com/victorias-childcare-announcements-explained-143991>

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

91 <https://www.legislation.gov.au/Details/F2020L00295/Amends>

92 [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/FlagPost/2020/April/Coronavirus\\_response-Free\\_child\\_care](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2020/April/Coronavirus_response-Free_child_care)

93 [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/FlagPost/2020/April/Coronavirus\\_response-Free\\_child\\_care](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2020/April/Coronavirus_response-Free_child_care)

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

8	Consultation	Yes	The sector representative bodies such as the Australian Childcare Alliance report “working closely with Education Minister, the Hon Dan Tehan, in helping to design the new early learning ‘lifeline’ package.” <sup>95</sup>
9	Communication	Yes	The Department of Skills and Education has the policy explained clearly on their website along with FAQs. <sup>96</sup>
10	Review	Yes	It is being reviewed as part of the inquiry into the Australian Government's response to the COVID-19 pandemic. <sup>97</sup> The Minister also committed to a one month review at the time of announcement. <sup>98</sup>
		7/10	

## Victoria: Use of emergency powers in response to COVID-19

On 16 March the then-Minister for Health the Hon. Jenny Mikakos declared a state of emergency under section 198(1) of the *Public Health and Wellbeing Act 2008 (Vic)*. The state of emergency can be declared by the Minister:

“on the advice of the Chief Health Officer and after consultation with the Minister and the Emergency Management Commissioner under the Emergency Management Act 2013, declare a state of emergency arising out of any circumstances causing a serious risk to public health.”<sup>99</sup>

The declaration can be extended for “further periods not exceeding 4 weeks but the total period that the declaration continues in force cannot exceed 6 months.”<sup>100</sup> The declaration of a public health emergency gives the Chief Health Officer (CHO) the power to:

- detain any person or group for as long as reasonably necessary to eliminate or reduce a serious risk to public health;
- restrict the movement of any person within Victoria;
- prevent any person or group from entering Victoria; and
- give any other direction reasonably necessary to protect public health.<sup>101</sup>

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

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

97 [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/COVID-19](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/COVID-19)

98 <https://ministers.dese.gov.au/morrison/press-conference-australian-parliament-house-act>

99 <https://www.legislation.vic.gov.au/in-force/acts/public-health-and-wellbeing-act-2008/043>

100 <https://www.legislation.vic.gov.au/in-force/acts/public-health-and-wellbeing-act-2008/043>

101 <https://www.parliament.vic.gov.au/publications/research-papers/download/36-research-papers/13962-emergency-powers-public-health-and-covid-19>

The declaration was made as per existing legislation, and therefore didn't require parliamentary approval. In March the declaration was not controversial as there was consensus that the novel virus would require a response from the government and the powers enabled would allow for expedient action.

Some of the few pointed questions about the use of emergency powers when they were declared in March came from David Limbrick MLC from the Liberal Democrats who stated that "it is sometimes said that those who sacrifice liberty for a little security gain neither," paraphrasing American founding father Benjamin Franklin.<sup>102</sup> During Questions without notice and ministers statements he asked the Minister for Health "what powers does the minister intend to use and for what purpose will they be used?"<sup>103</sup>

The Minister answered that the powers were necessary as there had "never been a public health emergency facing our nation that has been greater than this in our lifetime."<sup>104</sup>

"So yesterday's declaration made by me enabled our chief health officer to make a direction to put these new measures into place, the quarantine measures that were announced—14 days quarantine for all overseas travellers as well as the banning of non-essential mass gatherings. There may well be other measures that will be required."<sup>105</sup>

Mr Limbrick asked a follow up question of "what are the conditions under which the government will determine that these powers are no longer necessary and remove them?"<sup>106</sup>

The Minister answered that this is a "new virus here, and we are monitoring the data and looking at all the evidence on a daily basis, both nationally and internationally. We will make those assessments about what is required based on the experts' advice."<sup>107</sup>

Whilst the initial declaration didn't receive much criticism from the community the many orders that have been made under the powers have been subject to debate. These include:

- Lockdowns or stay at home orders including a curfew
- Mandatory masks
- Isolation for those with COVID-19 or potentially been in contact with someone
- Limitations on business activities
- Limitations on travel including preventing people from going beyond a 5km radius of their homes

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102 <https://hansard.parliament.vic.gov.au/isysquery/27f819fc-f7aa-41a3-a7af-c901683aae70/87/doc/>

103 <https://hansard.parliament.vic.gov.au/isysquery/27f819fc-f7aa-41a3-a7af-c901683aae70/87/doc/>

104 <https://hansard.parliament.vic.gov.au/isysquery/27f819fc-f7aa-41a3-a7af-c901683aae70/88/doc/>

105 <https://hansard.parliament.vic.gov.au/isysquery/27f819fc-f7aa-41a3-a7af-c901683aae70/88/doc/>

106 <https://hansard.parliament.vic.gov.au/isysquery/27f819fc-f7aa-41a3-a7af-c901683aae70/89/doc/>

107 <https://hansard.parliament.vic.gov.au/isysquery/27f819fc-f7aa-41a3-a7af-c901683aae70/90/doc/>

Free market think tank, the Institute of Public Affairs have criticised the restrictions for being disproportionate. Research fellow Morgan Begg referred to many of these restrictions as “petty” and “heavy-handed.”<sup>108</sup>

The Grattan Institute on the other hand has praised Victoria for its restrictions and criteria for lifting them. Health Program director Professor Stephen Duckett said that it “identifies the right goal (zero active cases), it provides explicit criteria for when restrictions might be lifted.”<sup>109</sup>

The use and extension of public health emergency powers has been an ongoing debate in Victoria, particularly as there have been attempts to amend the legislative powers.<sup>110</sup>

	Criteria	Conclusion	Comment
1	Urgency	Yes	Consensus that the declaration of public health emergency was required in order to respond to COVID-19. The declaration was made under existing legislation, the <i>Public Health and Wellbeing Act 2008</i> (Vic).
2	Need	Yes	Public health emergency declaration was deemed to be required based on advice from experts including the Chief Health Officer.
3	Objectives	Yes	The objective of declaring a public health emergency was couched in public interest terms, specifically to combat “ongoing serious risk to public health in Victoria from Novel Coronavirus 2019.” <sup>111</sup>
4	Options	No	No disclosure of why the chosen policy was preferred over other possible policies.
5	Mechanisms	No	No disclosure of the alternative ways considered for executing the chosen policy.
6	Analysis	No	No disclosure of underlying data or assumptions which prompted the declaration.
7	Pathway	Yes	The legislation states that the CHO must instruct the use of the public health emergency powers. The Department of Human Health and Services was also named as control agency during the response to the novel virus.

108 <https://ipa.org.au/wp-content/uploads/2020/04/IPA-Report-States-of-Emergency-An-analysis-of-COVID-19-petty-restrictions.pdf>

109 <https://theconversation.com/victoria-now-has-a-good-roadmap-out-of-covid-19-restrictions-new-south-wales-should-emulate-it-145393>

110 <https://www.legislation.vic.gov.au/bills/covid-19-omnibus-emergency-measures-and-other-acts-amendment-bill-2020>

111 <http://www.gazette.vic.gov.au/gazette/Gazettes2020/GG2020S193.pdf>

8	Consultation	No	The legislation requires that the declaration and use of powers must be on advice of the CHO. However, no reports released from consultation with the CHO or other medical advisers.
9	Communication	Yes	The declaration was communicated via a press release. <sup>112</sup>
10	Review	Yes	Public Accounts and Estimates Committee is currently conducting an inquiry into the Victorian Government's response to the COVID-19 pandemic.
		6/10	

## New South Wales: Use of emergency powers in response to COVID-19

New South Wales is the only jurisdiction where no formal emergency declaration was made. The restrictions brought in are consistent with ordinary powers contained in section 7 of the *Public Health Act 2010* (NSW) which grants the Minister the power to respond to public health risks. The legislation grants very broad powers to the Minister of Health, they can make any direction to:

- reduce or remove the risk of COVID-19 in the area;
- segregate or isolate people within NSW; and
- prevent, or give on a conditional basis, access to any part of NSW<sup>113</sup>

Any order made under these powers expires after 90 days unless specified it expires sooner.

New South Wales also established State Emergency Operations Centre (SEOC) with advisers from different fields to coordinate the emergency response to COVID-19.

The Minister of Health, Hon. (Brad) Bradley Ronald Hazzard has used the public health powers to create delegated legislation to:

- Direct the lockdowns
- Direct isolation for those with COVID-19 or potentially been in contact with someone that tested positive
- Create limitations on business activities including 'COVID-19 Safe' guidelines for business opening up after the shut down
- Create gathering restrictions
- Border and travel restrictions for interstate visitors and returning residents

The use of these powers granted by legislation to respond to COVID-19 was uncontroversial within the parliament. However, there was some debate around the application of these powers. The restrictions on gatherings preventing protest was a

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

113 <https://justiceconnect.org.au/resources/how-the-new-south-wales-governments-emergency-restrictions-on-covid-19-work/>

point of debate. Greens Member for Newtown Ms Jenny Leong MP noted that there was “COVID Safe plans for racecourses and sex work. I think there could also be COVID Safe plans for peaceful protest.”<sup>114</sup>

“Given the need to adjust to the new reality of living with COVID restrictions to keep our community safe and that NSW Health has helpfully provided templates to businesses to develop COVID safety plans by industry, will the Minister work with NSW Health to develop a specific COVID safety plan for peaceful protests, acknowledging their importance to our democracy and the need to avoid unnecessary uncertainty and division at this time?”<sup>115</sup>

Mr Hazzard explained that preventing protest was a difficult issue given the “right of people to express their democratic view” however “this is not the right time to be changing the public health orders, which would enable the possibility of the virus transmitting among those attending the demonstrations, let alone among those at home.”<sup>116</sup>

Outside the parliament the application of orders created under the public health powers were fiercely criticised by many across the political spectrum who were worried that they infringed civil liberties and were disproportionate. The NSW Greens health spokesperson, Cate Faehrmann, said it was “unacceptable these latest restrictions have been brought in overnight with scarce detail and such harsh penalties.”<sup>117</sup> John Roskam Executive Director of free market think tank the Institute of Public Affairs said:

“To control the spread of a dangerous virus that as yet has taken 24 lives in this country, 25 million Australians have been placed under indefinite house arrest, children’s playgrounds are locked and patrolled by security guards, and the police fly drones over beaches and parks.”

Other organisations considered that the restrictions were necessary to prevent the spread of the virus. Liberty Victoria spokesman Julian Burnside AO QC said that “on the surface, these measures interfere appallingly with human rights – but for good reason.”<sup>118</sup>

The orders that resulted from the public health powers were also criticised for “rapidly changing rules and widespread uncertainty about some interpretations.” Meaning that people were expected to comply with some new orders one day after being signed into law.

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114 <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-111975/link/6>

115 <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-111975/link/6>

116 <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-111975/link/6>

117 <https://www.theguardian.com/world/2020/mar/31/civil-liberties-concerns-over-australian-police-powers-to-issue-fines-for-coronavirus-rule-breaches>

118 <https://www.theguardian.com/world/2020/mar/31/civil-liberties-concerns-over-australian-police-powers-to-issue-fines-for-coronavirus-rule-breaches>

Criteria	Conclusion	Comment	
1	Urgency	Yes	Consensus that the public health powers were required in order to respond to COVID-19. These powers are under existing legislation, section 7 of the <i>Public Health Act 2010</i> (NSW).
2	Need	Yes	Public health powers were deemed to be required based on advice and evidence from experts including the Chief Health Officer.
3	Objectives	Yes	The objective of using public health powers was couched in public interest terms, the Minister for Health said “we will use our legislative public health powers to best safeguard the community.” <sup>119</sup>
4	Options	No	No disclosure of why the chosen policy was preferred over other possible policies.
5	Mechanisms	No	No disclosure of the alternative ways considered for executing the chosen policy.
6	Analysis	No	No disclosure of underlying data or assumptions which prompted the declaration.
7	Pathway	Yes	State Emergency Operations Centre (SEOC) with advisers from different fields created to coordinate the emergency response to COVID-19.
8	Consultation	No	Use of powers on advice “of health experts” and the CHO. <sup>120</sup> However, no reports were released from consultation with the CHO or other medical advisers.
9	Communication	Yes	The decision to use public health powers was communicated via a press release. <sup>121</sup>
10	Review	Yes	Public Accountability Committee currently conducting an inquiry into the NSW Government’s response to the COVID-19 pandemic. <sup>122</sup>
		6/10	

119 [https://www.health.nsw.gov.au/news/Pages/20200315\\_02.aspx](https://www.health.nsw.gov.au/news/Pages/20200315_02.aspx)

120 [https://www.health.nsw.gov.au/news/Pages/20200315\\_02.aspx](https://www.health.nsw.gov.au/news/Pages/20200315_02.aspx)

121 [https://www.health.nsw.gov.au/news/Pages/20200315\\_02.aspx](https://www.health.nsw.gov.au/news/Pages/20200315_02.aspx)

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



## Queensland: Use of emergency powers in response to COVID-19

On 29 January the Minister for Health and Minister for Ambulance Services made an order declaring a Public Health Emergency due to COVID-19 under the section 319 *Public Health Act 2005* (QLD). A declaration can be made if the Minister is satisfied that:

- There is a public health emergency; and
- it is necessary to exercise powers under this chapter to prevent or minimise serious adverse effects on human health.<sup>123</sup>

The Minister must “before declaring a public health emergency the Minister must, if practicable, consult with the chief executive and the chief health officer” if the prior consultation is impractical the “Minister must consult as soon as practicable after the declaration of the public health emergency.”

The declaration remains in force for 7 days, but can be extended periods of up to 90 days.

The public health emergency declaration gives the Chief Health Officer broad powers to:

- require a person not to enter or not to remain within a place
- require a person to stop using a place for a stated purpose
- require a person to go to a stated place
- require a person to stay at or in a stated place
- require a person to take measures to remove from the person a substance that is a hazard to human health, for example, by showering
- direct the movement of a person, animal or a vehicle into, out of, or around the public health emergency area
- require a person to state the person’s name and residential address
- require a person to answer questions by the emergency officer
- clean or disinfect a place, structure or thing
- carry out insect or pest control
- demolish stated structures or other property
- contain an animal, substance or thing within the public health emergency area
- remove an animal, substance or thing from a place
- destroy animals at a place or remove animals from a place for destruction at another place
- dispose of an animal, substance or thing at a place, for example, by burying the animal, substance or thing
- take action in relation to property including, for example, to allow the officer to take control of a building for the purposes of the emergency

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123 <https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2005-048>

- require a person to give the emergency officer reasonable help to exercise the emergency officer's orders
- detain of a person during a declared public health emergency for a period of 14 days.<sup>124</sup>

These powers have been used amongst other things to:

- Close the border between Queensland and other states
- Restrict gatherings
- Order isolation for those with COVID-19 or been in possible contact with someone who has

The use of these powers in response to COVID-19 was relatively uncontroversial in Parliament. However, the decision to close the border has been a subject of ongoing debate. In May the parliamentary opposition criticised the impact of these closures on the economy. Shadow Minister for Tourism Mr David Crisafulli said:

"A chorus of industry voices all say a September border reopening will destroy business. The Gold Coast mayor says he only supports the continued closure linked with medical advice. There are reports that the tourism minister was blindsided by the decision."<sup>125</sup>

The Premier Anastacia Palaszczuk MP has defended the border closures saying that she is putting the "health of Queenslanders and putting the priority of Queensland families first."<sup>126</sup> She also said that the measure was on the advice of the Chief Health Officer, Dr Jeannette Young.

The concerns about the economic results of the border closures were echoed by many in the tourist industry. Landmark Resort and Spa general manager Brett Thompson claimed that the border closure "decimated" business.<sup>127</sup> Destination Gold Coast chief executive officer Annaliese Battista said that the Gold Coast tourist industry was "teetering on the edge of collapse."<sup>128</sup> NSW and Federal government politicians also urged Queensland to open the border.<sup>129</sup> However, Dr Young said the border restrictions were necessary because the "vast majority of our cases have been related to people coming in through the border."<sup>130</sup>

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124 <https://www.claytonutz.com/covid-19-response/government-powers-and-directives>

125 [https://www.parliament.qld.gov.au/documents/Hansard/2020/2020\\_05\\_20\\_WEEKLY.pdf#search=COVID-19](https://www.parliament.qld.gov.au/documents/Hansard/2020/2020_05_20_WEEKLY.pdf#search=COVID-19)

126 [https://www.parliament.qld.gov.au/documents/Hansard/2020/2020\\_05\\_20\\_WEEKLY.pdf#search=COVID-19](https://www.parliament.qld.gov.au/documents/Hansard/2020/2020_05_20_WEEKLY.pdf#search=COVID-19)

127 <https://www.abc.net.au/news/2020-05-20/coronavirus-queensland-border-closure-annastacia-palaszczuk/12264162>

128 <https://www.abc.net.au/news/2020-05-20/coronavirus-queensland-border-closure-annastacia-palaszczuk/12264162>

129 <https://www.theguardian.com/world/2020/may/22/peter-dutton-encourages-people-to-challenge-queenslands-covid-19-border-closures>  
<https://www.abc.net.au/news/2020-05-23/coronavirus-how-is-there-different-health-advice-border-closures/12276062>

130 <https://www.couriermail.com.au/news/queensland/chief-medical-officer-expects-cases-to-slow-due-to-tough-border-and-quarantine-restrictions/news-story/9662b4733bff5e235b389a3976a9aceb>

There was also some discussion around the process of expanding public health powers. *The Public Health and Other Legislation (Public Health Emergency) Amendment Bill* was introduced into the parliament in March to amend the public health legislation to give “emergency officers appointed under the Public Health Act with wide-ranging powers to manage any health threats and keep Queenslanders safe.”<sup>131</sup> Whilst all parties agreed that these are “extraordinary times and they require extraordinary measures to address them.” The opposition was concerned that the debate had a “two-hour time limit.” Mr Jarrod Bleijie went on to say that:

“We have been waiting on and expecting this bill for two days. All of a sudden at 7.30 pm the minister introduces the bill. There is no reason why the bill could not have been sent to members tonight. Members would have had the opportunity during the night to read it—to actually read it—and work out what is in it.”<sup>132</sup>

Criteria	Conclusion	Comment	
1	Urgency	Yes	There was consensus that the public health emergency declaration was required in order to respond to COVID-19. The declaration was made under existing legislation, section 319 <i>Public Health Act 2005 (QLD)</i> . <sup>133</sup>
2	Need	Yes	The public health emergency was deemed to be required based on advice from experts including the Chief Health Officer. <sup>134</sup>
3	Objectives	Yes	There have been statements as to the objective of declaring a public health emergency couched in public interest terms since the declaration was made. However back in January when it was initially declared no such statement was made. <sup>135</sup>
4	Options	No	No disclosure of why the chosen policy was preferred over other possible policies.
5	Mechanisms	No	No disclosure of the alternative ways considered for executing the chosen policy.
6	Analysis	No	No disclosure of underlying data or assumptions which prompted the declaration.
7	Pathway	Yes	Pathway determined by legislation as CHO must instruct the use of emergency powers.

131 <https://www.abc.net.au/news/2020-02-04/qld-coronavirus-threat-health-emergency-laws-rushed-parliament/11925566>

132 [https://www.parliament.qld.gov.au/documents/Hansard/2020/2020\\_03\\_18\\_WEEKLY.pdf#search=COVID-19](https://www.parliament.qld.gov.au/documents/Hansard/2020/2020_03_18_WEEKLY.pdf#search=COVID-19)

133 <https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2005-048>

134 <https://statements.qld.gov.au/statements/89540>

135 <https://statements.qld.gov.au/statements/89540>

8	Consultation	No	The legislation required that the declaration and use of powers must be on advice of the CHO and the chief executive. Reportedly other medical advisers were consulted. However, this was not made available to the public. <sup>136</sup>
9	Communication	No	The decision to use public health powers was not clearly communicated in January. No evidence of a press release explaining the decision shortly after it was made. <sup>137</sup>
10	Review	Yes	The Queensland parliament is currently conducting several inquiries into the Government's response to the COVID-19 pandemic. <sup>138</sup>
		5/10	

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136 <https://statements.qld.gov.au/statements/89540>

137 [https://www.health.nsw.gov.au/news/Pages/20200315\\_02.aspx](https://www.health.nsw.gov.au/news/Pages/20200315_02.aspx)

138 <https://www.parliament.qld.gov.au/work-of-committees/committees/HCDSDVPC/inquiries/current-inquiries/COVID-19>

# Normal Decisions (Federal)

## My Health Record

My Health Record was designed to centralise health information of individual Australians, with the goal to provide a single point of access to the record for both health professionals and the individual concerned.<sup>139</sup>

The development of My Health Record has been gradual. My Health Record was based on a previous electronic health record implemented by the commonwealth government in 2012, known as Personally Controlled Electronic Health Record system (PCEHR). In 2013 a review of this system was conducted ('Royle Review') which found that it received limited public participation.<sup>140</sup>

The 2015-16 Budget contained an announcement 'My Health Record - A New Direction for Electronic Health Records in Australia' that allocated funding to strengthen eHealth governance arrangements.<sup>141</sup> In September 2015 the Minister for Health and the Minister for Sport, the Hon Sussan Ley, MP introduced the *Health Legislation Amendment (eHealth) Bill 2015* into the parliament. The Bill amended the 2012 legislative framework to create a new model known as My Health Record. In August 2018 the Senate Community Affairs References Committee held an inquiry in the My Health Record System.

My Health Record received bipartisan support. The legislation introduced from 2015 that created and amended the function of electronic health records system passed both Houses of Parliament with little controversy.<sup>142</sup>

Proponents of My Health Record include medical bodies and government agencies. They argued that the availability of health data will have life saving consequences such as:

- Being able to gain important information about a persons' health in an emergency;
- Reduction of medical errors by providing more information to doctors; and
- Collection of health data of Australians could lead to better public policy as trends and needs can be identified.<sup>143</sup>

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

140 <https://www.aph.gov.au/Parliamentary%20Business/Bills%20Legislation/Bills%20Search%20Results/Result/Second%20Reading%20Speeches?BillId=r5534&Page=2>

141 <https://www.aph.gov.au/DocumentStore.ashx?id=c7b5d5e7-18a2-4f38-993b-0a2f62b0609a&subId=659960>

142 <https://www.aph.gov.au/Parliamentary%20Business/Bills%20Legislation/Bills%20Search%20Results/Result/Second%20Reading%20Speeches?BillId=r5534&Page=2>

143 <https://www.aph.gov.au/Parliamentary%20Business/Bills%20Legislation/Bills%20Search%20Results/Result/Second%20Reading%20Speeches?BillId=r5534&Page=2>

However, privacy advocacy groups, such as the Australian Privacy Foundation, have expressed concern that the technical design of My Health Record would not be sufficient to protect people's data and is generally outdated. The Foundation has raised issues with the extent of data collected as well as the risk of future legislative change.

"There are two major problems with My Health Record that are insurmountable i.e. the basic design is flawed. The first is that it is government owned, the second is that governments of the future can change the laws regarding the use of My Health Record Data."<sup>144</sup>

Some aspects of the My Health Record received much attention from a policy standpoint. In particular whether the system should operate on an opt-in or opt-out mechanism. This was the main concern of the 2018 Senate inquiry and resulted in the creation of trials. Other issues such as privacy and infrastructure however have required additional amendments since the policy was rolled out.

The Government trialled different participation arrangements between March and October of 2016. Opt out arrangements where records are created unless the individual declares otherwise were trialed in Northern Queensland and the Nepean Blue Mountains and opt-in (or record created upon request) arrangements were trialed in Western Australia and Ballarat.

In the 2017-18 Budget the decision to transition to an opt-out participation model was announced. Individuals that wished to opt-out of My Health Record were given an initial 3-month period beginning on 16 July 2018, but was extended until 15 November 2018.

In July 2018 further amendments to the My Health Record privacy framework was announced to create a requirement that law enforcement must obtain a warrant to access records and create a requirement that information must be deleted from the systems upon a person opting out.

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<sup>144</sup> <https://privacy.org.au/campaigns/myhr/>

Criteria		Conclusion	Comment
1	Establish need	Yes	PCEHR Review 'Royle Review' concluded the previous eHealth Record System was inadequate and required reform. <sup>145</sup>
2	Set objectives	Yes	The objectives were clearly stated and couched in public interest terms. They were to resolve issues with PCEHR and improve healthcare by enabling the secure and instant sharing of health information.
3	Identify options	Yes	On 1 June 2017 a regulatory Impact Statement was released. <sup>146</sup> There was also a Senate inquiry conducted in 2018 to consider opt-in and opt-out models, privacy measures and administration. <sup>147</sup>
4	Consider mechanisms	Yes	Opt-in and opt-out mechanisms considered.
5	Analysis	No	Inquiry terms of reference and subsequent paper only requested submission on the benefits of My Health Record, there was no comprehensive cost benefit analysis undertaken.
6	Design pathway	Yes	My Health Record roll out strategy planned and managed by the Australian Digital Health Agency. Implementation review conducted by the Australian National Audit Office.
7	Consult further	Yes	Consultation on the legislation was conducted in 2015 and another public consultation on secondary data usage in 2017 rather than a comprehensive consultation.
8	Publish proposals	Yes	The Royle Review, released in 2013, accepted submissions and produced a final report publishing proposals in relation to a health record system. <sup>148</sup>
9	Introduce legislation	Yes	Legislation introduced in 2015 amended 2012 legislation that created the PCEHR.
10	Communicate decision	Yes	Comprehensive communication strategy around My Health Record including a media strategy about opt-out period and website with relevant information.
		9/10	

145 <http://www.healthbase.info/PCEHR/review/>

146 <https://ris.pmc.gov.au/2017/06/01/changes-my-health-record-system>

147 [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/MyHealthRecordsystem](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/MyHealthRecordsystem)

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

## Repeal of Medevac legislation

*Migration Amendment (Urgent Medical Treatment) Bill 2018* (the “Medevac Bill”) was a private member’s bill introduced in the House of Representatives on 3 December 2018 by crossbench MPs. The Medevac Bill’s purpose was to create a framework that would:

“require the temporary transfer to Australia of minors and other ‘transitory persons’ in regional processing countries for the purpose of receiving medical or psychiatric assessment or treatment.”<sup>149</sup>

The existing policy in relation to medical transfers was dependent on ministerial discretion. The new framework operated as follows:

“A transfer recommendation made by two doctors goes first to the Minister, to approve or refuse within 72 hours; the Minister may at this stage refuse the transfer due to character and/or security concerns, or on medical grounds (except in cases of minors). If the Minister’s objection is medical, the decision goes to an eight-person medical panel, which has a further 72 hours to review the medical case. If the panel recommends transfer, the case goes back to the Minister, who can still refuse on character and/or security grounds. In the absence of any such grounds, however, the transfer must at this stage be permitted.”<sup>150</sup>

The bill was supported by the “medical, legal, human rights and refugee sectors.”<sup>151</sup> The provisions of the “Medevac Bill” were subsequently added as a new Schedule 6 to the *Home Affairs Legislation Amendment (Miscellaneous Measures) Bill 2018* by the Senate in December 2018. This was agreed to by the House of Representatives, with the support of Labor and crossbenchers, in February 2019.<sup>152</sup> This marked the first substantial defeat of a Government in the House of Representatives since 1929. The Coalition Government voted against these amendments. During the 2019 election campaign the Coalition promised that, if re-elected, it would repeal the provisions. On 4 July 2019 the *Migration Amendment (Repairing Medical Transfers) Bill 2019* (the “Medevac Repeal Bill”) was introduced to amend and repeal the 2018 provisions.

The Medevac Repeal Bill was subject to much debate. It was ultimately repealed with the support of crossbenchers from One Nation and Senator Jacquie Lambie voting with the government. The MPs and Senators from the government were supportive of the Medevac Repeal Bill arguing that the framework was unnecessary to protect lives and posed a threat to national security. Speaking in favour of the Medevac Repeal Bill, Senator Amanda Stoker made the following remarks:

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149 [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/bd/bd1819a/19bd056](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1819a/19bd056)

150 <https://newsroom.unsw.edu.au/news/business-law/medevac-law-how-does-it-work>

151 [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/bd/bd1819a/19bd056](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1819a/19bd056)

152 [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r6069](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6069)



“We are told that these asylum seekers must come to Australia because they lack adequate medical care in offshore processing countries. So, again, let’s let the evidence do the talking. In Papua New Guinea, there is one healthcare worker for every 14 people who are being kept there in offshore detention and one mental health professional for every 37 detainees. In Nauru, there is one healthcare worker for every six people and one mental health professional for every 25 detainees. These are numbers that many of my rural and regional Queensland constituents would be envious about. They could only dream of getting those kinds of ratios.”<sup>153</sup>

The opposition party as well as MPs and Senators from The Australian Greens rejected the change. Senator Murray Watt opposed the Bill on behalf of Labor on the grounds that the repeal “was unnecessary” and:

“this bill is working and it delivers on a core Australian principal, which is that, if you are sick, no matter who you are, no matter what your race and no matter what your wallet, you will get medical care. That’s what medevac was about, and it remains as relevant now as it was when the bill was passed.”<sup>154</sup>

Outside the parliament many refugee advocacy groups were also vocal in opposing the bill on the grounds that it would compromise human rights. Australian Lawyers for Human Rights submitted the following remarks:

“The Medevac legislation is a vital part of ensuring Australia complies with its binding international obligations under the United Nations Convention Relating to the Status of Refugees and the Protocol Relating to the Status of Refugees (Refugee Convention) and international human rights law.”<sup>155</sup>

The right leaning advocacy group Advance Australia supported the repeal due to the Medevac Bill being a “ridiculous law [that] allows any two doctors to circumvent our border security and bring illegal immigrants to Australia if they believe them to be in need of medical attention.”<sup>156</sup>

The Medevac Repeal Bill was introduced into the House of Representatives on 4 July 2019 and passed both houses after a lengthy debate on 4 December 2019 to receive royal assent. The Medevac Repeal Bill was subject to an inquiry by the Senate Legal and Constitutional Affairs Legislation Committee and was also referred to the Senate Standing Committee for the Scrutiny of Bills and the Parliamentary Joint Committee on Human Rights for report.

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153 <https://www.openaustralia.org.au/senate/?id=2019-12-02.180.2&s=speaker%3A10948>

154 <https://www.openaustralia.org.au/senate/?id=2019-12-02.180.2&s=speaker%3A10948>

155 [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/bd/bd1920a/20bd034#\\_ftn57](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1920a/20bd034#_ftn57); and Australia, Senate, Journals, 137, 2018–19, 6 December 2018, p. 4544; Australia, House of Representatives, Votes and proceedings, 157, 2018–19, 12 February 2019, pp. 2058–9.

156 [https://www.advanceaustralia.org.au/medivac\\_used\\_to\\_bring\\_180\\_illegals\\_to\\_australia](https://www.advanceaustralia.org.au/medivac_used_to_bring_180_illegals_to_australia)

Criteria	Conclusion	Comment	
1	Establish need	No	Policy announced as an election promise, prior to inquiry or consultation. Need was not established based on factual evidence and stakeholder input.
2	Set objectives	Yes	The Government claimed the repeal was necessary to both protect national security and to combat the threat posed by people smugglers to keep Australia's borders secure.
3	Identify options	No	While the report released in October 2019 by the Senate Legal and Constitutional Affairs Legislation Committee set out dissenting views on the proposed policy, there is no evidence of the Government considering alternative policy options. <sup>157</sup>
4	Consider mechanisms	No	The only policy consideration was a repeal of the 2018 policy, rather than finding alternative mechanisms to achieve objectives.
5	Analysis	No	The explanatory memorandum contains a financial impact statement of the costs associated with the policy change and also a rationale as to why the change is required. However, there is a lack of evidence that the Government considered the pros and cons, and costs and benefits, of the policy proposal.
6	Design pathway	No	Whilst the policy amends the framework created in 2018, there is no evidence that an implementation plan of this change was created.
7	Consult further	Yes	August 2019 inquiry by the Senate Legal and Constitutional Affairs Legislation Committee enabled submissions and public consultation about the proposed legislation. <sup>158</sup>
8	Publish proposals	No	Whilst there was a consultation after the introduction of the draft legislation into parliament, there is no evidence of prior consultation or a green and white paper like process.
9	Introduce legislation	Yes	Legislation introduced into the House of Representatives on 4 July 2019 and passed both houses on 4 December 2019.

157 [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/RepairMedicaltransfers](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/RepairMedicaltransfers)

158 [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/RepairMedicaltransfers](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/RepairMedicaltransfers)

10	Comm-unicate decision	No	Whilst the media coverage on this issue was extensive, there was a lack of communication from the government on the change in policy. There was no press release from the Department of Home Affairs charged with administering the policy.
		3/10	

## Open banking regime

The Open Banking Regime is the first step in introducing a Consumer Data Right for Australians. The policy aims to create better competition between providers of financial services by allowing competing banks to transfer customer data upon the consent of the owner. This would allow consumers to easily transfer mortgages (or other financial services) from one bank to another in order to receive a better product.

Multiple government reviews recommended increased access to consumer data, most notably Report of the House of Representatives Standing Committee on Economics' Review of the Four Major Banks (the "Coleman Report") released in 2016 recommended that consumers (both individuals and small business) should be given access to their banking data.

In the 2017-18 Budget the then Treasurer, the Hon. Scott Morrison MP, announced that the Government would introduce an Open Banking Regime into Australia. On 20 July 2017, Morrison announced the terms of reference and the appointment of Mr Scott Farrell as the independent expert to lead a review into open banking (the "Review"). The Review was to consult with the relevant sectors as well as other interested parties and draft a report into what an open banking regime could look like for Australia.

On 9 May, 2018, the government agreed to the recommendations of the Review. Firstly, the government agreed to introduce a Consumer Data Right, and then a gradual phase in of the right applying it first to financial products.

On 25 May, 2018, the government announced the phase in of the Open Banking Regime. Phase one was to launch on 1 July 2019, it consisted of "all major banks making data available on credit and debit card, deposit and transaction accounts."<sup>159</sup> The second phase was to introduce all mortgages and loans by 1 February 2020. Major banks are to have the Open Banking Regime completely implemented by 1 July 2020 and all "remaining banks will be required to implement Open Banking with a 12-month delay on timelines compared to the major banks."<sup>160</sup>

The creation of a Consumer Data Right that would enable the Open Banking Regime received little debate. On 13 February 2019 the *Treasury Laws Amendment (Consumer Data Right) Bill 2019* (the "Consumer Data Right Bill") was introduced into the House of Representatives. In his second reading speech the Treasurer, Josh Frydenberg, spoke on its merits:

<sup>159</sup> <https://treasury.gov.au/publication/p2018-t286983>

<sup>160</sup> <https://treasury.gov.au/publication/p2018-t286983>

“The consumer data right is a fundamental structural reform that will drive competition and improve the flow of information around the Australian economy.

And the right will incentivise Australian entrepreneurs to develop new products and applications that reach more consumers and are better tailored to their needs.

For consumers, improved access to data will support better price comparison services, taking into account their unique circumstances, and promote more convenient switching between products and providers. It will also leverage new technology such as artificial intelligence and allow consumers to make more informed decisions on where they spend their money.”<sup>161</sup>

The opposition party supported the aims of the policy, but was concerned about the process being rushed. Labor Senators Chris Ketter and Jenny McAllister made the following comments:

“What is clear is that this bill has undergone a truncated development process. Labor Senators believe all those involved in working on the legislation, rules and standards have given their best efforts, but are working to deadlines set by government. Labor Senators believe it is politics, not policy that are driving these compressed timeframes, a government desperate to get a headline, but have failed to deliver the substance behind the headline.”<sup>162</sup>

The Law Council of Australia had similar reservations. In their submission to the Senate Economics Legislation Committee’s inquiry into the draft bill, they noted that the short timeframe for submissions (the Consumer Data Bill was referred for inquiry on the 13 February 2019 with a deadline for submissions of 28 February 2019) did not allow for a comprehensive analysis. However, from the analysis they were able to conduct in time, they noted three major concerns:

- the complexity involved in implementing ‘reciprocity’ as an initial requirement to be universally imposed on accredited data recipients
- the broad Ministerial discretion in making designation instruments and
- the lack of clarity and the unnecessary complexity in how the privacy safeguards division of the Bill will interact with the provisions of the Privacy Act.<sup>163</sup>

The initial Consumer Data Right Bill lapsed at the dissolution of Parliament. On 24 July 2019 the Consumer Data Bill was reintroduced, approved and received royal assent on the 12th of August 2019.

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161 [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/bd/bd1819a/19bd068](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1819a/19bd068)

162 [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/bd/bd1819a/19bd068](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1819a/19bd068)

163 [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/bd/bd1819a/19bd068](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1819a/19bd068)

The policy has received two rounds of consultation as well as independent initial Review (as mentioned above) and further review of the underlying framework by the Australian Competition and Consumer Commission (the ‘ACCC’) in September 2018.

Another possible criticism is lack of communication of the new policy to consumers. The main purpose of the Open Banking Regime is to provide a shift towards greater consumer choice for financial products, but polling by market research firm PureProfile shows that more than three quarters of consumers in Australia were unaware of the change.<sup>164</sup>

	Criteria	Conclusion	Comment
1	Establish need	Yes	The Coleman Report (following the 2016 Review of the Four Major Banks) established a lack of competition and transparency in the banking sector and that there is a need for “increasing consumers’ access to their banking data and to banking product data.” <sup>165</sup>
2	Set objectives	Yes	The public interest objective is to give consumers more control over their data “leading, for example, to more choice in where they take their business, or more convenience in managing their money and services.” <sup>166</sup>
3	Identify options	No	The policy to introduce an Open Banking Regime was announced prior to consultation. The 2017 Open Banking Review only considered potential mechanisms for introducing the policy rather than comparing it to other policies to increase competition in the finance sector. <sup>167</sup>
4	Consider mechanisms	Yes	The Review consulted on and considered alternative mechanisms and regulatory approaches.
5	Analysis	Yes	The Review into Open Banking in Australia Issues Paper released in August 2017 contained a cost/benefit analysis. <sup>168</sup>

164 <https://www.theaustralian.com.au/business/financial-services/consumers-not-aware-of-open-banking/news-story/c8f58e0350eec9f407ffc3e8880a7106>

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

166 [https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6370\\_ems\\_ce513d68-7222-49f4-a2fe-67e1c2b32fed/upload\\_pdf/712911.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6370_ems_ce513d68-7222-49f4-a2fe-67e1c2b32fed/upload_pdf/712911.pdf;fileType=application%2Fpdf)

167 [https://treasury.gov.au/sites/default/files/2019-03/Review-into-Open-Banking-\\_For-web-1.pdf](https://treasury.gov.au/sites/default/files/2019-03/Review-into-Open-Banking-_For-web-1.pdf)

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

6	Design pathway	Yes	The implementation has been designed and managed by the ACCC. A timetable explaining the phases of the Open Banking Regime is published on their website. <sup>169</sup>
7	Consult further	Yes	Additional consultation was conducted on the exposure draft of the Consumer Data Right Bill between 23 September 2018 - 12 October 2018. <sup>170</sup> Followed by a second round consultation on the 14 June 2019 - 12 July 2019 to respond to issues raised during the first consultation period. <sup>171</sup> From 6 March 2020 - 21 May 2020 an inquiry into future directions of the Consumer Data Right was conducted. <sup>172</sup>
8	Publish proposals	Yes	The Review included an Issues Paper (August 2017) followed by a final report (December 2017) that was effectively a white paper followed by a green paper. It should be noted, however, that these were narrowly focused on the question of open banking.
9	Introduce legislation	Yes	The Consumer Data Right Bill was introduced twice, first on 13 February 2019, then again on 24 July 2019. However, there was some criticism that the initial legislative process was rushed.
10	Communicate decision	Yes	A press release from the Prime Minister dated 1 July 2020 announced the introduction of the Open Banking Regime and that the four major banks will now “enable the Consumer Data Right in banking, “Open Banking” will now commence in relation to deposits, transaction accounts, credit and debit cards.” <sup>173</sup>
		9/10	

169 [https://www.accc.gov.au/system/files/CDR%20-%20Proposed%20timetable%20for%20participation%20of%20non-major%20ADIs%20in%20the%20CDR\\_0.pdf](https://www.accc.gov.au/system/files/CDR%20-%20Proposed%20timetable%20for%20participation%20of%20non-major%20ADIs%20in%20the%20CDR_0.pdf)

170 <https://treasury.gov.au/consultation/c2018-t329327>

171 <https://treasury.gov.au/consultation/c2019-t364234>

172 <https://treasury.gov.au/consultation/c2020-62639>

173 <https://www.pm.gov.au/media/consumer-data-right-arrives>

# Victoria

## Wage theft bill

On 26 May 2018, Victorian Premier Daniel Andrews announced a commitment from the Victorian Government to make wage theft a crime. The policy was announced following several high profile cases of under-payment of employees, however there does not appear to be any formal investigation of the extent of the challenge or alternative options prior to this policy announcement. Andrews said:

“Whether you’re a convenience store chain or a celebrity chef, if you deliberately and dishonestly underpay your workers, if you deny or deprive them of what is rightfully theirs, you will face jail.”<sup>174</sup>

On 18th of March 2020 the Wage Theft Bill was introduced in the Legislative Assembly of Victoria by Hon Jill Hennessy, Victorian Attorney General and Minister for Workplace Safety. The bill created various criminal offences including penalties for the underpayment of entitlements and falsifying records. It also created a ‘Wage Inspectorate’ with investigative powers to identify offences under the bill.<sup>175</sup>

In her second reading speech Ms Hennessy explained:

“In recent months, we’ve seen story after story of Australian workers being exploited and a Commonwealth system that far too often fails to adequately respond. A string of large, high profile companies have recently self-reported almost half a billion dollars in possible underpayments with Woolworths alone admitting it may be responsible for failing to pay over \$300 million in entitlements.”<sup>176</sup>

Further support for the bill came from employee representative organisations such as unions who applauded the bill for ensuring that employees’ entitlements would now be adequately protected by the law. Luke Hilakari, Trades Hall Council secretary, said the bill would “forever improve the lives of workers and their families.”<sup>177</sup>

Opposition to the bill came from business associations, the Federal government, and the Fair Work Ombudsman.<sup>178</sup> The opposing parties were concerned that it duplicated obligations and would add extra complexity to an already convoluted

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174 <https://www.theguardian.com/australia-news/2018/may/26/victorian-government-pledges-to-introduce-jail-terms-for-wage-theft>

175 <https://www.kwm.com/en/au/knowledge/insights/criminalising-underpayments-victorian-wage-theft-bill-2020-20200622>

176 [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=Wage+Theft+Bill+2020&IW\\_FIELD\\_IN\\_HOUSENAME=ASSEMBLY&IW\\_FIELD\\_IN\\_ACTIVITYTYPE=Second+reading&IW\\_FIELD\\_IN\\_SittingYear=2020&IW\\_FIELD\\_IN\\_SittingMonth=March&IW\\_FIELD\\_IN\\_SittingDay=19](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=Wage+Theft+Bill+2020&IW_FIELD_IN_HOUSENAME=ASSEMBLY&IW_FIELD_IN_ACTIVITYTYPE=Second+reading&IW_FIELD_IN_SittingYear=2020&IW_FIELD_IN_SittingMonth=March&IW_FIELD_IN_SittingDay=19)

177 <https://www.theage.com.au/politics/victoria/wage-theft-to-become-a-crime-as-victoria-s-parliament-passes-new-laws-20200617-p553ba.html>

178 <https://www.smh.com.au/business/workplace/criminalisation-of-wage-theft-likely-to-backfire-say-experts-20181212-p50lto.html>

legal framework. Christian Porter, the Federal Attorney-General, said the bill could result in “significant duplication of resources, confusion, potential unenforceability and ultimately, waste of public money.”<sup>179</sup>

Victorian Chamber of Commerce and Industry chief executive Paul Guerra said:

“If passed, the Wage Theft Bill 2020 will create the risk that a business could be prosecuted by both state and federal regulators for the same conduct...Increased maximum penalties and the threat of jail may also discourage businesses that identify underpayments to come forward.”<sup>180</sup>

Following the May 2018 announcement a consultation process beginning with an inquiry in July 2018 into penalty rates and fair pay was conducted. The final report from the inquiry contained a recommendation to create criminal penalties for wage theft.<sup>181</sup> With the final consultation paper released on 23 February 2020 with submissions closing on 9 March 2020. The bill was introduced on 18 March to receive royal assent on 23 June 2020.

Despite the amount of community consultation the process received much criticism for being too rushed and without reference to constitutionality or its interaction with Federal policy. Mr Porter said it “is totally unnecessary for the Andrews government to rush into this ill-conceived venture.”<sup>182</sup> Ms Hennessy praised the processes saying that the government had “promised to criminalise wage theft and we have delivered on that promise.”<sup>183</sup>

	Criteria	Conclusion	Comment
1	Establish need	No	The policy was announced in a media release, prior to any gathering of evidence or stakeholder input. It is notable that the policy was announced prior to the 2018 Inquiry into Penalty Rates and Fair Pay report and recommendations. <sup>184</sup> There was also a lack of consideration of existing federal laws that prohibit this practice.
2	Set objectives	Yes	The public interest objective of the policy is “to ensure that Victorian workers receive what they are lawfully entitled to” by criminalising ‘wage theft.’

179 <https://www.smh.com.au/politics/federal/victorian-wage-theft-laws-raise-double-jeopardy-risk-for-businesses-20200615-p552q4.html>

180 <https://www.smh.com.au/politics/federal/victorian-wage-theft-laws-raise-double-jeopardy-risk-for-businesses-20200615-p552q4.html>

181 [https://www.parliament.vic.gov.au/component/jdownloads/download/36-research-papers/13958-wage-theft-bill-2020#\\_ftn2](https://www.parliament.vic.gov.au/component/jdownloads/download/36-research-papers/13958-wage-theft-bill-2020#_ftn2)

182 <https://www.theage.com.au/politics/victoria/wage-theft-to-become-a-crime-as-victoria-s-parliament-passes-new-laws-20200617-p553ba.html>

183 <https://www.theage.com.au/politics/victoria/wage-theft-to-become-a-crime-as-victoria-s-parliament-passes-new-laws-20200617-p553ba.html>

184 [https://www.parliament.vic.gov.au/file\\_uploads/PRFPSC\\_58-02\\_Text\\_WEB\\_V0t4G6dx.pdf](https://www.parliament.vic.gov.au/file_uploads/PRFPSC_58-02_Text_WEB_V0t4G6dx.pdf)



3	Identify options	Yes	2018 inquiry into Penalty Rates and Fair Pay contained nine different recommendations including international comparisons of different wage theft laws.
4	Consider mechanisms	Yes	The 2018 inquiry into Penalty Rates and Fair Pay contained nine different recommendations including advocating federal policy changes and education for employees about their legal rights.
5	Analysis	No	No cost-benefit analysis undertaken or otherwise consideration of positives and negatives associated with the policy.
6	Design pathway	No	The policy creates a new function called the Wage Inspectorate Victoria to investigate and enforce the new laws. However, there doesn't appear to be a timetable for the rollout.
7	Consult further	Yes	Consultation paper with the preferred policy was released to the public 23 February 2020. However, the consultation period closed on 9 March 2020 (11 business days after the paper was released). Arguably, this was not enough time to invite considered submissions on the policy.
8	Publish proposals	No	The policy didn't receive a two-step review process. No green paper with proposed policy options, only a white paper explaining the policy after it was already announced as a <i>fait accompli</i> by the Premier.
9	Introduce legislation	Yes	On 18th of March 2020 the Wage Theft Bill was introduced into the parliament and was passed by both houses. The law received royal assent on 23 June 2020.
10	Communicate decision	Yes	A press release from the Premier announced the passage of the law on 17 June 2020. The press release explained what the law does.
		6/10	

## Gender Equality Bill

The *Gender Equality Act 2020 (Vic)* (Gender Equality Bill) requires public sector organisations to engage in audits, action plans, and progress reports to ensure equal gender representation within the public service. The Gender Equality Bill also establishes a Public Sector Gender Equality Commissioner to enforce the requirements.

The Gender Equality Bill received bipartisan support within the parliament as an Australian first. Those that supported it claimed that no other Australian jurisdiction had introduced a policy that so comprehensively promoted and enforced workplace gender equality. The Minister for Prevention of Family Violence, Minister for Women, Minister for Youth, Hon. Gabrielle Williams in her second reading speech made the following remarks:

“This is an historic moment in the journey toward gender equality for all Victorians. Today, the Victorian Government fulfils its commitment to introduce gender equality legislation by enacting the Gender Equality Bill. This Bill will drive gender equality in the community and the workplace—reducing the gender pay gap and boosting women’s workforce participation. This Bill further cements this Government’s commitment to gender equality and empowering women and girls in our State.”<sup>185</sup>

The only opposition to the Gender Equality Bill came from Liberal Democrat MP David Limbrick who objected to the it on privacy grounds but also because it would not serve to elevate people who need or merit it, he went on to make the following remarks:

“But is this bill really about social justice? Employees should have equal opportunity for roles, regardless of their gender. Anything else is discrimination. Everybody believes equality is a good thing. However, when the government talk about equality here what they really mean is equality of outcome, not equality of opportunity, and they plan to use social engineering to achieve these outcomes. This actively undermines equal opportunity and seeks to use gender to discriminate against current or potential employees. This could have serious consequences if, as we expect, men are discriminated against.”<sup>186</sup>

Outside the parliament there was also little debate. The feminist publication *Women’s Agenda* celebrated the passage of the Gender Equality Bill as a historic victory for women’s rights.

“Victoria has just made history, passing the country’s first ever state-based Gender Equality Act and establishing new standards for equity and equality in the state.

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185 [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=Gender+Equality+Bill+2019&IW\\_FIELD\\_IN\\_HOUSENAME=ASSEMBLY&IW\\_FIELD\\_IN\\_ACTIVITYTYPE=Second+reading&IW\\_FIELD\\_IN\\_SittingYear=2019&IW\\_FIELD\\_IN\\_SittingMonth=November&IW\\_FIELD\\_IN\\_SittingDay=27](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=Gender+Equality+Bill+2019&IW_FIELD_IN_HOUSENAME=ASSEMBLY&IW_FIELD_IN_ACTIVITYTYPE=Second+reading&IW_FIELD_IN_SittingYear=2019&IW_FIELD_IN_SittingMonth=November&IW_FIELD_IN_SittingDay=27)

186 [https://parliament.vic.gov.au/images/stories/daily-hansard/Council\\_2020/Legislative\\_Council\\_2020-02-20.pdf](https://parliament.vic.gov.au/images/stories/daily-hansard/Council_2020/Legislative_Council_2020-02-20.pdf)

The Andrews Labor Government’s Gender Equality Bill 2019 has passed through the Parliament and marks a major legislative push to address workplace gender barriers and gender discrimination.”<sup>187</sup>

Nick Cater of the Menzies Research Centre writing in the Australian called the Gender Equality Bill “pointless” and “scary.”

“It is pointless because we already know what those reports will say, if honestly compiled. They will say that there has never been a better time to be a woman in the Victorian public sector.

In June 2017, 67 per cent of Victorian public sector workers were women. Women have achieved close to parity at executive level with 48.9 per cent...

The scary part of the new commission is its mandate to spread its tentacles into the private sector. It will do so by means of regulations on government procurement, set not by parliament but by ministerial whim.”<sup>188</sup>

The introduction of gender equality legislation was announced as part of the government’s Gender Equality Strategy called “Safe and Strong” released to the public in May 2018.<sup>189</sup> Between August 2018 and November 2019 Engage Victoria completed a several stage consultation process on the exposure draft of the bill. On 26 November 2019, the Gender Equality Bill was introduced into the parliament, to be passed by both Houses of Parliament and receive royal assent on 25 February 2020.

	Criteria	Conclusion	Comment
1	Establish need	Yes	The report from the consultation period that followed the release of the legislation makes reference to a “series of 10 stakeholder workshops [that] were held between December 2017 and February 2018” conducted by the Nous Group that established a need for this policy. <sup>190</sup> However, the report following this consultation does not appear to be published anywhere.

187 <https://womensagenda.com.au/latest/victoria-has-just-passed-historic-gender-equality-act/>

188 <https://www.theaustralian.com.au/commentary/another-quango-in-the-name-of-gender-equality-respect/news-story/d5a91fc4ce69dd963e7821eeb3df6c49>

189 [https://www.vic.gov.au/sites/default/files/2018-05/Safe-and-Strong-Victorian\\_Gender\\_Equality\\_Strategy.pdf](https://www.vic.gov.au/sites/default/files/2018-05/Safe-and-Strong-Victorian_Gender_Equality_Strategy.pdf)

190 [https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/3915/7481/1417/Gender\\_Equality\\_Bill\\_Consultation\\_Feedback\\_Report.pdf](https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/3915/7481/1417/Gender_Equality_Bill_Consultation_Feedback_Report.pdf)

2	Set objectives	Yes	The public interest objectives have been clearly set out. The policy creates “a framework to require the public sector, Councils and universities to promote gender equality, to take positive action towards achieving gender equality...” <sup>191</sup>
3	Identify options	No	The discussion paper released in August 2018 for consultation only relates to the draft bill. Whilst it requests broad feedback in regards to the legislation, no alternative policies other than a Gender Equality Bill was considered. <sup>192</sup>
4	Consider mechanisms	Yes	The discussion paper released for consultation specifically asks for feedback on alternative implementation and enforcement methods including types of quotas and targets that should be used. <sup>193</sup>
5	Analysis	No	Whilst consultation included a discussion of the benefits of gender equality an analysis of benefits and costs in relation to the specific policy was not undertaken.
6	Design pathway	Yes	Creation of a new Public Sector Gender Equality Commissioner will implement and enforce the policy.
7	Consult further	Yes	The Victorian Government released the Bill for public comment in August 2018, with consultation including a Citizens' Jury of Victorians occurring from 21 August to 28 September 2018.
8	Publish proposals	No	Whilst there was a discussion paper on the policy after an exposure draft of the legislation was released, there was no green paper or prior consultation.
9	Introduce legislation	Yes	On 26 November 2019, the Gender Equality Bill was introduced into the lower House of Parliament to receive royal assent on 25 February 2020.
10	Communicate decision	Yes	Premier Daniel Andrews released a media statement on the new policy on 21 February 2020. Other government agencies released similar statements. <sup>194</sup>
		7/10	

191 [https://content.legislation.vic.gov.au/sites/default/files/0e2a7787-bd44-33a2-a2aa-b740294e4627\\_591061exab1.pdf](https://content.legislation.vic.gov.au/sites/default/files/0e2a7787-bd44-33a2-a2aa-b740294e4627_591061exab1.pdf)

192 Discussion paper here: <https://engage.vic.gov.au/gender-equality>

193 [https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/3915/7481/1417/Gender\\_Equality\\_Bill\\_Consultation\\_Feedback\\_Report.pdf](https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/3915/7481/1417/Gender_Equality_Bill_Consultation_Feedback_Report.pdf)

194 <https://www.premier.vic.gov.au/victorian-gender-equality-bill-makes-history-australia>

## Free TAFE

In the May 2018 Budget, the Victorian Government announced that it would provide 30 priority TAFE courses and 18 pre-apprenticeship courses for free ("Free TAFE"). The first cohort of students for these courses started in January 2019, with 39,700 students enrolling in one of the courses by the end of 2019. In January 2020, new early childhood courses were added.

The policy was not subject to legislation (other than an appropriation bill to fund the budget as announced). The only debate that took place within the parliament was over the budget and questions without notice to the Minister on the operation of the scheme.

Outside the parliament both the government and opposition produced media releases on the Free TAFE announcement. The Premier, Daniel Andrews celebrated the announcement as the biggest boost to TAFE Funding since the 1970s and spoke of the importance of skills for the future:

"This is exactly where we should be investing because these jobs and these skills are critically important to us removing level crossings, building better roads, upgrading schools and hospitals... Every Victorian needs to perhaps have a keener sense that all of that building work is being done by TAFE-qualified Victorians ... We are in their debt."<sup>195</sup>

The Shadow Minister for Training, Skills and Apprenticeships, Steph Ryan in a press release noted that the announcement is after a four year low in TAFE enrolments and that the funding scheme was directly "against the advice of Labor's own VET funding review which found it would result in over enrolments in some areas of provision."<sup>196</sup>

Outside of politics sectors like early childhood education welcomed the announcement as a way to boost skills in areas that currently have shortages of qualified employees. Meredith Peace, president of the Victorian branch of the Australian Education Union (AEU), said "rapid growth in Victoria's population meant the need for at least 7000 new teachers and educators in the coming years, and that building a qualified workforce was vital to delivering high quality programs for children."<sup>197</sup>

Private education providers, on the other hand, said the inequity of funding by favouring TAFE could undermine private providers of such services. Rod Camm, the chief executive of the Council for Private Education and Training said:

"Students need choice that ensures the opportunity for them to select a training provider that maximises their employment opportunities, and independent providers enjoy strong student outcomes..."

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195 <https://www.smh.com.au/politics/victoria/private-training-providers-fear-they-ll-be-penalised-under-tafe-boost-20180502-p4zcvva.html?csp=d42371e61111c536bdbc91b68e4a696%200>

196 <https://vic.liberal.org.au/news/2018-05-01/daniel-andrews-tafe-fix-too-little-too-late>

197 <https://thesector.com.au/2018/11/22/victorian-ecec-professionals-promised-free-tafe-should-labor-win-election/>

It would be a big shame to see successful training providers that achieve outstanding outcomes be penalised.”<sup>198</sup>

The policy process received a lot of criticism for being rushed and poorly implemented as the lack of estimates of students or caps on places meant that the scheme resulted in “82% blowout in the Free TAFE budget in the first year alone.”<sup>199</sup> The Shadow Minister for Training and Skills, Mary Wooldridge said that:

“Daniel Andrews has developed his TAFE policy on the run, with no sector consultation, and unfortunately it’s young Victorians and those returning to work who are suffering the consequences.”<sup>200</sup>

TAFE and VET providers also criticised the implementation due to the sudden increase in class sizes resulting in reduced quality of teaching. Victoria University Polytechnic reported a 100 per cent increase in enrolments in community services courses. Students have lodged complaints to the Australian Community Workers Association (the main accreditation body for community workers) regarding the decreased quality of the education they received at TAFE following the influx of enrolments. Association’s chief executive Sha Cordingley said of the complaints the body was investigating that:

“One of our worries is that we end up with a lot of graduates who have diplomas that are not as useful as other graduates’ qualifications... If you are doing fewer hours of placement and having larger class sizes and there is more strain on teaching staff, that can only lead to a poorer quality diploma.”<sup>201</sup>

The Training and Skills Minister Gayle Tierney said that the increase in student numbers in the designated courses was a sign that the policy was an “undeniable success.”<sup>202</sup>

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198 <https://www.smh.com.au/politics/victoria/private-training-providers-fear-they-ll-be-penalised-under-tafe-boost-20180502-p4zcv.html?csp=d42371e611111c536bdbc91b68e4a696%200>

199 <https://vic.liberal.org.au/news/2019-07-03/wooldridge-labor-fails-in-free-tafe-rollout>

200 <https://vic.liberal.org.au/news/2019-07-03/wooldridge-labor-fails-in-free-tafe-rollout>

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

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

Criteria	Conclusion	Comment	
1	Establish need	No	The policy was announced prior to consultation. The VET Funding Review that was conducted by the government did not include a recommendation for free TAFE courses. <sup>203</sup>
2	Set objectives	Yes	There was a public interest objective to fund “courses that lead to jobs in demand from Victorian employers” are provided for free to students. <sup>204</sup>
3	Identify options	No	No evidence that alternatives options were considered.
4	Consider mechanisms	No	No evidence that alternatives mechanisms were considered.
5	Analysis	No	No evidence of any cost-benefit analysis undertaken. Whilst the May 2018 budget was costed, there is no concomitant analysis of benefits. <sup>205</sup>
6	Design pathway	No	Implementation pathway was through student funding agreements with individual TAFEs but this did not account for additional teaching staff that would be required. <sup>206</sup>
7	Consult further	No	While there was a parliamentary inquiry into the budget - Budget Estimates - there was no public consultation as part of the policy process.
8	Publish proposals	No	No evidence that proposals were produced.
9	Introduce legislation	Yes	The policy was subject to legislation in the form of an appropriation bill to fund the budget. This bill was introduced with the Treasurer’s budget speech and debated on the following sitting. <sup>207</sup>
10	Communicate decision	Yes	The policy has been the subject of multiple press releases from the Premier particularly prior to the start of the free courses and when additional courses are added to the list. <sup>208</sup>
		3/10	

203 [https://www.education.vic.gov.au/Documents/about/department/VET\\_Funding\\_Review.pdf](https://www.education.vic.gov.au/Documents/about/department/VET_Funding_Review.pdf)  
[https://www.education.vic.gov.au/Documents/about/department/VETIssuesPaper\\_July2015.pdf](https://www.education.vic.gov.au/Documents/about/department/VETIssuesPaper_July2015.pdf)

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

205 [https://www.pbo.vic.gov.au/files/ALP\\_-\\_Policy\\_costings.pdf](https://www.pbo.vic.gov.au/files/ALP_-_Policy_costings.pdf)

206 [https://www.education.vic.gov.au/Documents/training/providers/rto/2018-19\\_Standard\\_v1.pdf](https://www.education.vic.gov.au/Documents/training/providers/rto/2018-19_Standard_v1.pdf)  
<https://www.education.vic.gov.au/training/providers/funding/Pages/serviceagree.aspx#link21>

207 <http://hansard.parliament.vic.gov.au/isysquery/0dfe6263-0236-44b8-9204-224c5c2321fa/436/doc/>

208 <https://www.premier.vic.gov.au/victorian-school-leavers-making-tafe-their-first-choice/>

# New South Wales

## Reproductive Health Care Reform bill

The Reproductive Health Care Reform Bill 2019 was introduced by independent MP, Alex Greenwich. The objects of the legislation were to:

- to enable a termination of a pregnancy to be performed on a person who is not more than 22 weeks pregnant,
- to enable a termination of a pregnancy to be performed on a person who is more than 22 weeks pregnant in certain circumstances,
- to identify certain registered health practitioners who may assist in the performance of a termination,
- to require a registered health practitioner who has a conscientious objection to the performance of a termination refer the person to another practitioner,
- to repeal offences relating to abortion in the Crimes Act 1900 and abolish any common law rules relating to abortion, and
- to amend the Crimes Act 1900 to make it an offence for a person who is not a medical practitioner otherwise authorised under the bill to terminate a pregnancy.<sup>209</sup>

The changes in the legislation received much debate, both in the parliament and within the general public. Those in favour of the bill considered the introduction as a matter of female autonomy. In the second reading speech Mr Greenwich spoke in favour of the Bill by noting that:

“The Reproductive Health Care Reform Bill 2019 recognises that the best outcomes in women’s reproductive health care are achieved when abortion is treated as a health matter, not a criminal matter, and a woman’s right to privacy and autonomy in decisions about their care is protected. In New South Wales it has been a criminal offence to procure an unlawful abortion since 1900, when the Crimes Act was first written. The law has not changed since then. This was a time when women could not vote and, because they could not stand, there were no women in this Parliament. Now not only can women vote and stand for office, but also our State has a female Premier, a female Leader of the Opposition and a female Governor.”<sup>210</sup>

A number of MPs, including Tanya Davies and Kevin Conolly, said they could not conscientiously pass the bill in its current form and threatened the premier, Gladys Berejiklian, that they would move to the cross bench (placing the governing party into the minority) if their amendments, in particular a ban on abortions for the purpose of sex selection, were not met.

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209 <https://www.parliament.nsw.gov.au/bill/files/3654/XN%20Reproductive%20Health%20Care%20Reform%20Bill%202019.pdf>

210 <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1323879322-106443'>



Outside the parliament, the bill received even more debate. Many of those in favour came from groups such as the Human Rights Law Centre (HRLC). Edwina MacDonald, a Legal Director called for the bill to be passed without delay or amendment:

“The current laws are archaic and change is long overdue. It is unacceptable that, in 2019, women still fear prosecution when accessing an abortion and we are still treated like we are incapable of making decisions about our bodies and lives... Passing this Bill will demonstrate that the NSW Parliament respects women as competent decision-makers over their bodies and that it is committed to women’s health, safety and equality.”<sup>211</sup>

However, equally fervent opposition was also voiced from religious communities and pro-life groups. The main concern was whether the proposed legislation appropriately balances rights of the woman with the rights of the unborn. Professor Margaret Somerville, School of Medicine, University of Notre Dame made the following comments:

“Most Australians do not accept the strongest pro-choice stance that abortion at any stage is a decision solely for the pregnant woman and her doctors and that the law should never be involved, nor do they accept the strongest pro-life stance, which is that abortion should never be legally allowed. Most Australians are on a spectrum between these two poles. So does the bill strike the right balance between these poles and provide the right safeguards? My answer is a clear no... The ethical tone of a society is not set by how it treats its strongest, most privileged, most powerful members, but by how it treats its weakest, most vulnerable and most in need. Unborn children belong in that latter group.”<sup>212</sup>

Abortion reform had been attempted previously in New South Wales, with the last bill introduced in 2017 not passing. There was a push to enact reforms as quickly as possible with many, such as Dr Vijay Roach, President of The Royal Australian and New Zealand College of Obstetricians and Gynaecologists, criticising the amendments to the legislation that held up the process.

However, there were also many complaints about the processes being “rushed.” Although there was a parliamentary inquiry, the consultation processes lasted a week. This produced comments from those that objected to the bill. The Rev Hon Fred Nile asked the following question to the Leader of the House, representing the Premier:

“Will the Leader of the Government in this House explain how it is that the Standing Committee on Social Issues, which has received over 10,000 submissions from the public on a contentious bill, can be expected to adequately consider them in one single week, hold only two days of hearings and publish a report three days after their conclusion?”<sup>213</sup>

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211 <https://www.hrlc.org.au/news/2019/8/13/nsw-parliament-must-decriminalise-abortion-without-further-delay>

212 <https://righttolifensw.org.au/abortion-law-reform-act-2019-explained-part-5/>

213 <https://righttolifensw.org.au/abortion-law-reform-act-2019-explained-part-5/>

Criteria	Conclusion	Comment	
1	Establish need	Yes	Parliamentary research briefs produced indicated that NSW laws were out-of-step with other states and also public opinion. It also indicated that doctors and medical professionals were finding the law difficult to understand and clarification was required. <sup>214</sup>
2	Set objectives	Yes	Explanatory Note accompanying the legislation set out clear objectives, to remove abortion from the criminal code. The second reading speech couched this objective in public interest terms saying that when "abortion is treated as a health matter not a criminal matter" is when the "best outcomes in women's reproductive health care are achieved." <sup>215</sup>
3	Identify options	Yes	The issues backgrounders developed by the NSW Parliament show evidence of consideration of relevant case law, abortion laws across Australia, and different policy options in relation to abortion. <sup>216</sup>
4	Consider mechanisms	Yes	The NSW Parliament considered mechanisms through various proposed amendments during the debate, with various amendments agreed to. <sup>217</sup>
5	Analysis	No	There is no evidence that the NSW Parliament formally considered different alternatives or potential costs and benefits of different policies.
6	Design pathway	No	No evidence of implementation strategy considered or produced.
7	Consult further	Yes	The NSW Parliament undertook further consultation through a parliamentary committee that received 13,000 submissions and had 15 hours of hearings. <sup>218</sup> There were, nevertheless, complaints about the short length of the committee's inquiry.

214 <https://www.parliament.nsw.gov.au/researchpapers/Documents/Abortion%20law%20and%20the%20Reproductive%20Health%20Care%20Reform%20Bill%202019.pdf>

215 <https://www.parliament.nsw.gov.au/bill/files/3654/XN%20Reproductive%20Health%20Care%20Reform%20Bill%202019.pdf>; and; [https://www.alexgreenwich.com/reproductive\\_health\\_care\\_reform\\_bill\\_2019](https://www.alexgreenwich.com/reproductive_health_care_reform_bill_2019)

216 <https://www.parliament.nsw.gov.au/researchpapers/Documents/Abortion%20Law.pdf>  
<https://www.parliament.nsw.gov.au/researchpapers/Documents/Abortion%20law%20and%20the%20Reproductive%20Health%20Care%20Reform%20Bill%202019.pdf>

217 <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3654>

218 <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2547/Final%20report%20-%20Reproductive%20Health%20Care%20Reform%20Bill%202019.pdf>

8	Publish proposals	No	Whereas there was a report released after the consultation period, the consultation was conducted on legislation that was already before the parliament. There was no two-step or green and white paper process.
9	Introduce legislation	Yes	Legislation was introduced on 30 July 2019. The provisions were debated and amended before being passed by both houses on 25 September 2019.
10	Communicate decision	Yes	NSW Health amongst other agencies produced press releases communicating the change in law.
		7/10	

## Music festivals bill

The *Music Festivals Bill (2019) NSW* (the “Music Festival Bill”) introduces a framework for regulating music festivals by “requiring organisers of high-risk festivals to comply with approved safety management plans.”<sup>219</sup> Originally the government had tried to achieve this aim by creating regulations, however these were disallowed in the parliament scrutiny process.<sup>220</sup> The Music Festival Bill was an attempt by the government to regulate music festivals through legislation instead of delegated legislation.

The Music Festivals Bill was introduced on 16 October 2019 by the Hon. Victor Dominell MP, the Customer Services Minister. In his second reading speech he said that the legislation was required to support “a vibrant and safe music festival industry” he went on to say that:

“While the majority of festivals run with no significant drug or alcohol issues, there have unfortunately been a number of critical incidents which give rise to the need for a stronger legislative approach. Last summer we lost five young people to drug overdoses at music festivals. A further 40 were evacuated from festivals, with 20 being admitted to intensive care. In response to this, the Government introduced a regulatory scheme under the Liquor Act 2007 that was intended to support the Government’s engagement with operators of higher-risk music festivals that the community considered should be held to a higher standard to ensure they were taking all necessary steps to deal with alcohol and drug-related issues at their events.”

219 <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3705>

220 <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2521#tab-reportsandgovernmentresponses>

The Music Festival Bill passed the lower house without amendment, however, it received a lot of criticism and subsequent amendment in the upper house. The Hon. John Graham criticised the government's attempt to rush through regulations rather than engage in a consultative process. He went on to speak to the risk associated with over regulation:

"I will talk about what is at stake if we get this wrong... I have had senior festival operators say when they have approached some of the major banks to refinance that the advice they are given is: Given the regulatory risk, we are not prepared to invest in this sector in New South Wales. Those festivals are run by good operators who are known to members of this Chamber. In fact, I know members of this Chamber have been to at least one of the festivals I am referring to. That is the advice that the banks are giving about the state of play, which reflects the uncertainty that has been caused in New South Wales as a result of this discussion. That is what is at stake. Festival operators have been upfront in saying that not only are festivals being pushed out of New South Wales but also they are considering leaving this State because of the approach."

The music festival industry was concerned that the regulations would be "unworkable."<sup>221</sup> The Australian Festival Association released a statement criticising the process:

"Uncertainty and a lack of meaningful consultation has a punitive effect on our businesses, the creative economy, jobs and tourism in live music in NSW... As a result, members of the Australian Festival Association will now consider their futures in NSW."<sup>222</sup>

The Music Festival Bill passed the upper house with significant amendments. The most substantial of which was the requirement of an industry roundtable to provide ongoing consultation between the government and music festival organisations and their peak bodies. The government initially rejected this amendment for being "completely unprecedented."<sup>223</sup> The final legislation was given royal assent on 21 November 2019.

There has been concern from critics of the bill that the legislation as well as the implementation was rushed in order to ensure the framework was in place prior to the summer music festival season.<sup>224</sup> There was also criticism following reports finding that the implementation of the Bill produced no tangible reduction in harm.<sup>225</sup>

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221 <https://theindustryobserver.thebrag.com/nsw-live-biz-significant-win-music-festivals-bill/>; and; <https://www.timebase.com.au/news/2018/AT04958-article.html>

222 <https://indaily.com.au/news/2019/10/23/music-festivals-threaten-to-pull-plug-on-nsw/>

223 <https://www.sbs.com.au/news/it-s-a-victory-for-common-sense-nsw-music-festival-bill-passes>

224 <https://themusicnetwork.com/nsw-festivals-legal-options-legislation/>; and; <https://themusicnetwork.com/nsw-festival-laws-get-worse/>

225 <https://www.abc.net.au/triplej/programs/hack/nsw-festival-regulations-did-not-reduce-drug-incidents/12474968>  
[https://www.nme.com/en\\_au/news/music/nsw-festival-regulations-review-2710964](https://www.nme.com/en_au/news/music/nsw-festival-regulations-review-2710964)  
<https://www.parliament.nsw.gov.au/tp/files/77794/Review%20of%20the%20operation%20of%20the%20Music%20Festivals%20Act%202019.pdf>

Criteria	Conclusion	Comment	
1	Establish need	No	Whilst on introducing the bill the Minister acknowledged the need for regulation of music festivals to prevent harm (and particularly that caused by intoxication) there is no evidence of a stakeholder or evidence based process to determine whether the specific policy was needed.
2	Set objectives	Yes	There is a clear statement of a public interest objective set out on the first page of the legislation. It is "to promote a safer environment at music festivals by requiring organisers of high-risk festivals to comply with approved safety management plans." <sup>226</sup>
3	Identify options	No	No evidence of alternative policy options considered.
4	Consider mechanisms	Yes	Regulation Committee's inquiry following the failed introduction of delegated legislation considered different mechanisms.
5	Analysis	No	No evidence of a cost benefit analysis has been undertaken.
6	Design pathway	Yes	The Independent Liquor & Gaming Authority (ILGA) was instructed to manage the roll out of the policy beginning with the creation of a list of high-risk festivals which, as of 1 March, will have to comply with the new law. <sup>227</sup>
7	Consult further	No	Consultation in the form of industry round tables occurred <i>after</i> the passage of the legislation. This does not fulfill the requirement for further consultation before a policy is legislated.
8	Publish proposals	No	No evidence of a green paper and white paper process. There was no proposed policy or consultation prior to or after the introduction of legislation.
9	Introduce legislation	Yes	The Music Festival Bill received comprehensive discussion and amendment as it passed through both Houses of Parliament to receive assent on the 21 November 2019.
10	Communicate decision	Yes	The Minister via ILGA (the regulator) issued a statement explaining how the policy works and who it applies to. <sup>228</sup>
		5/10	

226 <https://www.parliament.nsw.gov.au/bill/files/3705/Passed%20by%20both%20Houses.pdf>

227 <https://www.liquorandgaming.nsw.gov.au/news-and-media/ministerial-media-release-nsw-government-releases-list-of-higher-risk-music-festivals>

228 <https://www.liquorandgaming.nsw.gov.au/news-and-media/ministerial-media-release-nsw-government-releases-list-of-higher-risk-music-festivals>

## Right to farm

The Right to Farm Bill on introduced on 20 August 2019 (The “Bill”) amends the *Inclosed Lands Protection Act of 1901* (NSW) by creating a new offence of “aggravated trespass” where the perpetrator illegally enters a property and “hinders, or attempts to hinder, the conduct of the business or undertaking.”<sup>229</sup> It also prevents the operation of the tort of nuisance being brought against landowners when undertaking lawful commercial activities on their land.

The Bill received much debate both in the parliament and in the community. The Bill was introduced on motion by Mr Adam Marshall (MP for the Northern Tablelands and Minister for Agriculture and Western New South Wales). In his second reading speech he highlighted the importance of farmers and that the Bill was a historic enshrinement of a farmers right to use their land. He went on to comment that:

“It is a priority for this Government to protect our farmers from illegal activities on their farms and in our best interests to protect, enable, support and expand the work of farmers across the State. Strengthening the trespass legislation to support a farmer’s right to farm uninhibited by illegal trespass activities and nuisance claims against them by neighbours was a key commitment of this Government, and this bill shows that we are delivering. The scale and importance of agriculture, forestry and fishing to this State cannot be overstated. In 2018-19 those three industries alone directly employed over 85,000 people across the State, with another 85,423 people employed in downstream primary industries such as food manufacturing and the abattoir industry. The overwhelming majority—87 per cent—are employed in rural and regional New South Wales, which is currently in the grips of the worst drought on record.”<sup>230</sup>

The opposition to the Bill was mainly due to perceived political posturing. Whilst attempts to create a Right to Farm policy and legislation have been ongoing since 2005, the push to enact the legislation and the form it took came from current events, in particular a series of farm invasions by animal rights activists. The Hon. Mick Veitch speaking for the opposition, supported the spirit of the Bill but had reservations that it would have unintended consequences:

“Shearers might take industrial action, in which case they will be captured by the legislation. Abattoirs are on inclosed lands. If the workers in the abattoirs are to take industrial action, they will be captured by the legislation. An amendment will be moved on this issue. Saying that the industrial action concerns in the Legislative Assembly have now been addressed is inaccurate. The bill still captures other occupations and activities that take place. That aspect needs tidying up. That is yet another example of there being an issue with the legislation. It is important to note that since its tightening up in the lower House, the bill now before

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229 <https://www.lexology.com/library/detail.aspx?g=308af2ca-7e8c-474b-824b-9ef8fe75e676>

230 <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-107151>

this House—the Minister talked about it in her second reading speech—narrows down the definitions of “agricultural land” and “inclosed land”. In some ways, that is a move away from—I suppose you would call it—the debacle in 2016 when amendments were proposed to the inclosed lands Act.”<sup>231</sup>

More vehement opposition came from outside the parliament. Many conservation and animal rights activist groups opposed the Bill. Vegan Australia and Greenpeace opposed the bill on the basis that those that trespass on farms for the sake of protest pose no threat and therefore laws preventing them from entering a farm is an unreasonable impediment to protest. In their submission the NSW parliamentary inquiry in to the Bill, Vegan Australia made the following comments:

“When whistleblowers and rescuers enter an animal agriculture facility, their target is the sheds and pens holding farmed animals. They are not interested in the homes of the owners or workers, which in any case are usually far from where the animals are kept. Their goal is to document and expose the conditions of the animals, not to threaten those who work in the facilities.”<sup>232</sup>

Environmental groups were concerned with the ‘nuisance shield’ provisions that protect against legal claims from neighbours or others affected by the activities on the property. Environmentalists were concerned that this will enable farmers to change the way they farm (e.g. the intensity of farming) without legal remedies for those affected by the change. The Environmental Defenders Office objected to this provision saying that:

“The Bill proposes to create a ‘nuisance shield’ through firstly taking the step of removing any right of recourse to the law of nuisance for certain commercial agricultural activities, and secondly, by modifying the discretion of the Court in remedying nuisance. These proposed amendments are not a proportionate response to the problems identified in the Second Reading Speech. The majority of calls we get to the EDO legal advice line concerning nuisance from agricultural activities are actually from neighbouring farmers themselves, so this approach may simply exacerbate those tensions in rural communities. We submit that other options should be applied to address land use conflicts.”<sup>233</sup>

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231 <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-80631>

232 [https://www.veganaustralia.org.au/right\\_to\\_farm\\_right\\_to\\_harm](https://www.veganaustralia.org.au/right_to_farm_right_to_harm)

233 <https://www.edo.org.au/publication/right-to-farm-bill-in-nsw/>

Farmer advocacy groups supported the legislation as an important protection against trespass and to ensure that farmers can engage in commercially viable farming activities. NSW Farmers president James Jackson made the following comments:

“In addition to the biosecurity threat to local food and fibre production, farm trespass causes enormous anxiety for farming families and their employees... Actions from the State Government are now reflecting the impact of criminal farm invasions and damage to property... From small farmers in peri-urban areas to broadacre farmers in the Western Division, we all need the ability to produce food and fibre for the nation without the burden of complaints about lawful farming activities.”<sup>234</sup>

The policy process has a long history, a parliamentary research brief has been created that sets out the previous attempts to pass right to farm legislation. The 2005 version of the legislation was introduced as a private members Bill by the Deputy Leader of the Nationals, Don Page, but did not proceed beyond a second reading. Another policy attempt was made in 2015. In August 2019, the Right to Farm Bill was introduced. It was referred to Portfolio Committee No. 4 - Industry for inquiry and report. It passed both Houses of Parliament with multiple amendments to receive royal assent on 21 November 2019.

	Criteria	Conclusion	Comment
1	Establish need	No	Parliamentary research briefs produced in 2015 did not express a need for right to farm legislation. Further consultation or evidence gathering was not undertaken before the release of the Bill. There was no clear statement of why the policy was needed based on factual evidence and stakeholder input. <sup>235</sup>
2	Set objectives	Yes	A clear statement of the policy’s objectives couched in terms of the public interest is expressed on the first page of the legislation. It states that it is to “provide for matters relating to farm trespass and the defence of agricultural enterprises” that could be considered in the public interest. <sup>236</sup>
3	Identify options	Yes	The parliamentary research brief included examples from different jurisdictions which have different types of right to farm policies. <sup>237</sup>

234 <https://www.tenterfieldstar.com.au/story/6348105/nsw-farmers-back-right-to-farm-bill/>

235 <https://www.parliament.nsw.gov.au/researchpapers/Documents/right-to-farm-laws/The%20right%20to%20farm.pdf>

236 <https://www.parliament.nsw.gov.au/bill/files/3670/Passed%20by%20both%20Houses.pdf>

237 <https://www.parliament.nsw.gov.au/researchpapers/Documents/right-to-farm-laws/The%20right%20to%20farm.pdf>



4	Consider mechanisms	Yes	The parliamentary research brief included policy examples from different jurisdictions. <sup>238</sup> The NSW Department of Primary Industry has also created its own 'right to farm' framework which is a principles based approach. <sup>239</sup>
5	Analysis	No	No evidence of a cost benefit analysis being undertaken.
6	Design pathway	No	No evidence of a comprehensive project management plan designed for the policy's rollout.
7	Consult further	Yes	Parliamentary inquiry was established on 24 September 2019 to inquire and report on the provisions of the Bill. It received 391 submissions and 2,829 copies of two different proformas. <sup>240</sup>
8	Publish proposals	No	The Bill was released prior to consultation. There was no public input on possible policy options or a green and white paper process.
9	Introduce legislation	Yes	In August 2019, the Right to Farm Bill was introduced and passed both Houses of Parliament with multiple amendments to receive royal assent on 21 November 2019.
10	Communicate decision	Yes	Press releases from the government and the Minister communicated the policy. <sup>241</sup>
		6/10	

238 <https://www.parliament.nsw.gov.au/researchpapers/Documents/right-to-farm-laws/The%20right%20to%20farm.pdf>

239 [https://www.dpi.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0006/587184/NSW-Right-to-farm-policy.pdf](https://www.dpi.nsw.gov.au/__data/assets/pdf_file/0006/587184/NSW-Right-to-farm-policy.pdf)

240 <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2553/Right%20to%20Farm%20Bill%202019%20-%20Report%20No%2041.pdf>

241 <https://www.adammarshall.com.au/history-made-for-farmers-right-to-farm-law-passes-parliament/>

# Queensland

## Child Death Review bill

The *Child Death Review Legislation Amendment Bill 2019* (the “Bill”) establishes a Child Death Review Board. The reason for the Bill was to implement the Queensland Family and Child Commission (QFCC) recommendations to improve the investigation of children who die under state protection.<sup>242</sup> The QFCC investigation of the Queensland system of child deaths review was instigated because of the death of a 21 month-old called Mason Jet Lee in 2016, who was found to have been known to Child Safety Services.

The Bill was introduced to the Queensland Parliament by the Attorney-General, Hon Yvette D’Ath on 18 September 2019. The Explanatory Note accompanying explains that:

The Bill establishes a new child death review model (new model) by:

- expanding the requirement to conduct an internal systems review following the death or serious physical injury of a child known to Child Safety, to other relevant government agencies involved in providing services to that child (in addition to Child Safety and the litigation director); and
- establishing a new, independent Child Death Review Board (the Board), located within the QFCC, responsible for carrying out systems reviews, following child deaths connected to the child protection system, to identify opportunities for continuous improvement in systems, legislation, policies and practices; and to identify preventative mechanisms to help protect children and prevent deaths that may be avoidable.<sup>243</sup>

The policy received by-partisan support. There was also no objections or controversy from members of the public. The Queensland Law Society submitted recommendations to improve the bill and general operation of the new board, but overall was supportive of the policy objectives.<sup>244</sup>

Following the introduction of legislation on the 18th of September, the Bill was referred to the Education, Employment and Small Business Committee for detailed consideration. The committee tabled its report on Monday 18 November 2019. The legislation was passed by the parliament on 5 February 2020.

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242 <https://www.qfcc.qld.gov.au/sites/default/files/For%20professionals/death-of-a-child-report-march-2017.pdf>

243 <https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2019-030>

244 [https://www.qls.com.au/files/b97301d0-4808-4420-9698-ab0200f677e0/3922\\_-\\_CHILD\\_DEATH\\_REVIEW\\_LEGISLATION\\_AMENDMENT\\_BILL\\_2019.pdf](https://www.qls.com.au/files/b97301d0-4808-4420-9698-ab0200f677e0/3922_-_CHILD_DEATH_REVIEW_LEGISLATION_AMENDMENT_BILL_2019.pdf)

	Criteria	Conclusion	Comment
1	Establish need	Yes	The QFCC review established a need for a new system of inquiry into the death of a child.
2	Set objectives	Yes	The explanatory note accompanying the legislation sets out clear objectives to reform the framework for reviewing child deaths. In a statement the Minister couched the Bill in public interest terms saying that it was required "to provide more independence, transparency and accountability" and "protect the most vulnerable people in our community." <sup>245</sup>
3	Identify options	Yes	The QFCC review considered the existing system of child death review process in Queensland as well as options for reform based on best practice in other jurisdictions.
4	Consider mechanisms	Yes	The QFCC review considered various mechanisms for reforming the system of review into child deaths.
5	Analysis	No	The QFCC review did not provide consideration of the pros and cons of different processes.
6	Design pathway	No	The new board created by the legislation is designed to implement the broader objectives of the policy. However, the establishment of the new board does not appear to have a publicly released timeline.
7	Consult further	Yes	Parliamentary inquiry undertaken after the release of the legislation.
8	Publish proposals	No	The QFCC review was a one-step process and did not include public consultation, and therefore cannot be considered akin to a green/white paper process.
9	Introduce legislation	Yes	Legislation was introduced on the 18th of September and passed on the 5 February 2020.
10	Communicate decision	Yes	The Attorney-General and Minister for Justice produced a statement communicating that laws had passed to establish an "independent Child Death Review Board to examine child death cases in Queensland." <sup>246</sup>
		7/10	

245 <https://statements.qld.gov.au/statements/88398>

246 <https://statements.qld.gov.au/statements/89273>

## Personalised Transport Ombudsman

The Personalised Transport Ombudsman (“PTO”) was introduced in Queensland with the purpose:

- To establish the Personalised Transport Ombudsman to help resolve complaints relating to personalised transport services (e.g. taxis, hire-limousines and ride-booking services);
- Support the protection of fare revenue under the new ticketing solution; and
- Clarify and improve the enforceability of existing provisions of the Transport Operations (Passenger Transport) Act 1994.<sup>247</sup>

On 13 February 2019 the legislation creating the new ombudsman role was introduced into parliament. The Minister for Transport and Main Roads, the Hon Mark Bailey, clarified in his second reading speech that the new ombudsman will be an independent umpire for disputes, but this does not mean that commercial negotiation will cease to take place.

“The legislative framework outlined in this bill aims to deliver a cost-effective model, accessible to the industry and customers at no charge. What does this mean in practice? Firstly, the ombudsman is not intended to be the only way that customers, drivers or service providers can resolve their concerns about personalised transport services. For example, if a passenger loses a personal item while riding in a taxi they should still contact the taxi company. If a driver has issues with their employment arrangement with a service provider they can and should still raise this directly with the service provider and seek to address their concerns in this way. It is anticipated that the ombudsman will be particularly beneficial to the public and industry where a person does not know where to start to resolve their personalised transport problem or where they are unable to resolve an issue through the existing channels.”<sup>248</sup>

Speaking in opposition to the new legislation, Shadow Minister for Transport and Main Roads Mr Steven Minnikin criticised the legislation for giving too few investigative powers to the new ombudsman.

“It is considered that the establishment of the PTO position is an attempt—and I stress: an attempt—by the government to shift responsibility for settling these issues. However—and this is where the opposition absolutely disagrees with what is being proposed at this sitting of regional parliament today here in Townsville—the limited powers assigned to the position suggest that these issues, including complaints about government policy and legislation or even alleged offences under other relevant transport legislation, will simply not be properly investigated.”<sup>249</sup>

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247 <https://www.legislation.qld.gov.au/view/html/bill.first.exp/bill-2018-091>

248 [https://www.parliament.qld.gov.au/documents/hansard/2019/2019\\_09\\_03\\_WEEKLY.pdf#page31](https://www.parliament.qld.gov.au/documents/hansard/2019/2019_09_03_WEEKLY.pdf#page31)

249 [https://www.parliament.qld.gov.au/documents/hansard/2019/2019\\_09\\_03\\_WEEKLY.pdf#page31](https://www.parliament.qld.gov.au/documents/hansard/2019/2019_09_03_WEEKLY.pdf#page31)

Industry bodies broadly supported the new position in principle but also noted the lack of enforcement powers the ombudsman has. The Taxi Council of Queensland chief executive Blair Davies said the “PT ombudsman will not have any real power to compel parties to a dispute to do anything, other than to supply information and attend meetings which presents as potentially challenging, if not unduly limiting.” The Ride Share Drivers’ Association of Australia made a similar observation.

The only robust opposition came from the Transport Workers Union Queensland saying that big companies would simply ignore the ombudsman. The secretary, Peter Biagini, said “Large multinational companies such as UberX and other local taxi entities are unlikely to make bone fide offers to settle matters if the PTO can be safely ignored once conciliation is over.”<sup>250</sup> He also noted that anyone that worked in the industry was specifically barred from holding the ombudsman’s role. The Limousine Action Group Queensland made a similar observation of the PTO position, though in a pithy remark saying that the recruitment ad could read “opportunity to join the QLD public service. High paid job with all the perks, you must have NO recent industry experience.”<sup>251</sup>

The introduction of the Personalised Transport Ombudsman is the part of stage 3 of a five-year plan to implement a new framework for personalised transport. This plan received consultation (including a green paper and white paper process and a review referred to as the “Varghese Review”).<sup>252</sup> The Personalised Transport Ombudsman Bill 2019 received considerable debate after its introduction on 13 February 2019 and passed with a number of amendments to receive royal assent on 12 September 2019. The Bill was also subject to a review by the Transport and Public Works Committee.<sup>253</sup>

	Criteria	Conclusion	Comment
1	Establish need	Yes	There was evidence, as exposed in the independent review, of a need for a formal channel to resolve disputes due “to changing customer expectations resulting from the emergence of new technology and related personalised transport business models.” <sup>254</sup>
2	Set objectives	Yes	The policy established objectives on public interest grounds they were “to help resolve complaints relating to personalised transport services...support the protection of fare revenue” and clarify existing provisions.

250 <https://www.brisbanetimes.com.au/politics/queensland/uber-and-taxi-cop-will-not-have-any-real-power-taxi-council-20190312-p513i2.html>

251 <https://www.brisbanetimes.com.au/politics/queensland/uber-and-taxi-cop-will-not-have-any-real-power-taxi-council-20190312-p513i2.html>

252 [https://www.tmr.qld.gov.au/~media/busind/Taxiandlimousine/QLds\\_Personalised\\_Transport\\_Horizon\\_5-year.pdf?la=en](https://www.tmr.qld.gov.au/~media/busind/Taxiandlimousine/QLds_Personalised_Transport_Horizon_5-year.pdf?la=en); and; <https://apo.org.au/sites/default/files/resource-files/2016-05/apo-nid65826.pdf>; and; <https://www.tmr.qld.gov.au/~media/busind/Taxiandlimousine/industryreviewfactsheet.pdf>; page 43 <https://ipa.org.au/wp-content/uploads/2018/10/IPA-Report-Evidence-Based-Policy-20-case-studies.pdf>

253 <https://www.parliament.qld.gov.au/work-of-committees/committees/TPWC/inquiries/past-inquiries/18PnlTransOmb2019>

254 <https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2018-091>

3	Identify options	Yes	The explanatory notes set out alternative policy options that were considered before deciding on the Personalised Transport Ombudsman. <sup>255</sup>
4	Consider mechanisms	Yes	The Report from the Transport and Public Works Committee recommended alternative enforcement mechanisms which were rejected in the final bill. <sup>256</sup>
5	Analysis	Yes	A cost/benefit analysis was undertaken in regards to the policy and concluded that “the PTO may impose some compliance costs on parties (for example, the requirement to provide information or attend a meeting), these costs are expected to be outweighed by the savings that result from the timely resolution of disputes.” <sup>257</sup>
6	Design pathway	Yes	The implementation of the PTO is part of a larger framework. Stage three sets out the plan to rollout the PTO. <sup>258</sup>
7	Consult further	Yes	The Bill was subject to a review by the Transport and Public Works Committee which allowed submissions and public hearings from interested parties.
8	Publish proposals	Yes	Green Paper (Opportunities for Personalised Transport, May 2016) and White Paper (Opportunities for Personalised Transport, August 2016) encompassed the whole transport framework including the PTO. <sup>259</sup>
9	Introduce legislation	Yes	The Personalised Transport Ombudsman Bill 2019 received considerable debate after introduction on 13 February 2019 and passed with a number of amendments to receive royal assent on 12 September 2019.
10	Communicate decision	Yes	Both the Premier and the Minister released statements about the introduction of the PTO.
		10/10	

255 Personalised Transport Ombudsman

256 <https://www.parliament.qld.gov.au/work-of-committees/committees/TPWC/inquiries/past-inquiries/18PnlTransOmb2019>; and <https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2019/5619T1043.pdf>

257 <https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2018-091>

258 [https://www.tmr.qld.gov.au/-/media/busind/Taxiandlimousine/QLds\\_Personalised\\_Transport\\_Horizon\\_5-year.pdf?la=en](https://www.tmr.qld.gov.au/-/media/busind/Taxiandlimousine/QLds_Personalised_Transport_Horizon_5-year.pdf?la=en);  
[https://www.tmr.qld.gov.au/-/media/busind/Taxiandlimousine/QLd-Personalised\\_Transport\\_Horizon-stage-2.pdf?la=en](https://www.tmr.qld.gov.au/-/media/busind/Taxiandlimousine/QLd-Personalised_Transport_Horizon-stage-2.pdf?la=en);  
<https://www.tmr.qld.gov.au/business-industry/Taxi-and-limousine/Queenslands-Personalised-Transport-Horizon/Personalised-transport-industry-reforms-stage-3>

259 <https://ipa.org.au/wp-content/uploads/2018/10/IPA-Report-Evidence-Based-Policy-20-case-studies.pdf>

## Police Discipline Reform bill

The *Police Service Administration (Discipline Reform) and Other Legislation Amendment Bill 2019 (QLD)* (the “Police Discipline Reform Bill”) amends the police discipline framework to “guide, correct, rehabilitate and, if necessary, discipline police officers.” It does this by repealing the *Police Service (Discipline) Regulations 1990* and amending the:

- Crime and Corruption Act 2001;
- Evidence Act 1977;
- Police Powers and Responsibilities Act 2000; and
- Police Service Administration Act 1990.<sup>260</sup>

The Police Discipline Reform Bill was introduced by the Minister for Police and Minister for Corrective Services, the Hon Mark Ryan. Speaking in favour of the amendments to the police discipline framework he said that they upheld the Fitzgerald Inquiry legacy.<sup>261</sup>

“It is also worth noting that this bill was introduced and examined by this House 30 years after the landmark Fitzgerald report was delivered. This bill represents the most significant change that has occurred internally to the Police Service in the intervening 30 years. It is also a reflection of the maturing of the Queensland Police Service and the Crime and Corruption Commission during that period. The need for reform of the police discipline system is obvious from the fact that it has been virtually unchanged since it was implemented as a response to the Fitzgerald report. A period of 30 years without change or modernisation is a long time in any organisation.”<sup>262</sup>

The Shadow Minister for Police and Counter Terrorism Mr Trevor Watts also spoke in favour of the reform. He explained that the legislative process was bipartisan.

“The LNP welcomes the bill, which encapsulates a revised police discipline system. It has been negotiated with bipartisan support, and I acknowledge that.... Public confidence in the QPS is paramount. I want to make it absolutely clear that nothing can be more important than the safety of our citizens, and the thin blue line that guards that safety is valued by us all in this House, most particularly those on our side. I would also say that thin blue line must be held to high account in terms of its ethics, its accountability and its behaviour.”<sup>263</sup>

Most stakeholders were supportive of the Police Discipline Reform Bill. The Queensland Police Union applauded the new framework for modernising an antiquated system.

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260 <https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2018-043>

261 <https://www.ccc.qld.gov.au/about-us/our-history/fitzgerald-inquiry>

262 [https://www.parliament.qld.gov.au/documents/hansard/2019/2019\\_10\\_15\\_WEEKLY.pdf#page41](https://www.parliament.qld.gov.au/documents/hansard/2019/2019_10_15_WEEKLY.pdf#page41)

263 [https://www.parliament.qld.gov.au/documents/hansard/2019/2019\\_10\\_15\\_WEEKLY.pdf#page41](https://www.parliament.qld.gov.au/documents/hansard/2019/2019_10_15_WEEKLY.pdf#page41)

“It costs significant public funds to recruit and train a police officer. The new Bill recognises that officers are human beings who can make mistakes. It is designed to implement a system of discipline which recognises this and encourages officers to come forward and engage with their supervisors to improve their performance. It is designed to actively increase the professionalism of officers by removing the fear of a punitive sanction for minor or inconsequential misconduct, and replacing it with professional development strategies.”

The Bar Association of Queensland had reservations about some of the disciplinary mechanisms, for instance removing salary changes as a sanction.

“The Association is concerned that the proposed Bill leaves a very large gap between the maximum fine that can be imposed (approx. \$6,500) and the sanction of demotion (in rank).”

The Police Discipline Reform Bill is the product of multiple inquiries.<sup>264</sup> The stakeholders involved in the process were pleased with the level of consultation. Mr Alan MacSporran, Chair of the Crime and Corruption Commissioner spoke of the process:

“I have nothing but praise for all of those stakeholders who participated because at no stage was there ever a show-stopping problem that could not be solved. It is just another testament to what can be achieved if there is the will to cooperate and work through the issues. That is what has happened here ... All of the parties, including the shadow ministers, signed the memo of understanding and then the matter went to the parliamentary draftsman and that high-level, detailed cooperation between the stakeholders continued during the process while the parliamentary draftsman was setting out the provisions that you now have before you in the bill. I think it is an outstanding success ...”

At the 2015 election, the government committed to ‘review the police complaints system and implement a new disciplinary system... which ensures accountability and fairness for both police officers and the public’.<sup>265</sup> The Police Discipline Reform Bill was introduced on 13 February 2019. There was a lengthy debate and a number of amendments of a technical nature as well as a referral to the Economics and Governance Committee for consideration for additional recommendations and amendments. Royal assent was given to the final legislation on 30 October 2019.

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264 See, for example: Criminal Justice Commission, *Integrity in the Queensland Police Service: Implementation and Impact of the Fitzgerald Inquiry Reforms*, September 1997; CMC, *Dangerous Liaisons: A report arising from a CMC investigation into allegations of police misconduct (Operation Capri)*, July 2009; CMC, *CMC Review of the Queensland Police Service’s Palm Island Review*, June 2010; CMC, *Setting the Standard: A review of current processes for the management of police discipline and misconduct matters*, December 2010; Simon Webbe, Hon Glen Williams AO, QC and Felix Grayson APM, *Simple, Effective, Transparent, Strong: An independent review of the Queensland police complaints, discipline and misconduct system*, Report by the Independent Expert Panel, May 2011.

265 <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2019/5619T559.pdf>



Criteria	Conclusion	Comment	
1	Establish need	Yes	A clear need was established as the current system was 'antiquated' and engendered a lack of confidence within the QPS and the community according to a number of reviews that were conducted.
2	Set objectives	Yes	Policy objectives were couched in public interest terms. It was to repeal the old disciplinary framework and create a new one that "can guide, correct, rehabilitate and, if necessary, discipline police officers and police recruits." <sup>266</sup>
3	Identify options	No	No evidence that any alternative policy options were considered.
4	Consider mechanisms	Yes	The report from the Economics and Governance Committee contemplated different mechanisms including different sanctions.
5	Analysis	No	No evidence that a cost benefit analysis was undertaken.
6	Design pathway	No	No evidence that a project plan to rollout the reforms was published.
7	Consult further	Yes	The Economics and Governance Committee review allowed for further consultation after the legislation was released.
8	Publish proposals	No	The government lists the seven stakeholders that it consulted with during the drafting process. The legislation was a product of consultation but no public green paper was released for general feedback.
9	Introduce legislation	Yes	The Police Discipline Reform Bill was introduced on 13 February 2019. There was a lengthy debate and a number of amendments of a technical nature. Royal assent was given to the final legislation on 30 October 2019.
10	Communicate decision	No	There was a press release dated 13 February when the Bill was introduced into parliament, another press release dated 23 September, and another dated 17 October but none dated after the legislation received assent. <sup>267</sup>
		5/10	

<sup>266</sup> <https://www.legislation.qld.gov.au/view/html/bill.first.exp/bill-2018-043>

<sup>267</sup> <https://statements.qld.gov.au/statements/88644> and <https://www.ccc.qld.gov.au/corruption/police-oversight/police-discipline-system>

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